

D.LAW, INC.
Emil Davtyan (SBN 299363)
emil@d.law
David Yeremian (SBN 226337)
d.yeremian@d.law
David Keledjian (SBN 309135)
d.keledjian@d.law
David Arakelyan (SBN 337076)
d.arakelyan@d.law
450 N. Brand Blvd. Ste. 840
Glendale, CA 91203
Telephone: (818) 962-6465
Facsimile: (818) 962-6469
Attorneys for Plaintiff CHRISTOPHER
TORNIO BACLAY, on behalf of himself and others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN FRANCISCO

UNLIMITED JURISDICTION

CHRISTOPHER TORNIO BACLAY, on
behalf of himself and all others similarly
situated, and the general public,

Plaintiff,

v.

EMERALD FUND, INC., a California
corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No.: CGC-23-609362

*[Assigned for all purposes to the Hon. Ethan
P. Shulman, Dept. 304]*

**DECLARATION OF DAVID KELEDJIAN
IN SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF THE
CLASS ACTION SETTLEMENT**

Date: March 5, 2025
Time: 9:00 AM
Dept: 304

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

2

3
4
5
6
7
8
9

10
11
12
13
14
15
16
17

18

19
20
21
22

23
24
25
26

27
28

1 range of defendants. These cases have involved the gamut of wage-and-hour claims, including
2 claims for failure to pay minimum wages, unpaid wages and overtime, failure to provide meal
3 breaks, inaccurate pay statements, and failure to pay timely wages - similar to claims at issue in
4 the present matter.

5 6. I am experienced in prosecuting employment matters, particularly class actions. In
6 addition to the present case, I am also class counsel for dozens of other putative wage-and-hour
7 class-action lawsuits pending in various state and federal jurisdictions throughout California.

8 7. My extensive experience in litigating employment wage and hour matters has been
9 integral in identifying legal issues, evaluating the strengths and weaknesses of a case, and
10 generally negotiating fair and reasonable class action settlements. Practice in the narrow field of
11 wage and hour litigation requires skill and knowledge concerning the constantly evolving
12 substantive law (state and federal), as well as the procedural law of class action litigation. In this
13 action, I am fully equipped to use the skills and knowledge I have developed. Therefore, on the
14 account of my resources, experience, and knowledge, I am well qualified to act as Class Counsel
15 and represent Plaintiff and the putative Class Members in this action.

16 8. I recently successfully certified a case and when necessary we pursue cases on appeal.
17 Owing to my experience, I am well qualified to evaluate the class claims in this action, to
18 evaluate settlement v. trial and defenses raised.

19 9. For purposes of this motion, the "Class" or "Class Members" consist of "all persons
20 employed by Defendants in hourly or non-exempt positions in California during the Class Period"
21 from September 27, 2019, through April 13, 2024. I do not believe that I have any conflicts of
22 interest with the Class or with the Class Representative. I am not related to the Class
23 Representative. I have not previously represented the Defendant in any matter. I respectfully
24 submit that I, and D.Law, Inc. are well suited to act as Class Counsel in this action, and we have
25 and will continue to vigorously represent the interests of the Class Members.

26 ///

27 ///

28 ///

PROCEDURAL HISTORY

10. On September 27, 2023, Plaintiff filed a class action complaint against Defendant alleging eight causes of action: (1) Failure to Provide Meal Periods Under Labor Code §§ 204, 223, 226.7, 512 and 1198; (2) Failure to Provide Rest Periods Under Labor Code §§ 204, 223, 226.7 and 1198; (3) Failure to Pay Hourly Wages and Overtime Under Labor Code §§ 223, 510, 1194, 1194.2, 1197, 1197.1 and 1198; (4) Failure to Pay Proper Sick Pay Under Labor Code §§ 246; (5) Failure to Provide Accurate Written Wage Statements Under Labor Code § 226(a); (6) Failure to Timely Pay All Final Wages under Labor Code §§ 201, 202, and 203; (7) Failure to Indemnify Under Labor Code § 2802; (8) Unfair Competition in Violation of Business & Professions Code § 17200 *et seq*;

11. Plaintiff contends that Defendant failed to pay Settlement Class Members all wages due and owing, including by requiring off the clock work, failing to properly calculate and pay sick pay and meal and rest break premiums, unlawfully rounding to the detriment of Class Members, failing to provide meal and rest breaks, failing to furnish accurate wage statements, failing to timely pay wages including final wages, failing to maintain accurate records, and failing to reimburse necessary business expenses.

