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Zachary C. Burch*

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF CONTRA COSTA**

ZACHARY C. BURCH, individually, and on
behalf of all others similarly situated,

Plaintiff,
v.

EASTBAY EQUITIES, INC., California
corporation dba WENDY'S; and DOES 1 through
10, inclusive,

Defendants.

Case No. C23-00765

**[PROPOSED] ORDER GRANTING
PLAINTIFF'S MOTION FOR APPROVAL
OF PAGA SETTLEMENT**

PAGA APPROVAL HEARING:

Date: November 14, 2024
Time: 9:00 a.m.
Dept.: 12

Complaint Filed: April 4, 2023
Trial Date: Not set

1 **[PROPOSED] ORDER**

2 Plaintiff Zachary C. Burch (“Plaintiff”) seeks approval of a PAGA Settlement
3 Agreement (“Settlement”) entered into with Defendant Eastbay Equities, Inc. (“Defendant”)
4 (together with Plaintiff, the “Parties”) in full resolution of the above-captioned litigation (the
5 “Action”).

6 The Court having duly considered Plaintiff’s Notice of Motion and Motion for
7 Approval of PAGA Settlement (“Approval Motion”), the supporting declaration and exhibits
8 thereto, all papers filed and proceedings had herein, and having reviewed the record in the
9 Action, and good cause appearing,

10 **IT IS HEREBY ORDERED AND DECREED AS FOLLOWS:**

11 1. The Court, for purposes of this Order, refers to and incorporates all defined terms
12 as set forth in the PAGA Settlement Agreement attached as “**Exhibit 1**” hereto.

13 2. The Court hereby GRANTS the Approval Motion, and the Settlement is hereby
14 accepted and approved. The Court’s Tentative Ruling granting the Approval Motion, which
15 became the Court’s ruling, is attached hereto as “**Exhibit 2.**”

16 3. The obligations set forth in the Settlement are deemed part of this Order, and the
17 Parties and the Settlement Administrator are ordered to carry out the Settlement according to
18 its terms and provisions.

19 4. Plaintiff and the Aggrieved Employees, effective on the date when Defendant
20 fully funds the entire Gross Settlement Amount, will release claims against all Released Parties
21 as follows:

22 **Plaintiff’s Release:** Plaintiff and his respective former and present
23 spouses, representatives, agents, attorneys (including PAGA
24 Counsel), heirs, administrators, successors, and assigns generally,
25 release and discharge Released Parties from all claims, transactions,
26 occurrences, or penalties under the California Private Attorneys’
27 General Act (Labor Code section 2698, et seq.) that were or could
28 have been sought by the Labor Commissioner for the violations
identified and facts contained in the Operative Complaint and
Plaintiff’s PAGA Notice, that accrued at any time during the PAGA
Period. (“Plaintiffs’ Release.”) Plaintiff’s Release under this
Agreement 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.

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 all claims for penalties under the California Private Attorneys' General Act (Labor Code section 2698, et seq.) that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in, and that could have been sought by the Labor Commissioner for the violations identified in, the Operative Complaint and/or Plaintiff's PAGA Notice to the LWDA that accrued at any time during the PAGA Period ("Released Claims"). Aggrieved Employees retain their rights to pursue claims for wages, statutory penalties, and any other damages.

Release by PAGA Counsel: PAGA Counsel releases on behalf of their present and former attorneys, employees, agents, successors and assigns the Released Parties from all claims for Attorneys' Fees and/or Litigation Costs incurred in connection with the Operative Complaint and the PAGA Period facts stated in the Operative Complaint and the PAGA Notice.

Released Parties: Released Parties are Eastbay Equities, Inc., and its respective past, present, or future affiliates, related entities, parents, subsidiaries, owners, members, partners, officers, directors, board members, managers, supervisors, employees, co-employers, predecessors, successors, assigns, agents, shareholders, investors, insurers, legal representatives, representatives, independent contractors, franchisors, including "Quality Is Our Recipe, LLC," and franchisees.

PAGA Period: PAGA Period means the period from April 1, 2022 through August 1, 2024.

5. PAGA Counsel submitted the Settlement to the California Labor and Workforce Development Agency ("LWDA"), which did not object. As such, the LWDA releases the Released Claims pursuant to *Arias v Superior Court*, 46 Cal.4th 969, 985-866 (2009).

6. The Parties shall bear their own respective attorneys' fees and costs, except as otherwise provided for in the Settlement and approved by the Court.

1 7. The Settlement is not an admission by the Defendant as defined below, nor is this
2 Order a finding of the validity of any allegations or of any wrongdoing by the Defendant.
3 Neither this Order, the Settlement, nor any document referred to herein, nor any action taken to
4 carry out the Settlement, may be used as an admission of any fault, wrongdoing, omission,
5 concession, or liability whatsoever by or against Defendant.

6 8. Defendant shall pay a Gross Settlement Amount of \$460,000.00, which shall
7 include the following payments to the Aggrieved Employees, the Labor and Workforce
8 Development Agency (“LWDA”), Plaintiff’s Counsel, and the Settlement Administrator
9 pursuant to the terms of the Settlement:

- 10 a. Actual administration costs of up to \$6,000, payable to the Settlement
11 Administrator, Simpluris, Inc., for administration of the Settlement;
12 b. Attorneys’ fees to Plaintiff’s Counsel in the amount of \$153,333.33;
13 c. Reimbursement for actual costs incurred by Plaintiff’s Counsel in the amount
14 of \$19,727.44; and
15 d. The remaining amount to the PAGA Fund, which shall be allocated as set forth
16 in Labor Code § 2699(d), with 75% allocated to the LWDA, and the remaining
17 25% to the Aggrieved Employees on a pro-rata basis.

18 9. Settlement checks shall remain valid and negotiable for one-hundred and eighty
19 (180) calendar days from the date of their issuance. If there are uncashed checks following this
20 period, the Settlement Administrator will ensure the uncashed funds shall be forwarded to State
21 of California Controller’s Unclaimed Property Fund in the name of the Aggrieved Employees
22 who did not cash their checks.

23 10. Defendant shall transmit the entire Gross Settlement Amount due under the
24 Settlement Agreement to the Settlement Administrator within ten (10) business days after the
25 later of the Effective Date or the date the Settlement Administrator provides Defendant with
26 wire instructions for depositing the Gross Settlement Amount and verbally verifies the
27 authenticity of those wire instructions with Defendant by a telephone call prior to the transfer.
28

1 Defendant shall initiate the telephone call with the Settlement Administrator within five (5)
2 calendar days of receiving the wire transfer instructions from the Settlement Administrator.

3 11. Within fourteen (14) calendar days after Defendant fully funds the Gross
4 Settlement Amount, the Settlement Administrator shall disburse funds pursuant to the terms
5 specified in this Settlement Agreement.

6 12. "Effective Date" means the date by when both of the following have occurred:
7 (a) the Court enters a Judgment on its Order granting approval of the Settlement; and (b) the
8 Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) the
9 period for filing any appeal, writ, or other appellate proceeding opposing the settlement
10 approval has elapsed without any appeal, writ, or other appellate proceeding having been filed;
11 (b) any appeal, writ, or other appellate proceeding opposing the settlement approval has been
12 dismissed finally and conclusively with no right by any appellant or objector to pursue further
13 remedies or relief; or (c) any appeal, writ, or other appellate proceeding has upheld the
14 settlement approval with no right by any appellant or objector to pursue further remedies or
15 relief. In this regard, it is the intention of the Parties that the Settlement shall not become
16 effective until the Court's approval of the Settlement is completely final, and no further recourse
17 exists by an appellant or objector who seeks to contest the Settlement. The occurrence of the
18 Effective Date is a prerequisite to any obligation of Defendant to pay the Gross Settlement
19 Amount.

20 13. The Court hereby appoints Simpluris, Inc. as the Settlement Administrator.

21 14. The Court hereby appoints Moon Law Group, PC as PAGA Counsel.

22 15. The Court finds that the fees requested by Plaintiff's Counsel of \$153,333.33 are
23 reasonable, and the costs incurred by Plaintiff's Counsel in the amount of \$19,727.44 were
24 reasonable and necessary for the prosecution of this Action. The Court hereby awards attorney's
25 fees in the amount of \$153,333.33 and costs in an amount of \$19,727.44 to Plaintiff's Counsel
26 for their costs. The payment of fees and costs to Plaintiff's Counsel shall be made in accordance
27 with the terms of the Settlement.
28

1 16. The Court approves the proposed notice letter, attached as Exhibit B to the
2 Settlement, to be sent to Aggrieved Employees along with their respective settlement checks.

3 17. This Action is dismissed with prejudice.

4 18. Plaintiff shall submit a copy of this Order to the LWDA within thirty (30)
5 calendar days after entry of this Order.

6 19. This Court shall retain jurisdiction, pursuant to California Code of Civil
7 Procedure section 664.6, over this Action, the Parties, and the Aggrieved Employees to the
8 fullest extent necessary to interpret, enforce, and effectuate the terms and intent of the
9 Settlement and this Order and Judgment.

10 20. The Court sets a Compliance Hearing re: Disbursement for September 18, 2025
11 at 9:00 a.m. in Department 39. At least one week prior to the Compliance Hearing, Plaintiff's
12 Counsel shall file a compliance statement, which should update and document the actual
13 litigation costs to be reimbursed, and a final report and declaration by the Settlement
14 Administrator regarding settlement distribution. Ten percent of the attorneys' fees shall be
15 withheld by the Settlement Administrator pending the Compliance Hearing. No appearance
16 will be required at the Compliance Hearing if the Settlement Administrator's declaration
17 reports that all the distributions under the Settlement are complete.

18 **IT IS SO ORDERED.**

19 DATED: _____

HON. CHARLES S. TREAT
CONTRA COSTA COUNTY SUPERIOR
COURT

EXHIBIT 1

PAGA SETTLEMENT AGREEMENT

This “PAGA” (Private Attorneys General Act of 2004, California Labor Code section 2698 et seq.) Settlement Agreement (“Agreement”) is made by and between Plaintiff Zachary C. Burch (“Plaintiff”) and Defendant Eastbay Equities, Inc. dba Wendy’s (“Defendant”). The Agreement refers to Plaintiff and Defendant collectively as “Parties,” or individually as “Party.”

1. DEFINITIONS.

- 1.1 “Action” means Plaintiff’s PAGA lawsuit entitled *Zachary Burch vs. Eastbay Equities, Inc.*, filed in the Superior Court of California, County of Contra Costa, case number C23-00765.
- 1.2 “Aggrieved Employee” means any and all persons who are or were employed by Defendant in California as a non-exempt employee during the PAGA Period.
- 1.3 “Aggrieved Employee Data” means Aggrieved Employee identifying information in Defendant’s possession including the Aggrieved Employee’s name, last-known mailing address, Social Security number, and number of PAGA Pay Periods.
- 1.4 “Aggrieved Employee Address Search” means the Settlement 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 Settlement Administrator with Aggrieved Employees.
- 1.5 “Approval Order” means the Court’s order granting approval of the Settlement.
- 1.6 “Attorneys’ Costs” or “Litigation Costs” means the amount to be reimbursed to PAGA Counsel for their litigation costs and expenses incurred to prosecute the Action. Attorneys’ Costs shall not exceed \$25,000.00.
- 1.7 “Attorneys’ Fees” means the amount to be awarded to PAGA Counsel for the work they have performed in furtherance of the Action. Attorneys’ Fees shall not exceed \$153,333.33, which represents one-third of the Gross Settlement Amount.
- 1.8 “Court” means the Superior Court of California, County of Contra Costa.
- 1.9 “Defense Counsel” means Littler Mendelson, P.C, the attorneys representing Defendant in the Action.
- 1.10 “Effective Date” means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order granting approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) the period for filing any appeal, writ, or other appellate proceeding opposing the settlement approval has elapsed without any appeal, writ, or other appellate proceeding having been filed; (b) any appeal, writ, or other appellate proceeding opposing the settlement approval has been dismissed finally and conclusively with no right by any appellant or objector to pursue further remedies or relief; or (c) any appeal, writ, or other

appellate proceeding has upheld the settlement approval with no right by any appellant or objector to pursue further remedies or relief. In this regard, it is the intention of the Parties that the Settlement shall not become effective until the Court's approval of the Settlement is completely final, and no further recourse exists by an appellant or objector who seeks to contest the Settlement. The occurrence of the Effective Date is a prerequisite to any obligation of Defendant to pay the Gross Settlement Amount.

- 1.11 "Gross Settlement Amount" means \$460,000.00 which is the maximum total amount Defendant agrees to pay under the Settlement except as provided in Paragraph 8 below. The Gross Settlement Amount will be used to pay Individual PAGA Payments, the LWDA PAGA Payment, Attorneys' Fees, Attorneys' Costs, the Settlement Administration Costs, and any employer side payroll taxes (if any).
- 1.12 "Individual PAGA Payment" means the Aggrieved Employee's pro rata share of the 25% of the Net Settlement Amount calculated according to the number of Pay Periods the Aggrieved Employee worked during the PAGA Period.
- 1.13 "Judgment" means the judgment entered by the Court based upon the Approval Order.
- 1.14 "LWDA PAGA Payment" means the 75% of the Net Settlement Amount paid to the Labor and Workforce Development Agency's ("LWDA") under Labor Code section 2699, subd. (i).
- 1.15 "Net Settlement Amount" means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Attorneys' Fees, Attorneys' Costs, and the Settlement Administration Costs. The remainder is the total amount of PAGA civil penalties to be paid under the Settlement, which will be allocated 75% to the LWDA and 25% to the Aggrieved Employees in settlement of PAGA claims.
- 1.16 "PAGA Counsel" means Moon Law Group, PC, the attorneys representing Plaintiff in the Action.
- 1.17 "Pay Period" means any pay period during which an Aggrieved Employee was employed by Defendant for at least one day during the PAGA Period.
- 1.18 "PAGA Notice" means Plaintiff's April 1, 2023 letter to Defendant and the LWDA providing notice pursuant to Labor Code § 2699.3(a), attached hereto as **Exhibit A**.
- 1.19 "PAGA Period" means the period from April 1, 2022 through August 1, 2024, or the date of the Court's Order approving the Settlement, whichever date is earlier.
- 1.20 "Released Claims" means the claims being released by Plaintiff and Aggrieved Employees as described in Paragraph 5.2 below.
- 1.21 "Released Parties" means Eastbay Equities, Inc., and its respective past, present, or future affiliates, related entities, parents, subsidiaries, owners, members, partners, officers, directors, board members, managers, supervisors, employees, coemployers, predecessors, successors, assigns, agents, shareholders, investors, insurers, legal representatives, representatives, independent contractors, franchisors, including "Quality Is Our Recipe, LLC," and franchisees.

- 1.22 “Settlement” means the disposition of the Action effected by this Agreement and the Judgment.
- 1.23 “Settlement Administrator” means Simpluris, Inc., a neutral, third-party administrator the Parties have agreed to appoint to administer the Settlement.
- 1.24 “Settlement Administration Costs” means means the amount the Settlement Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in administering the Settlement in accordance with this Agreement.

2. RECITALS

- 2.1 On April 4, 2023, Plaintiff commenced this Action by filing a complaint alleging the following causes of action against Defendant: (1) Failure to Pay Minimum Wages [Cal. Lab. Code §§ 204, 1194, 1194.2, and 1197]; (2) Failure to Pay Overtime Compensation [Cal. Lab. Code §§ 1194 and 1198]; (3) Failure to Provide Meal Periods [Cal. Lab. Code §§ 226.7, 512]; (4) Failure to Authorize and Permit Rest Breaks [Cal. Lab. Code § 226.7, 512]; (5) Failure to Indemnify Necessary Business Expenses [Cal. Lab. Code § 2802]; (6) Failure to Timely Pay Final Wages at Termination [Cal. Lab. Code §§ 201-203]; (7) Failure to Provide Accurate Itemized Wage Statements [Cal. Lab. Code § 226]; and (8) Unfair Business Practices [Cal. Bus. & Prof. Code §§ 17200, et seq.]. On June 5, 2023, Plaintiff filed a first amended complaint, alleging additional cause of action for Civil Penalties Under PAGA [Cal. Lab. Code § 2699, et seq.] (the “Operative Complaint”). On June 30, 2023, Plaintiff’s class allegations were dismissed. Thus, the Action consists solely of Plaintiff’s cause of action for civil penalties under PAGA.
- 2.2 Defendant 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. This Agreement shall not be construed as an admission of fault or wrongdoing by the Released Parties, or any of them.
- 2.3 Pursuant to Labor Code section 2699.3, subd. (a), Plaintiff gave timely written notice to Defendants and the LWDA by sending a PAGA notice letter on April 1, 2023. Plaintiff’s PAGA case number is LWDA-CM-945829-23.
- 2.4 On May 1, 2024, the Parties participated in an all-day mediation presided over by mediator Tripper Ortman, Esq., which led to this Agreement to settle the Action. The Parties agree that the terms and conditions of this Agreement are the result of lengthy, intensive arms-length negotiations between the Parties supervised by an experienced employment law mediator.
- 2.5 Prior to mediation and negotiating the Settlement, Plaintiff obtained, through informal discovery, a sample of the time and payroll records for the Aggrieved Employees, the number of Pay Periods and Aggrieved Employees in the PAGA Period, relevant excerpts of Defendant’s employment policies and handbook, and other relevant documents. Plaintiff retained an expert to analyze the records produced by Defendant.

- 2.6 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 8 below, Defendant promises to pay \$460,000.00 and no more as the Gross Settlement Amount. Defendant has no obligation to pay the Gross Settlement Amount prior to the deadline stated in Paragraph 4.3 of this Agreement. The Settlement 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 Defendant.