12. On September 27, 2023, Plaintiff submitted a Private Attorneys General Act (“PAGA”) notice letter (“PAGA Notice”) to the Labor Workforce Development Agency (“LWDA”) addressing the same wage and hour allegations as her class action complaint and served Defendant with the PAGA Notice on the same day. A true and correct copy of the confirmatory email and the LWDA letter submitted on behalf of Plaintiff is attached hereto as **Exhibit B**. The LWDA did not express an interest in investigating Plaintiff’s claims within the 65-day period. Therefore, on December 1, 2023, Plaintiff filed a First Amended Complaint (“FAC”) adding a cause of action for penalties under PAGA. The FAC is the operative complaint in this case.

INVESTIGATION AND DISCOVERY

13. I have participated in all discovery, mediation and negotiations since the inception of Plaintiff’s case. Before filing the lawsuit, Class Counsel investigated and researched the facts and circumstances underlying the pertinent issues and the law applicable thereto. This required

1 thorough discussions and interviews between Class Counsel and Plaintiff, as well as preliminary
2 research into the various legal issues involved in the case. After conducting their initial
3 investigation, Class Counsel determined that Plaintiff's claims were well-suited for class and
4 representative action adjudication owing to what appeared to be a common course of conduct
5 affecting a similarly situated group of employees.

6 14. After filing the lawsuit, Class Counsel conducted a thorough investigation of the facts
7 and claims giving rise to the action, including: (1) conducting informal discovery and meeting
8 and conferring with defense counsel about same; (2) reviewing and analyzing a sampling of time
9 and pay records as well as employment handbooks, Plaintiff's personnel files, relevant policies
10 and other documentation; (3) researching the applicable law and potential defenses; (4) reviewing
11 information provided by Defendant at the mediation; and (5) negotiating and finalizing the
12 Settlement Agreement and related documents. The Class enumerated in this action is
13 ascertainable because the Class Members may be readily identified by reference to Defendant's
14 records. Defendant has agreed to share the information from these records with the Settlement
15 Administrator in order to identify and contact the Class Members. I understand there are
16 approximately 65 total Class Members.

17 15. Defendant, for its part, vigorously contests liability, the amount of claimed damages,
18 and the propriety of class certification. After Class Counsel analyzed the relevant documents and
19 other gathered data, Class Counsel believed that this case was appropriate for resolution via
20 mediation. Given the high level of risk present for both sides, the parties elected to mediate
21 Plaintiff's claims and explore the possibility of settlement.

22 16. On March 14, 2024, the parties mediated this case with Michale Mandel, Esq., who is
23 also a respected and highly experienced mediator in wage and hour class actions. During
24 mediation, Plaintiff and Defendant's counsel discussed all aspects of the case, including the risks
25 of litigation and the risks to both parties of proceeding with a motion for class certification as well
26 as the law relating to unpaid wages, meal periods, rest periods, sick pay, wage statements, and
27 final pay. As a result of the mediation, the parties agreed to settle the lawsuit according to the
28 terms set forth in the Settlement Agreement, attached hereto as **Exhibit A**.

17. From Class Counsel's review of the facts, strengths, and weaknesses of the case, the risks and delays posed by further litigation, and Class Counsel's own prior litigation experience, Class Counsel believes that the recovery for each class member is fair and reasonable taking into consideration the amounts received in other wage and hour class actions, the risks inherent in litigation of this genre, and the reasonable tailoring of each Class Member's claim to the settlement award he or she will receive. Further, and based on the settlement negotiations, which were extensive and conducted in good faith and at arm's length between attorneys with substantial experience litigating class actions and wage and hour cases, the Settlement Agreement was the product of a non-collusive settlement process in which the parties were forced to make significant compromises in the interest of reaching a full and complete settlement of the lawsuit.

SUMMARY OF SETTLEMENT

18. The parties have executed a Settlement Agreement attached hereto and incorporated herein as **Exhibit A**. Defendant has agreed to pay One Hundred Twenty-Five Thousand Dollars and Zero Cents (\$125,000.00) (“Gross Settlement Amount”) on a non-reversionary basis to settle and release all claims asserted by Plaintiff in the FAC and those in the PAGA Notice. (**Exh. A**, page 5, lines 12 – 14) The Gross Settlement Amount is in exchange for Plaintiff’s and the Settlement Class Members’ release of all claims, and the released PAGA claims.

19. The Settlement Agreement defines “Settlement Class Members” as all persons employed by Defendants in an hourly or non-exempt positions in California during the Class Period from September 27, 2019, through April 13, 2024 and who have not previously released their claims against Defendant (**Exh. A**, page 3, line 28 and page 4, lines 1 – 7.) However, it does not include any person who submits a timely and valid request for exclusion. (**Exh. A**, page 6, lines 25 – 26.) “Class Period” means the period from September 27, 2019, through April 13, 2024. (**Exh. A**, page 4, line 7.)

20. The “Net Settlement Amount” shall be the Gross Settlement Amount, less Class Counsel Fees and Costs, the Class Representative Enhancement payment, Administration Costs, the LWDA PAGA Payment (seventy-five percent (75%) of the PAGA Payment), and Individual PAGA Payments (twenty-five percent (25%) of the PAGA Payment). (**Exh. A**, page 6, lines 3 –

6.) These amounts are detailed as follows:

- a) Class Counsel Fees and Costs: Class Counsel's attorneys' fees shall not exceed Forty-One Thousand and Six Hundred Sixty-Six Dollars and Sixty-Seven Cents (\$41,666.67), and actual reasonable litigation costs in an amount not to exceed Twelve Thousand Five Hundred-Seventy-Five Dollars and Thirty-Five Cents (\$12,575.35); (**Exh. A**, page 3, lines 22 – 27.);
- b) Settlement Administration Costs shall not exceed Five Thousand Dollars and Zero Cents (\$5,000.00); (**Exh. A**, page 8, lines 14 – 25.);
- c) Class Representative Enhancement Payment, shall not exceed Five Thousand Dollars and Zero Cents (\$5,000.00); (**Exh. A**, page 19, lines 21 – 27.);
- d) PAGA Penalties, Ten Thousand Dollars and Zero Cents (\$10,000.00) for civil penalties under the PAGA, where 75% (\$7,500.00) will be paid to the LWDA and 25% (\$2,500.00) distributed to Aggrieved Employees. (**Exh. A**, page 5, lines 26 – 28 and page 6, lines 1 – 2.)

21. The "Individual Class Payment," is each Participating Class Member's share of the Net Settlement Amount, will be calculated and apportioned from the Net Settlement Amount based on the number of workweeks a Participating Class Member worked during the Class Period as a non-exempt employee in California.

22. Defendant shall pay its employer-side payroll tax obligations on the Wage Portion of the Individual Class Payments in addition to the Gross Settlement Amount, and shall wire or mail the employer's share of payroll taxes to the Settlement Administrator within ten (10) calendar days after the Effective Date, as defined in the Settlement Agreement. None of the Gross Settlement Amount will revert to Defendant. (**Exh. A**, page 5, lines 17 – 18; page 15, lines 12 – 13; page 16, lines 12 – 13.)

23. The settlement amount was a compromise figure, factoring in the inherent risks related to certification, liability and damages. However, taking into account all of the circumstances of the action and the defenses raised by Defendant against certification, liability and damages, Class Counsel believes that the settlement is fair and reasonable.

1 24. Class Members shall each receive a Notice of Class Action Settlement (“Class Notice”)
2 via regular First Class U.S. Mail, using the most current, known mailing addresses identified in
3 the Class List. (**Exh. 1** to the Settlement Agreement, Exh. A, page 11, lines 27 – 28.) Before
4 mailing, the Settlement Administrator will perform a search based on the National Change of
5 Address Database for information to update and correct for any known or identifiable address
6 changes. (**Exh. A**, page 12, lines 1 – 12.) If the Class Notice is returned as non-deliverable on or
7 before the Response Deadline and a new address is obtained by way of a returned Class Notice,
8 then the Settlement Administrator will promptly forward the original Class Notice to the updated
9 address via first-class regular U.S. mail, indicating on the original packet the date of such re-
10 mailing. (**Exh. A**, page 12, lines 1 – 12.)

11 25. Class Members will have an opportunity to dispute the workweek information provided
12 in their Class Notice and they must timely produce evidence to support the information is
13 inaccurate. (**Exh. A**, page 12, lines 22 – 24.) The settlement Administrator shall decide the
14 dispute and may ask Defendant to produce the personnel and payroll files of the Class Member
15 disputing their credited workweeks in order to resolve the dispute. (**Exh. A**, page 12, lines 23 –
16 28, and page 13, lines 1 – 6.)