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

3.2.1 To PAGA Counsel: Attorneys' Fees of not more than one-third (1/3) of the Gross Settlement Amount, which is currently estimated to be \$153,333.33, and Litigation Costs of not more than \$25,000.00. Defendant will not oppose requests for these payments provided that they do not exceed these amounts. Plaintiff and/or PAGA Counsel will file a motion for approval of the Settlement, which will include a request for PAGA Counsel's Attorneys' Fees and Litigation Costs. If the Court approves Attorneys' Fees and/or Litigation Costs less than the amounts requested, the Settlement 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 the Attorneys' Fees and/or Litigation Costs. The Settlement Administrator will pay the Attorneys' Fees and Litigation Costs using one or more IRS 1099 Forms. PAGA Counsel assumes full responsibility and liability for taxes owed on the Attorneys' Fees and Litigation Costs 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 Settlement Administrator: Settlement Administration Costs not to exceed \$6,000.00 except for a showing of good cause and as approved by the Court. To the extent the Settlement Administration Costs are less or the Court approves payment less than \$6,000.00, the Settlement Administrator will retain the remainder in the Net Settlement Amount.

3.2.3 To the LWDA and Aggrieved Employees: The Net Settlement Amount will be distributed amongst Aggrieved Employees and the LWDA, with 75% allocated to the LWDA PAGA Payment and 25% allocated to the Individual PAGA Payments.

3.2.3.1 The Settlement Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of the Net Settlement Amount by the total number of Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's Pay Periods. Aggrieved Employees

assume full responsibility and liability for any taxes owed on their Individual PAGA Payments.

3.2.3.2 All payments to Aggrieved Employees under this Settlement shall be characterized as non-wage penalties, and the Settlement Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

4. **SETTLEMENT FUNDING AND PAYMENTS.**

- 4.1 PAGA Period Pay Periods. Based on a review of its records to date, Defendant estimates there are approximately 1,739 Aggrieved Employees approximately who worked a total of 35,000 pay periods in the PAGA Period.
- 4.2 Aggrieved Employee Data. Within ten (10) business days of the later of the Effective Date or the date the Settlement Administrator provides Defendant with instructions for securely transferring the Aggrieved Employee Data to the Settlement Administrator, Defendant will deliver the Aggrieved Employee Data to the Settlement Administrator, in the form of a Microsoft Excel spreadsheet. To protect Aggrieved Employees' privacy rights, the Settlement 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 the Settlement Administrator employees who need access to the Aggrieved Employee Data to effect and perform under this Agreement. Defendant has a continuing duty to immediately notify PAGA Counsel if it discovers that the Aggrieved Employee Data omitted Aggrieved Employee identifying information and to provide corrected or updated Aggrieved Employee Data as soon as reasonably feasible. Without any extension of the deadline by which Defendant must send the Aggrieved Employee Data to the Settlement Administrator, 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. PAGA Counsel agrees that it shall not view the Aggrieved Employee Data, and that if obtains the Aggrieved Employee Data, it will immediately delete the data and inform the Settlement Administrator and Defense Counsel of the disclosure and the steps it took to delete the Aggrieved Employee Data.
- 4.3 Funding of Gross Settlement Amount. Defendant shall fully fund the Gross Settlement Amount by transmitting the funds to the Settlement Administrator no later than ten (10) business days after the later of (1) the Effective Date, or (2) the date the Settlement Administrator provides Defendant with wire instructions for depositing the Gross Settlement Amount and verbally verifies the authenticity of those wire instructions with Defendant by a telephone call prior to the transfer, initiated by Defendant using the Settlement Administrator's telephone number published on its known website. Defendant shall initiate the telephone call with the Settlement Administrator to verify the authenticity of the wire transfer instructions within five (5) calendar days of receiving the wire transfer instructions from the Settlement Administrator.
- 4.4 Payments from the Gross Settlement Amount. Within fourteen (14) calendar days after Defendant fully funds the Gross Settlement Amount, the Settlement Administrator shall mail checks for all Individual PAGA Payments, the LWDA PAGA Payment, Attorneys'

Fees, and Litigation Costs. Disbursement of PAGA Counsel Attorneys' Fees and Litigation Costs shall not precede disbursement of Individual PAGA Payments.

4.4.1 The Settlement Administrator will issue checks for the Individual PAGA Payments and send them to 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 Settlement 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 Settlement Administrator must conduct an Aggrieved Employee Address Search for all Aggrieved Employees whose checks are returned undelivered without USPS forwarding address. Within seven (7) calendar days of receiving a returned check, the Settlement Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Aggrieved Employee Address Search. The Settlement 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 Settlement Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Aggrieved Employee, thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b).

4.4.4 The payment of Individual PAGA Payments shall not obligate Defendant 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 Defendant fully funds the entire Gross Settlement Amount, Plaintiff and the Aggrieved Employees will release claims against all Released Parties as follows:

- 5.1 Plaintiff's Release. Plaintiff and his 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, occurrences, or penalties under the California Private Attorneys' General Act (Labor Code section 2698, et seq.) that were or could have been sought by the Labor Commissioner for the violations identified and facts contained in the Operative Complaint and Plaintiff's PAGA Notice, that accrued at any time during the PAGA Period. ("Plaintiffs' Release.") Plaintiff's Release under this Agreement 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 all claims for penalties under the California Private Attorneys' General Act (Labor Code section 2698, et seq.) that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in, and that could have been sought by the Labor Commissioner for the violations identified in, the Operative Complaint and/or Plaintiff's PAGA Notice to the LWDA that accrued at any time during the PAGA Period ("Released Claims"). Aggrieved Employees retain their rights to pursue claims for wages, statutory penalties, and any other damages.

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

6. MOTION FOR APPROVAL OF SETTLEMENT.

6.1 Plaintiff's Responsibilities. Plaintiff will prepare all documents necessary to obtain the Court's approval of the Settlement and deliver them to Defense Counsel before the motion and supporting papers are filed with the Court. Specifically, Plaintiff will prepare the following documents: (i) a draft proposed Approval Order; (ii) a signed declaration from the Settlement Administrator attaching its "not to exceed" bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Aggrieved Employee Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Aggrieved Employees or the LWDA; and the nature and extent of any financial relationship with Plaintiff, PAGA Counsel or Defense Counsel; (iii) a signed declaration from PAGA Counsel firm attesting to its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code § 2699.3(a)), Operative Complaint (Labor Code § 2699(l)(1)), and this Agreement (Labor Code § 2699(l)(2)); and (iv) declarations from Plaintiff and PAGA Counsel stating all facts relevant to any actual or potential conflict of interest with Aggrieved Employees and/or the Settlement 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 Counsel. PAGA Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the motion for approval of the Settlement (“Approval Motion”) no later than 30 days after the full execution of this Agreement, and obtaining a prompt hearing date for the Approval Motion and appearing in Court to advocate in favor of the Motion. PAGA Counsel is responsible for delivering the Court’s Approval Order to the Settlement Administrator.
- 6.3 Duty to Cooperate. If the Parties disagree on any aspect of the proposed Approval Motion 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 Approval Motion 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 Settlement Administrator. The Parties have jointly selected Simpluris, Inc. (“Simpluris”) to serve as the Settlement Administrator and verified that, as a condition of appointment, Simpluris agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Settlement Administration Costs. The Parties, PAGA Counsel and Defense Counsel represent that they have no interest or relationship, financial or otherwise, with the Settlement Administrator other than a professional relationship arising out of prior experiences administering settlements.
- 7.2 Employer Identification Number. The Settlement Administrator shall have and use its own “Employer Identification Number” for purposes of calculating payroll tax withholdings and providing reports to state and federal tax authorities.
- 7.3 Qualified Settlement Fund. The Settlement Administrator shall establish a settlement fund that meets the requirements of a qualified settlement fund (“QSF”) under US Treasury Regulation section 468B-1. Instructions to Defendant. The Settlement Administrator shall provide Defendant with instructions for securely transferring the Aggrieved Employee Data to the Settlement Administrator after receiving the Approval Order from PAGA Counsel and by no later than the Effective Date. The Settlement Administrator shall also provide Defendant with wire instructions for depositing the Gross Settlement Amount after receiving the Approval Order from PAGA Counsel and by no later than the Effective Date.
- 7.4 Notice to Aggrieved Employees. All checks for the Individual PAGA Payment mailed to each Aggrieved Employee shall be accompanied by a notice letter from the Settlement Administrator, substantially in the form attached to this Agreement as **Exhibit B**.

- 7.5 Final Accounting and Declaration. Within ten (10) days after the Settlement Administrator disburses all funds in the Gross Settlement Amount, the Settlement Administrator shall provide PAGA Counsel and Defense Counsel with a final accounting, detailing its disbursements of all payments made under this Agreement. If requested by the Parties and/or the Court, at least fourteen (14) days before any deadline set by the Court, the Settlement Administrator shall prepare and provide PAGA Counsel and Defense Counsel, a signed declaration attesting to its due diligence and compliance with all of its obligations under this Agreement. The Settlement Administrator shall supplement its declaration as needed or requested by the Parties and/or the Court. PAGA Counsel is responsible for filing the Settlement Administrator's declaration in Court.
- 7.6 Administrator Duties. The Settlement Administrator has a duty to perform or observe all tasks to be performed or observed by the Settlement Administrator contained in this Agreement or otherwise.

8. ESCALATOR CLAUSE. Based on its records, Defendant estimates that, as of the date of this Agreement, there are approximately 35,000 Pay Periods in the PAGA Period. If the number of Pay Periods in the PAGA Period exceeds 35,000 by more than 10%, meaning if the number of total Pay Periods is 38,500 or more, the Gross Settlement Amount shall be increased by the percentage that the actual number of Pay Periods exceeds 38,500. Alternatively, Defendant may elect to end the PAGA Period applicable to the Released Claims on the date that the total number of Pay Periods reaches 38,500, so that the escalator clause is not triggered.

9. CONTINUING JURISDICTION AND WAIVER OF RIGHT TO APPEAL.

- 9.1 Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.
- 9.2 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the Attorneys' Fees and Attorneys' Costs, the Parties, their respective counsel waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If another party appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.

10. ADDITIONAL PROVISIONS.

- 10.1 No Admission of Liability or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Defendant that any of the allegations in the Operative Complaint have merit or that Defendant has any liability for any claims asserted; nor should it be intended or construed as an admission

by Plaintiff that Defendant'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 the Settlement, Defendant reserves all available defenses to the claims in the Action, and Plaintiff reserves the right to contest Defendant's defenses. The Settlement, this Agreement, and the Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

- 10.2 Publicity. PAGA Counsel agrees to discuss the terms of this Settlement only in declarations submitted to the Court to establish PAGA Counsel's adequacy to serve as counsel, in declarations submitted to the Court in support of the Approval Motion, and any other pleading filed with the Court in conjunction with the Settlement. PAGA Counsel and Plaintiff agree that they will not publish any press releases or press statements regarding the Settlement, identify Defendant or Defense Counsel by name in any media including PAGA Counsel's website, or have any communications with the press or media about the Action or the Settlement. Plaintiff, in response to inquiries, will state that that "the Action was resolved." This provision will not impede PAGA Counsel's ability to discharge fiduciary duties, including effectuating the terms of this Settlement.
- 10.3 Confidentiality Prior to Approval. Plaintiff, PAGA Counsel, Defendant, and Defense Counsel separately agree that, until the Approval Motion is filed, they and each of them will not disclose, disseminate and/or publicize, or cause or permit another person to disclose, disseminate or publicize, any of the terms of the Agreement directly or indirectly, specifically or generally, to any person, corporation, association, government agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses, all of whom will be instructed to keep this Agreement confidential; (2) counsel in a related matter; (3) to the extent necessary to report income to appropriate taxing authorities; (4) in response to a court order or subpoena; or (5) in response to an inquiry or subpoena issued by a state or federal government agency.
- 10.4 Communication by PAGA Counsel. PAGA Counsel will not initiate contact or communicate with the Aggrieved Employees during the approval process. However, nothing in this paragraph shall be construed to prevent PAGA Counsel from responding to inquiries from Aggrieved Employees.
- 10.5 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. However, this Agreement does not effect or supersede the individual settlement agreement and general release that Plaintiff entered into with Defendant on or about May 8, 2024, which shall become null and void to the extent that the Settlement contemplated in this Agreement is not approved by the Court.
- 10.6 Attorney Authorization. PAGA Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiff and Defendant, 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.

- 10.7 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 the Action's mediator, Tripper Ortman, and/or the Court for resolution.
- 10.8 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 Parties in this Settlement.
- 10.9 No Tax or Legal Advice. The Parties understand and agree that the Parties are neither providing tax or legal advice, nor making representations regarding tax obligations or consequences, if any, related to this Agreement, and that the Aggrieved Employees will assume any such tax obligations or consequences that may arise from this Agreement, and that the Aggrieved Employees shall not seek any indemnification from the Parties or any of the Released Parties in this regard. Neither Plaintiff, PAGA Counsel, Defendant, 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.
- 10.10 Invalidity of Any Provision. Before declaring any provision of this Agreement invalid, the Parties request that the Court first attempt to construe the provisions valid to the fullest extent possible consistent with applicable precedents, so as to define all provisions of this Agreement valid and enforceable.
- 10.11 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, and approved by the Court.
- 10.12 Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
- 10.13 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.
- 10.14 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.
- 10.15 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 Defendant 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.

- 10.16 Headings. The descriptive headings contained in this Agreement are inserted for convenience and reference only and in no way define, limit, extend or describe the scope of this Settlement or any provision hereof. Each term of this Settlement is contractual and not merely a recital.
- 10.17 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.
- 10.18 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:

Kane Moon
 Allen Feghali
 Julie Sohyun Oh
MOON LAW GROUP, PC
 725 S Figueroa Street, 31st Floor
 Los Angeles, CA 90017
 Telephone: (213) 232-3128
 Facsimile: (213) 232-3125
 kmoon@moonlawgroup.com
 afeghali@moonlawgroup.com
 joh@moonlawgroup.com

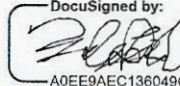
To Defendant:

Richard L. Gillespie
 Cristina L. Piechocki
LITTLER MENDELSON, P.C.
 Treat Towers
 1255 Treat Boulevard, Suite 600
 Walnut Creek, California 94597
 Telephone: (925) 932-2468
 Facsimile: (925) 946-9809
 rgillespie@littler.com
 cpiechocki@littler.com

- 10.19 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.
- 10.20 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, until the Court approves the Settlement or, if the Court refuses to approve the Settlement, until the Parties declare in writing that the Agreement cannot be modified and that the Settlement is void. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 the date to bring a case to trial under CCP section 583.310 shall be tolled until Final Approval.

10.21 Plaintiff represents that he has complied with any and all prefiling requirements for his PAGA claim against Defendant, including but not limited to providing notice to the California Labor and Workforce Development Agency as required by California Labor Code section 2699.3. Plaintiff further agrees to provide any and all notices to the California Labor and Workforce Development Agency required to effectuate the Settlement, including the notice required by California Labor Code section 2699 subdivision (1)(2).

Date: 6/12/2024

DocuSigned by:

A0EE9AEC136049C...

Plaintiff Zachary C. Burch

Date: 6-19-24

NANCY MELIN
Defendant Eastbay Equities, Inc.

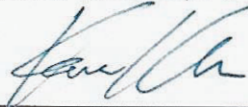
By: Nancy Melin

Its: G. O. O.

Approved as to form by:

Date: 6/12/2024

MOON LAW GROUP, PC



Kane Moon
Allen Feghali
Julie Sohyun Oh
Counsel for Plaintiff

Date: June 27, 2024

LITTLER MENDELSON, P.C.

Cristina Piechocki

Richard L. Gillespie
Cristina L. Piechocki
Counsel for Defendant

Exhibit A

MOON & YANG, APC

ATTORNEYS AT LAW
WWW.MOONYANGLAW.COM

1055 W. SEVENTH ST., SUITE 1880
LOS ANGELES, CALIFORNIA 90017
TELEPHONE: (213) 232-3128
FACSIMILE: (213) 232-3125

Kane Moon, Esq.
Kane.Moon@moonyanglaw.com

April 1, 2023

VIA ONLINE SUBMISSION

Labor & Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

VIA CERTIFIED MAIL

Eastbay Equities, Inc.
399 Taylor Blvd., Suite 103
Pleasant Hill, CA 94523

Notice of Labor Code Violations and PAGA Penalties

Re: ***Zachary C. Burch v. Eastbay Equities, Inc. dba Wendy's***

To Whom It May Concern:

Please be advised that my office has been retained by Zachary C. Burch ("Plaintiff") to pursue a Labor Code Private Attorney General Act (PAGA) representative action (Cal. Lab. Code §§ 2699, *et seq.*) against his former employer, Eastbay Equities, Inc. dba Wendy's ("Defendant"). The purpose of this letter is to comply with PAGA and set forth the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to Plaintiff and all of Defendant's aggrieved employees.

Plaintiff wishes to pursue a PAGA representative action on behalf of Plaintiff as an aggrieved employee, on behalf of the State of California, and on behalf of all other current and former aggrieved employees who worked for Defendant in California as an hourly paid, non-exempt employee at any time within the applicable statutory period (hereafter, the "Aggrieved Employees").

Plaintiff and the Aggrieved Employees of Defendant suffered the Labor Code violations described below.

Factual Background Regarding Plaintiff's Employment with Defendant

Defendant owns and operates an industry, business, and establishment within the State of California, including Contra Costa County. As such, Defendant is subject to the California Labor Code and the Wage Orders issued by the Industrial Welfare Commission ("IWC").

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Plaintiff worked for Defendant as a crew member from approximately May 2022 to July 2022, primarily in Contra Costa County. Defendant classified Plaintiff as non-exempt from overtime. During the time period that Plaintiff was employed by Defendant, Plaintiff typically worked 5 to 6 days per week, and in excess of 8 hours each workday.

Throughout Plaintiff's employment, Defendant committed numerous labor code violations under state law. As discussed below, Plaintiff's experience working for Defendant was typical and illustrative.

Failure to Pay for All Hours Worked, Including Overtime

Under California law, an employer must pay for all hours worked by an employee. "Hours worked" is the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In addition, Labor Code § 510 provides that employees in California shall not be employed more than eight (8) hours in any workday or forty (40) hours in a workweek unless they receive additional compensation beyond their regular wages in amounts specified by law.

Labor Code §§ 1194 and 1198 also provide that employees in California shall not be employed more than eight hours in any workday unless they receive additional compensation beyond their regular wages in amounts specified by law. Additionally, Labor Code § 1198 states that the employment of an employee for longer hours than those fixed by the Industrial Welfare Commission is unlawful.

Throughout the statutory period, Defendants maintained a policy and practice of not paying Plaintiff and the Aggrieved Employees for all hours worked, including all overtime wages. Throughout the statutory period, Plaintiff and the Aggrieved Employees were required to work off-the-clock, and uncompensated. For example, Plaintiff and the Aggrieved Employees were required to arrive early to work without clocking in, such as to organize supplies and fill soda machines and ice machines, off the clock and uncompensated. Plaintiff and the Aggrieved Employees were also required to work after their shifts ended, and after clocking out, such as to clean, mop floors, sweep, wash dishes, take out trash, and other activities, off the clock and uncompensated. Plaintiff and the Aggrieved Employees were also unpaid some time at the beginning of their employment, during the time in which they were not yet in the timekeeping system. During this time, Defendants did not pay Plaintiff and the Aggrieved Employees for all work performed. Plaintiff and the Aggrieved Employees were also not paid all wages for watching training videos, which were completed off the clock and uncompensated. Also throughout the statutory period, Plaintiff and the Aggrieved Employees were sometimes required to show up to work, only to be asked to return home within the first 2 hours, without being paid

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reporting time pay. Also throughout the statutory period, Plaintiff and the Aggrieved Employees sometimes worked more than 1 shift during a single workday, but were not paid split shift premiums. Also throughout the statutory period, Defendants required Plaintiff and the Aggrieved Employees to work seven consecutive days without rest, and further failed to pay all double-time wages and overtime wages owed.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, 1197.1, and 2699(f)(2) for failing to pay for all hours worked, including overtime.

Failure to Provide Meal Periods

Under California law, employers have an affirmative obligation to relieve employees of all duty in order to take their first 30-minute, duty-free meal periods no later than the start of sixth hour of work in a workday, and to allow employees to take their second 30-minute, duty-free meal period no later than the start of the eleventh hour of work in the workday. Further, employees are entitled to be paid one hour of additional wages for each workday they were not provided with all required meal period(s).

Despite these legal requirements, Defendant wrongfully failed to provide Plaintiff and the Aggrieved Employees with legally compliant meal periods. Defendant regularly required Plaintiff and the Aggrieved Employees to work in excess of five consecutive hours a day without providing a 30-minute, continuous and uninterrupted, duty-free meal period for every five hours of work, or without compensating Plaintiff and the Aggrieved Employees for meal periods that were not provided by the end of the fifth hour of work or tenth hour of work. Defendant did not adequately inform Plaintiff and the Aggrieved Employees of their right to take a meal period by the end of the fifth hour of work, or, for shifts greater than 10 hours, by the end of the tenth hour of work. Moreover, Defendant did not have adequate written policies or practices providing meal periods for Plaintiff and the Aggrieved Employees, nor did Defendant have adequate policies or practices regarding the timing of meal periods. Defendant also did not have adequate policies or practices to verify whether Plaintiff and the Aggrieved Employees were taking their required meal periods. Accordingly, Defendant's policy and practice was to not provide meal periods to Plaintiff and the Aggrieved Employees in compliance with California law.

Plaintiff and the Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not provided with all required meal period(s). Defendant, however, regularly failed to pay Plaintiff and the Aggrieved Employees the additional wages to which they were entitled for meal periods and that were not provided.

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As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, and 2699(f)(2) for failing to provide meal periods and pay meal period premium wages.

Failure to Authorize and Permit Rest Periods

Employers are required by California law to authorize and permit breaks of 10 uninterrupted minutes for each four hours of work or major fraction of four hours (i.e. more than two hours). Thus, for example, if an employee's work time is 6 hours and ten minutes, the employee is entitled to two rest breaks. Each failure to authorize rest breaks as so required is itself a violation of California's rest break laws.

Defendant, however, wrongfully failed to authorize and permit Plaintiff and the Aggrieved Employees to take timely and duty-free rest periods. Defendant regularly required Plaintiff and the Aggrieved Employees to work in excess of four consecutive hours a day without Defendant authorizing and permitting them to take a 10 minute, continuous and uninterrupted, rest period for every four hours of work (or major fraction of four hours), or without compensating Plaintiff and the Aggrieved Employees for rest periods that were not authorized or permitted. Defendant did not adequately inform Plaintiff and the Aggrieved Employees of their right to take a rest period. Moreover, Defendant did not have adequate policies or practices permitting or authorizing rest periods for Plaintiff and the Aggrieved Employees, nor did Defendant have adequate policies or practices regarding the timing of rest periods. Defendant also did not have adequate policies or practices to verify whether Plaintiff and the Aggrieved Employees were taking their required rest periods. Further, Defendant did not maintain accurate records of employee work periods, and therefore Defendant cannot demonstrate that Plaintiff and the Aggrieved Employees took rest periods during the middle of each work period. Accordingly, Defendant's policy and practice was for Plaintiff and the Aggrieved Employees to work through rest periods and to not authorize or permit them to take any rest periods.

Plaintiff and the Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not authorized and permitted to take all required rest period(s). Defendant, however, regularly failed to pay Plaintiff and the Aggrieved Employees the additional wages to which they were entitled for rest periods and that they were not authorized and permitted to take.

As a result, Defendant are liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, and 2699(f)(2) for failing to authorize and permit rest periods and pay rest period premium wages.

Failure to Maintain Accurate Records of Hours Worked and Meal Periods

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Plaintiff seeks penalties under Labor Code § 1174(d). Pursuant to Labor Code § 1174.5, any person, including any entity, employing labor who willfully fails to maintain accurate and complete records required by Labor Code § 1174 is subject to a penalty under § 1174.5. Pursuant to the applicable IWC Order § 7(A)(3), every employer shall keep time records showing when the employee begins and ends each work period. Meal periods and total hours worked daily shall also be recorded.

Defendant, however, failed to maintain accurate records of hours worked and all meal periods taken or missed by Plaintiff and the Aggrieved Employees.

Defendant's failure to provide and maintain records required by the Labor Code IWC Wage Orders deprived Plaintiff and the Aggrieved Employees the ability to know, understand and question the accuracy and frequency of meal periods, and the accuracy of their hours worked stated in Defendant's records. Therefore, Plaintiff and the Aggrieved Employees had no way to dispute the resulting failure to pay wages, all of which resulted in an unjustified economic enrichment to Defendant. As a direct result, Plaintiff and the Aggrieved Employees have suffered and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost interest on such wages and expenses and attorney's fees in seeking to compel Defendant to fully perform its obligation under state law, all to their respective damage in amounts according to proof at trial. As a result of Defendant's knowing failure to comply with the Labor Code and applicable IWC Wage Orders, Plaintiff and the Aggrieved Employees have also suffered an injury in that they were prevented from knowing, understanding, and disputing the wage payments paid to them.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 1174.5 for failing to maintain accurate records of hours worked and meal periods.

Failure to Reimburse and Indemnify Expenses

California Labor Code § 2802 requires employers to reimburse employees for their necessary expenditures and losses incurred in direct consequence of the discharge of their duties or of their obedience to directions of the employer.

Throughout the statutory period, Defendant wrongfully required Plaintiff and the Aggrieved Employees to pay expenses that they incurred in direct discharge of their duties for Defendant without reimbursement, which included the purchase of masks, and the requirement of Plaintiff and the Aggrieved Employees to maintain their own uniforms. Plaintiff and the Aggrieved Employees incurred these substantial expenses as a direct result of performing their job duties for Defendant, and Defendant has failed to indemnify Plaintiff and the Aggrieved Employees for these employment-related expenses.

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Failure to Pay All Accrued Vacation Wages at Termination

Labor Code § 227.3 requires employers to pay employees for all unused vested vacation time at their final rate of pay upon termination of their employment.

During the statutory period, Defendant maintained a policy and practice of failing to pay Plaintiff and the Aggrieved Employees the correct amount of vacation pay owed at the termination of employment. For instance, when Plaintiff's employment with Defendant terminated, he was owed vacation wages at his true final wage rate on his final pay check from Defendant even though he had accrued unused vacation time. On information and belief, Defendant's failure to pay Plaintiff the correct amount of vacation pay was not a single, isolated incident, but was instead part of Defendant's policy and practice that applied to the Aggrieved Employees.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 2699(f)(2) for failing to pay all accrued vacation wages at termination.

Failure to Timely Pay All Wages at Termination

Labor Code §§ 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

Within the applicable statute of limitations, the employment of Plaintiff and many other Aggrieved Employees ended, i.e. was terminated by quitting or discharge, and the employment of others will be. However, during the relevant time period, Defendant failed, and continues to fail to pay Plaintiff and terminated Aggrieved Employees, without abatement, all wages required to be paid by Labor Code sections 201 and 202 either at the time of discharge, or within seventy-two (72) hours of their leaving Defendant's employ. These unpaid wages include wages for unpaid work time (including minimum and straight time wages), missed meal periods, and missed rest periods.

Defendant's conduct violates Labor Code §§ 201 and 202. Labor Code § 203 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, then the wages of the employee shall continue as a penalty wage from the due date, and at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

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Accordingly, Plaintiff and the Aggrieved Employees are entitled to recover from Defendant their additionally accruing wages for each day they were not paid, at their regular hourly rate of pay, up to 30 days maximum pursuant to Labor Code § 203.

Moreover, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 2699(f)(2) for failing to timely pay all wages at termination.

Failure to Furnish Accurate Itemized Wage Statements

Labor Code § 226(a) provides that every employer shall furnish each of his or her employees an accurate itemized wage statement in writing showing nine pieces of information, including: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. An employee is presumed to suffer an injury if this information is missing. (Lab. Code § 226(e)(2)(B)(iii).)

The statute further provides: “An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney’s fees.” (Lab. Code § 226(e)(1).)

Defendant intentionally and willfully failed to provide employees with complete and accurate wage statements. The deficiencies include, among other things, the failure to correctly identify hourly rates, the failure to correctly list gross wages earned, and the failure to list the true net wages earned, including wages for meal periods that were not provided in accordance with California law, wages for rest periods that were not authorized and permitted to take in accordance with California law, and correct wages earned for all hours worked.

As a result of Defendant violating Labor Code § 226, Plaintiff and similarly Aggrieved Employees suffered injury and damage to their statutorily protected rights.

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Accordingly, Plaintiff and similarly Aggrieved Employees are entitled to recover from Defendant the greater of their actual damages caused by Defendant's failure to comply with Labor Code § 226(a), or an aggregate penalty not exceeding \$4,000 dollars per employee.

Moreover, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 226.3 for failing to furnish accurate itemized wage statements.

Failure to Pay All Earned Wages Twice Per Month

Based on its failure to pay Plaintiff and the Aggrieved Employees for all wages as discussed above, Defendant also violated Labor Code § 204.

Labor Code § 204 requires employers to pay employees all earned wages two times per month. Throughout the statute of limitations period applicable to this cause of action, employees were entitled to be paid twice a month at their regular rates, including all meal period premium wages owed, rest period premium wages owed, and wages owed for hours worked. However, during all such times, Defendant systematically failed and refused to pay the employees all wages due, and failed to pay those wages twice a month, in that employees were not paid all wages for all meal periods not provided by Defendant, all wages for all rest periods not authorized and permitted by Defendant, and all wages for all hours worked. As a result, Defendant owes employees the legally required wages for unpaid wages, and Plaintiff and the Aggrieved Employees suffered damages in those amounts.

Moreover, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 210 for failing to pay all earned wages twice per month.

Action for Civil Penalties Under PAGA

In light of the above, Plaintiff alleges that Defendant violated the following provisions of the Labor Code with respect to the Aggrieved Employees:

1. Labor Code § 204, 510, 1194, 1197, and 1198 by failing to pay for all hours worked, including minimum wages, straight time wages and overtime wages;
2. Labor Code § 226.7, 512 and applicable Wage Orders by failing to provide meal periods;
3. Labor Code § 226.7 and applicable Wage Orders by failing to authorize and permit rest periods;
4. Labor Code § 1174.5 and applicable Wage Orders by failing to maintain accurate records of hours worked and meal periods taken or missed;

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5. Labor Code § 2802 by failing to reimburse and indemnify employees for expenses and losses in the direct consequence and discharge of their duties;
6. Labor Code § 227.3 by failing to pay all vacation wages at termination;
7. Labor Code §§ 201 to 203 by willfully failing to pay all wages owed at termination;
8. Labor Code § 226 by failing to provide accurate itemized wage statements; and
9. Labor Code § 204 by failing to pay all earned wages two times per month.

Therefore, on behalf of all Aggrieved Employees, Plaintiff seeks applicable penalties related to the violations alleged above pursuant to the PAGA. These include, but are not limited to, penalties under Labor Code §§ 210, 226.3, 558, 1174.5, 1197.1, 2802, and 2699(f)(2).

Plaintiff has placed Defendant on notice by mailing a certified copy of this correspondence to its corporate address, as indicated on the first page.

Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact me.

Sincerely,

MOON & YANG, APC



Kane Moon, Esq.
Attorney at Law

Exhibit B

<<DATE>>

<<FIRST_NAME>> <<LAST_NAME>>

<<ADDRESS 1>>

<<ADDRESS 2>>

NOTICE OF PAGA SETTLEMENT

Zachary Burch vs. Eastbay Equities, Inc.

Superior Court of California, County of Contra Costa, Case No. C23-00765

This is not a solicitation.

This is not a lawsuit against you, and you are not being sued.

PLEASE READ THIS NOTICE

The California Superior Court, County of Contra Costa has granted approval of a settlement in the above-captioned action (“Settlement”). Because your rights are affected by this Settlement, it is important that you read this Notice of Settlement (“Notice”) carefully. The purpose of this Notice is to provide a brief description of the claims alleged in the action and the key terms of the settlement.

WHAT INFORMATION IS IN THIS NOTICE

1. Why Have I Received This Notice?..... Page 1
2. What Is This Case About? Page 1
3. Who Are the Attorneys Representing the Parties?Page 2
4. How Does This Settlement Affect My Rights?Page 2
5. How Much Can I Expect to Receive From This Settlement?.....Page 3
6. How Can I Obtain Additional Information or Court Documents?Page 4

1. Why Have I Received This Notice?

Enclosed is your payment from the settlement of the lawsuit entitled *Zachary Burch vs. Eastbay Equities, Inc.* (Contra Costa County Superior Court, Case No. C23-00765.) The lawsuit was filed by a former employee, Zachary C. Burch (“Plaintiff”), against the named defendant Eastbay Equities, Inc. (“Defendant” or “EBE”), pursuant to the California Private Attorneys General Act of 2004, codified at California Labor Code § 2698, *et seq.* (called “PAGA”). The lawsuit was brought by Plaintiff on behalf of the State of California and all persons who worked for EBE in California as a non-exempt employee at any time between April 1, 2022 and [APPROVAL DATE] (“PAGA Period”). You have been identified as one of the employees on whose behalf the lawsuit was filed.

2. What Is This Case About? Plaintiff alleges he and other non-exempt employees employed by EBE in California during the PAGA Period were subjected to various Labor Code violations. EBE denied and continues to deny all allegations and liability. However, to avoid further time and expense of protracted and uncertain litigation, Plaintiff and EBE agreed to settle the lawsuit.

3. *Who Are the Attorneys Representing the Parties?*

Attorneys for Plaintiff	Attorneys for EBE
MOON LAW GROUP, PC Kane Moon Allen Feghali Julie Sohyun Oh 725 South Figueroa Street, 31st Floor Los Angeles, CA 90017 Telephone: (213) 232-3128 Facsimile: (213) 232-3125	LITTLER MENDELSON, P.C. Richard L. Gillespie Cristina Piechocki 1255 Treat Blvd, Suite 600 Walnut Creek, CA 94597 Telephone: (619) 232-0441 Facsimile: (925) 946-9809

4. *How Does This Settlement Affect My Rights? What are the Released Claims?*

The Court approved the Settlement on [**DATE**]. On the date the Court enters the order approving the Settlement (“Order”), and payment of all funds due under the Settlement are made, the Labor and Workforce Development Agency (“LWDA”) and Aggrieved Employees (as defined below), including Plaintiff, fully release and forever discharge the Released Parties (as defined below) from any and all Released Claims (as defined below).

“Aggrieved Employee” means any and all persons who worked for Defendant in California as a non-exempt employee at any time between April 1, 2022 through [August 1, 2024 or **APPROVAL DATE**].

“Released Claims” means that as part of the Settlement, you will be releasing claims for civil penalties that arose during the PAGA Period based on the facts alleged, or reasonably could have been alleged, in this lawsuit or Plaintiff’s PAGA notice letter to the LWDA. Specifically, the Settlement provides: “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 all claims for penalties under the California Private Attorneys’ General Act (Labor Code section 2698, et seq.) that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in, and that could have been sought by the Labor Commissioner for the violations identified in, the Operative Complaint and/or Plaintiff’s PAGA Notice to the LWDA that accrued at any time during the PAGA Period (“Released Claims”). Aggrieved Employees retain their rights to pursue claims for wages, statutory penalties, and any other damages.”

“Released Parties” are Eastbay Equities, Inc., and its respective past, present, or future affiliates, related entities, parents, subsidiaries, owners, members, partners, officers, directors, board members, managers, supervisors, employees, co-employers, predecessors, successors, assigns, agents, shareholders, investors, insurers, legal representatives, representatives, independent contractors, franchisors, including “Quality Is Our Recipe, LLC,” and franchisees.

As of [EBE’s funding date], Plaintiff, the State of California, and all Aggrieved Employees shall be deemed to have, and by operation of the Court’s Order and judgment granting approval of the settlement, fully, finally, and forever released, relinquished, and discharged each and all of the

Released Parties from the Released Claims between April 1, 2022 through [August 1, 2024 or **APPROVAL DATE**]. Plaintiff, the Aggrieved employees and the LWDA may discover facts in addition to those they now know or believe to be true with respect to the subject matter of the Released Claims, but upon the Court's approval of the Settlement, Plaintiff, the LWDA and the Aggrieved Employees shall be deemed to have, and by operation of the Court's Order and judgment approving the Settlement shall have, fully, finally and forever settled and released any and all of the Released claims, without regard to subsequent discovery or existence of such different or additional facts. It is the intent of the Parties that the Settlement approval order and judgment entered by the Court shall have full *res judicata* effect and be final and binding upon the LWDA and PAGA Aggrieved Employees regarding the Released Claims. In light of the binding nature of a PAGA judgment on non-party employees pursuant to *Arias v. Sup. Ct.*, 46 Cal. 4th 969 (2009) and *Cardenas v. McLane Foodservice, Inc.*, 796 F.Supp.2d 1246 (2011), Aggrieved Employees shall be deemed to have released the Released Claims regardless of whether their settlement check is cashed or not.

5. *How Much Can I Expect to Receive From This Settlement?*

The Gross Settlement Amount is the maximum total payment under the Settlement. The Gross Settlement Amount is \$460,000.00. This sum is comprised of PAGA Counsel Attorneys' Fees of \$153,333.33; reimbursement of PAGA Counsel's Litigation Costs of \$ [REDACTED]; Settlement Administration Costs of \$ [REDACTED]; and the remainder as PAGA penalties, or the Net Settlement Amount. The Net Settlement Amount is comprised of the LWDA Payment and the Individual PAGA Payments to Aggrieved Employees. \$ [REDACTED], or 75% of the Net Settlement Amount will be paid to the LWDA in accordance with the PAGA. \$ [REDACTED], or 25% of the Net Settlement Amount will be paid to the Aggrieved Employees as Individual PAGA Payments, which will be calculated on a pro rata basis, based on the number of each Aggrieved Employee's pay periods worked during the PAGA Period.

Based on EBE's records, you worked [**NUMBER OF PAY PERIODS**] pay periods during the PAGA Period. The total amount of pay periods worked by all Aggrieved Employees during the PAGA Period is [**NUMBER OF PAY PERIODS**].

The enclosed check represents your share based upon the number of pay periods you worked during the period from April 1, 2022 through [August 1, 2024 or **APPROVAL DATE**].

An IRS 1099 Form is enclosed. You will be solely responsible for paying federal, state or local taxes, if any, on the amount of your check.

Your enclosed check is valid for 180 days from the date of its issuance. **It is strongly recommended that you cash or deposit this check immediately.** After that date, you cannot cash the check and it will be null and void and the amount forwarded to the State of California Controller's Office Unclaimed Property Division for further handling.

Even if you fail to cash the enclosed check, you will still be deemed to have waived all claims arising from the above-entitled lawsuit as defined above under "Released Claims," including all claims set forth in the release of claims described above.

If the check is lost or misplaced, please contact the Settlement Administrator immediately at [xxx-xxx-xxxx]. If you have any questions about your check, please contact the [insert administrator information].

6. *How Can I Obtain Additional Information or Court Documents?*

IF YOU NEED MORE INFORMATION OR HAVE ANY QUESTIONS, you may contact the Settlement Administrator at the telephone number listed below, toll free. Please refer to the EBE Settlement.

PLEASE DO NOT CALL THE COURT OR COURT'S CLERK FOR INFORMATION ABOUT THIS SETTLEMENT.

EXHIBIT 2

SUPERIOR COURT OF CALIFORNIA, CONTRA COSTA COUNTY
MARTINEZ, CA
DEPARTMENT 12
JUDICIAL OFFICER: CHARLES S TREAT
HEARING DATE: 11/14/2024

GENERAL INSTRUCTIONS FOR CONTESTING TENTATIVE RULINGS IN DEPT. 12

NOTE PROCEDURE CAREFULLY

The tentative ruling will become the Court's ruling unless by 4:00 p.m. of the court day preceding the hearing, counsel or self-represented parties email or call the department rendering the decision to request argument and to specify the issues to be argued. Calling counsel or self-represented parties requesting argument must advise all other affected counsel and self-represented parties by no later than 4:00 p.m. of their decision to appear and of the issues to be argued. Failure to timely advise the Court and counsel or self-represented parties will preclude any party from arguing the matter. (*Local Rule 3.43(2).*)

Note: In order to minimize the risk of miscommunication, parties are to provide an **EMAIL NOTIFICATION TO THE DEPARTMENT OF THE REQUEST TO ARGUE AND SPECIFICATION OF ISSUES TO BE ARGUED**. Dept. 12's email address is: dept12@contracosta.courts.ca.gov. Warning: this email address is not to be used for any communication with the department except as expressly and specifically authorized by the court. Any emails received in contravention of this order will be disregarded by the court and may subject the offending party to sanctions.

Submission of Orders After Hearing in Department 12 Cases

The prevailing party must prepare an order after hearing in accordance with CRC 3.1312. If the tentative ruling becomes the Court's ruling, a copy of the Court's tentative ruling **must be attached to the proposed order** when submitted to the Court for issuance of the order.

Courtroom Clerk's Calendar

1. 9:00 AM CASE NUMBER: C23-03262 CASE NAME: DAVID LORIE VS. TOWN OF MORAGA HEARING ON ORDER TO SHOW CAUSE IN RE: WHY THE INJUNCTION SHOULD NOT BE MODIFIED FILED BY: <u>*TENTATIVE RULING:*</u>

The Court set this hearing for purposes of considering modifications to the preliminary injunction, potentially to plug "loopholes" that represent conduct similar to what was intended to be enjoined, but that was not expressly addressed in the drafting.

Defendants did not object at the time to the setting of this hearing for this purpose. However, they now point out correctly that a textual modification of the preliminary injunction is not available because of the pendency of defendants' appeal from the granting of the injunction. (*Waremart Foods v. UFCWU Local 588* (2001) 87 Cal.App.4th 145, 154.)

SUPERIOR COURT OF CALIFORNIA, CONTRA COSTA COUNTY
MARTINEZ, CA
DEPARTMENT 12
JUDICIAL OFFICER: CHARLES S TREAT
HEARING DATE: 11/14/2024

9. 9:00 AM CASE NUMBER: C23-00570
CASE NAME: GENOVEVA HERRERA HERNANDEZ VS. LAS MONTANAS MARKET, INC.
***HEARING ON MOTION FOR DISCOVERY TO COMPEL FURTHER RESPONSES TO FORM INTEROGS SET 1**
FILED BY: HERRERA HERNANDEZ, GENOVEVA
TENTATIVE RULING:

By stipulation, these discovery motions are **continued** to January 16, 2025. If any live disputes remain that require the Court's decision, the parties should notify the Department by no later than January 2, specifying what is still pending (and whether it calls for updated briefing).

10. 9:00 AM CASE NUMBER: C23-00570
CASE NAME: GENOVEVA HERRERA HERNANDEZ VS. LAS MONTANAS MARKET, INC.
***HEARING ON MOTION FOR DISCOVERY TO COMPEL FURTHER RESPONSES TO REQ FOR PROD OF DOCS**
FILED BY: HERRERA HERNANDEZ, GENOVEVA
TENTATIVE RULING:

See Line 9.

11. 9:00 AM CASE NUMBER: C23-00570
CASE NAME: GENOVEVA HERRERA HERNANDEZ VS. LAS MONTANAS MARKET, INC.
***HEARING ON MOTION FOR DISCOVERY COMPEL FURTHER RESPONSES TO SPECIAL INTEROGS SET 1**
FILED BY: HERRERA HERNANDEZ, GENOVEVA
TENTATIVE RULING:

See Line 9.

12. 9:00 AM CASE NUMBER: C23-00765
CASE NAME: ZACHARY BURCH VS. EASTBAY EQUITIES, INC.
***HEARING ON MOTION IN RE: APPROVAL OF PAGA SETTLEMENT**
FILED BY: BURCH, ZACHARY C.
TENTATIVE RULING:

Plaintiff Zachary Burch moves for approval of the settlement of his PAGA suit against defendant Eastbay Equities, Inc. Defendant operates several Wendy's restaurants. Plaintiff was employed by defendant during 2022. Plaintiff also moves for approval of his attorney's fees, litigation costs, and administration costs. (Unusually, there is no representative payment to plaintiff involved.)

SUPERIOR COURT OF CALIFORNIA, CONTRA COSTA COUNTY
MARTINEZ, CA
DEPARTMENT 12
JUDICIAL OFFICER: CHARLES S TREAT
HEARING DATE: 11/14/2024

The motion is **granted**.

A. Background of the Case and Terms of Settlement

This a PAGA case (not a class action), alleging a variety of violations of the Labor Code concerning failure to provide rest and meal breaks, failure to pay minimum wages and overtime, and cascading derivative violations. In particular, plaintiff asserts alleged violations for off-clock work and violations concerning rest and meal breaks.

This case was first filed on April 4, 2023 as a class action. PAGA claims were added by later amendment. Because there existed an arbitration agreement with a class waiver, however, the parties stipulated to dismiss the class claims and proceed with the case on a representative-PAGA basis only.

The total settlement payment is \$460,000. Out of this is to come attorney's fees of \$153,333 (one-third of the recovery); \$19,727 in litigation costs, and up to \$6,000 in costs to the settlement administrator.

The remaining amount, about \$275,667, is allocated as PAGA penalties. Those penalties are apportioned 75% to the LWDA and 25% to the aggrieved employees.

The settlement covers all non-exempt employees between April 1, 2022 and August 1, 2024. There are an estimated 1,739 covered employees. The payments from the employee share of the penalty will be distributed among the employees based on the number of pay periods each individual worked during the released period. The average employee share will be about \$40, though this will vary from employee to employee based on the pay-period allocation formula. These amounts may rise if the litigation and administration costs end up being lower than the total allocations.

Plaintiff's counsel attests that informal discovery was undertaken, and the settlement was reached after a session with an experienced mediator.

Plaintiff provided required notices to the LWDA of the initial claims and of the proposed settlement.

The settlement provides a process for mailing the notices to the aggrieved employees, who will not have to submit a claim, along with a process for following up on returned mail. The settlement amount will be paid to the administrator within 10 days. The administrator will seek to obtain current mailing addresses, and will remit all settlement funds to the appropriate recipients, including the LWDA and the aggrieved employees.

The settlement provides that the value of checks uncashed after 180 days shall be remitted to the State Controller's Office, Unpaid Property Division.

Specified PAGA claims, and any claims which could have been pleaded under the PAGA based on the factual allegations in PAGA Complaint and the LWDA Letter, would be released. It also provides that the parties intend to fully resolve all PAGA claims for the full PAGA Period.

B. Standards for Review of a PAGA Settlement

SUPERIOR COURT OF CALIFORNIA, CONTRA COSTA COUNTY
MARTINEZ, CA
DEPARTMENT 12
JUDICIAL OFFICER: CHARLES S TREAT
HEARING DATE: 11/14/2024

Recently, the Court of Appeal's decision in *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, provided guidance on this issue. In *Moniz*, the court found that the "fair, reasonable, and adequate" standard applicable to class actions applies to PAGA settlements. (*Id.*, at 64.) The Court also held that the trial court must assess "the fairness of the settlement's allocation of civil penalties between the affected aggrieved employees". (*Id.*, at 64-65.)

California law provides some general guidance concerning judicial approval of any settlement. First, public policy generally favors settlement. (*Neary v. Regents of University of California* (1992) 3 Cal.4th 273.) Nonetheless, the court should not approve an agreement contrary to law or public policy. (*Bechtel Corp. v. Superior Court* (1973) 33 Cal.App.3d 405, 412; *Timney v. Lin* (2003) 106 Cal.App.4th 1121, 1127.) Moreover, "The court cannot surrender its duty to see that the judgment to be entered is a just one, nor is the court to act as a mere puppet in the matter." (*California State Auto. Assn. Inter-Ins. Bureau v. Superior Court* (1990) 50 Cal.3d 658, 664.) As a result, courts have specifically noted that *Neary* does not always apply, because "Where the rights of the public are implicated, the additional safeguard of judicial review, though more cumbersome to the settlement process, serves a salutary purpose." (*Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal.App.4th 46, 63.)

C. Application to This Settlement

Plaintiff indicates that the settlement is fair, and was evaluated by counsel based on adequate information and arms-length negotiation. In response to plaintiff's allegations, defendant asserted that it paid employees for all recorded time; that off-the-clock time was undocumented and unknown to defendant; and that employees were paid meal time premiums or signed waivers. Plaintiffs' counsel has provided a detailed declaration analyzing the potential strengths and weaknesses of plaintiffs' claims and defendants' potential defenses. The Court is satisfied with the analysis.

Of course, some reduction must be made for the strength of the case, and the time and expense of obtaining recovery. Even assuming success on the merits of each claim, PAGA gives the court discretion to reduce penalties for a variety of reasons, including where "based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust arbitrary and oppressive, or confiscatory." (Labor Code § 2699(e)(2).) Moreover, recent decisions may make it difficult for PAGA plaintiffs to recover statutory penalties, as opposed to actual missed wages. (See, e.g., *Naranjo v. Spectrum Security Services, Inc.* (2024) 15 Cal.5th 1056.) These factors make the result hard to predict.

Labor Code § 2699(g)(1) provides that a prevailing employee in a PAGA action may recover attorney's fees. Plaintiff seeks one-third of the total settlement amount as fees, relying on the "common fund" theory. Even a proper common fund-based fee award, however, should be reviewed through a lodestar cross-check. In *Lafitte v. Robert Half International* (2016) 1 Cal.5th 480, 503, the Supreme Court endorsed the use of a lodestar cross-check as a way to determine whether the percentage allocated is reasonable. It stated: "If the multiplier calculated by means of a lodestar cross-check is extraordinarily high or low, the trial court should consider whether the percentage used should be adjusted so as to bring the imputed multiplier within a justifiable range, but the court is not necessarily required to make such an adjustment." (*Id.*, at 505.) Although *Lafitte* concerns a class

SUPERIOR COURT OF CALIFORNIA, CONTRA COSTA COUNTY
MARTINEZ, CA
DEPARTMENT 12
JUDICIAL OFFICER: CHARLES S TREAT
HEARING DATE: 11/14/2024

action, not a PAGA-only case, this Court views the use of a lodestar cross-check as appropriate here. Plaintiffs' counsel have provided a breakdown and documentation of their lodestar figure of \$110,433; thus, the lodestar multiplier is approximately 1.4. This appears appropriate in light of the risks of the case and the results achieved.

The settlement agreement includes an escalator provision, to be triggered in the event that the number of covered employees or work weeks turns out to be materially higher than now estimated. If the clause is triggered and the defendant elects to increase the total payment, no further approval will be needed. The parties are cautioned, however, that in the event the clause would result in a significant modification of the settlement (such as cutting back the covered period), it would be prudent to seek further approval from the Court.

Litigation costs of \$19,727 (mostly mediation and consulting fees) are reasonable and are approved.

The settlement administrator's costs of \$6,000 are reasonable and are approved.

The statute does not expressly address how the 25% plaintiff's share of the penalties is to be allocated among all of the aggrieved employees. (*Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal.4th 348, 382.) One court has held, however, that the entire 25% share of penalties could not be awarded to the named plaintiff. (*Moorer v. Noble L.A. Events, Inc.* (2019) 32 Cal.App.5th 736, 742-43.) In *Moorer*, the plaintiff had claim worth about \$9,500, yet was collecting penalties of \$148,000, and keeping the entire employee share, causing the court to be concerned that the plaintiff had lost sight of the fact that the purpose of the action is to benefit the public, not private parties. Allocation based on pay periods is reasonable here.

D. Conclusion

The proposed settlement is approved. Counsel are directed to prepare an order including the Court's ultimate order, the other provisions submitted in the proposed order, and a corresponding judgment. The order would include a compliance hearing for a suitable date chosen in consultation with the Department's clerk. One week before the compliance hearing, counsel shall file a compliance statement. Ten percent of the attorney's fees shall be withheld by the Administrator pending the compliance hearing. Counsel will also be expected to update and document the actual litigation costs to be reimbursed.

Effective January 6, 2025, this case is reassigned for all purposes to Department 39.

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA)
3) ss
4 COUNTY OF LOS ANGELES)

5 I am employed in the county of Los Angeles, State of California. I am over the age of 18
6 and not a party to the within action; my business address is 725 South Figueroa Street, 31st Floor
7 Los Angeles, California 90017. On November 19, 2024, I served the foregoing document
8 described as:

9 **[PROPOSED] ORDER GRANTING PLAINTIFF'S MOTION FOR APPROVAL**
10 **OF PAGA SETTLEMENT**

11 X by E-mailing ____ the original X a true copy to the following:

12 Ian B. Wieland (SBN 285721)
13 ian@sw2law.com
14 Paul M. Parvanian (SBN 247824)
15 paulp@sw2law.com
16 **SAGASER, WATKINS & WIELAND, PC**
17 5260 North Palm Avenue, Suite 400
18 Fresno, California 93704
19 Telephone: (559) 421-7000
20 Facsimile: (559) 473-1483

21 *Attorneys for Defendants Cencal Wings II, Inc., Cencal Wings III, Inc., Cencal Wings IV, Inc.,*
22 *Cencal Wings V, Inc., and Cencal Wings VI, Inc.*

23 ☒ **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California,
24 by e-mail delivery on the parties listed herein at their most recent known e-mail address
25 or e-mail of record in this action.

26 X (State) I declare under penalty of perjury under the laws of the State of California
27 that the above is true and correct.

28 Executed on November 20, 2024, at Los Angeles, California.

29 Janelle Jickain
30 Name

31 
32 Signature