17 26. Class Members wishing to opt-out from the Settlement Agreement must sign and
18 postmark a written request for exclusion to the settlement Administrator within the Response
19 Deadline (sixty (60) calendar days from the initial mailing of the Class Notice). (**Exh. A**, page 8,
20 lines 3 – 8; page 12, lines 26 – 29; page 13, lines 1- 6.) Class Members will also have the
21 opportunity to object to the Settlement Agreement, by serving a copy of the objection to the
22 Settlement Administrator within the Response Deadline. (**Exh. A**, page 14, lines 8 – 20.) Class
23 Members who do not serve written objections may not object to the settlement by way of appeal.
24 (*Id.*)

25 ///

26 ///

27 ///

28 ///

THE STRENGTH OF PLAINTIFF' CASE
IN LIGHT OF THE SETTLEMENT AMOUNT

27. Because the class consists of numerous employees, it was unlikely that the potential monetary claims of individual Class Members would have proved viable without the class-action mechanism. The Settlement Agreement should be approved in light of two California appellate decisions: *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116.

28. The strength of the Plaintiff's case in light of the settlement amount is deemed by courts to be the "most important." *Clark v. American Residential Services, LLC* (2009) 175 Cal.App.4th 785, 799 (citing *Kullar*). Here, Plaintiff alleges that Defendant failed pay Class Members all wages due and owing, including by requiring off the clock work, failed to properly calculate and pay sick pay and meal and rest break premiums, had an unlawful rounding policy detrimental to Class Members. Plaintiff further alleges that Defendant failed to provide proper meal and rest breaks or provide premium pay in lieu thereof, failed to furnish accurate wage statements, failed to timely pay wages including final wages, failed to maintain accurate records, and failed to reimburse necessary business in expenses violation of California law. Plaintiff seeks related violations of California's Business & Professions Code, and penalties pursuant to Labor Code § 2699 *et seq.*

29. Plaintiff conducted discovery and investigated each of the claims they alleged. Specifically, Defendant produced the following: (a) the version of Defendant's employee handbook in effect during the Class Period; (b) all versions of Defendant's policies and procedures pertaining to minimum wages, overtime, meal breaks, and rest breaks, which were in effect during the Class Period; (c) Plaintiff's personnel files; (d) Plaintiff's timekeeping and payroll records; (e) a sampling of the Class Members' timekeeping and payroll records; and (f) information on the class demographics including the total number of Class Members during the Class Period, total number of Class Members during the PAGA Period, total number of current employees, total number of former employees in the relevant time period, average hourly rate of pay, total number of workweeks worked during the Class Period, and the total number of

1 paychecks issued during the relevant time period. The merits of each of these claims will be
2 addressed separately below.

3 30. Based on the data provided, Class Counsel estimated the following maximum
4 exposures for 66 total Class Members, who worked an estimated 3,120 workweeks during the
5 Class Period, with an average hourly pay rate of \$23.45:

- 6 - \$73,164: for meal and rest period liability [one violation per week x 3,120 weeks x \$23.45];
- 7 - \$109,746: for unpaid wages and overtime [one hour of unpaid time per week x 3,120 weeks
8 x \$35.17 (1.5 times the average rate of pay)];
- 9 - \$371,448: for waiting time penalties under Section 203 [8 hours x 30 days x 66 class
10 members x \$23.45];
- 11 - \$15,600: for unpaid reimbursements [780 work months x \$20 a month];
- 12 - \$3,095.40: for unpaid sick pay [66 class members x \$23.45 x 2 hours] ;
- 13 - \$59,200: for wage statement penalties [(\$50 x 1,184 wage statements issued to class
14 members during the one-year statutory period)]; and
- 15 - \$118,400: for penalties under the PAGA [\$100 x 1,184 pay periods during the PAGA
16 period].

17 Class Counsel estimates the maximum exposure of damages and penalties at \$750,653.40.

18 31. However, taking into account the difficulties of proof, the Defendant's defenses, and
19 other attendant risks, Plaintiff estimates that the total amount of damages, monetary penalties, or
20 other relief that the class could reasonably expect to be awarded at trial is significantly less than
21 the maximum exposure.

22 **Minimum Wages and Overtime**

23 32. Plaintiff alleges that Defendant failed to pay Plaintiff and Class Members minimum
24 wages for all hours worked, in violation of minimum wage laws. Plaintiff contends that Class
25 Members were not paid all wages they were owed including for all worked performed and for all
26 overtime hours worked. Specifically, Plaintiff alleges Defendant unlawfully rounded down the
27 hours Class Members worked. Plaintiff contends the time punches Class Members were required
28 to input were rounded and reduced to reflect the scheduled work time rather than the actual hours

1 worked. Additionally, Plaintiff contends that Class Members spent time booting up and logging
2 into the computer and check the work orders for the day prior to clocking in.

3 33. Moreover, Plaintiff alleges Class Members were required to perform post-shift off the
4 clock work and continue working after they clocked out for the day. Additionally, Plaintiff
5 contends Defendant required Class Members to perform work-related tasks during unpaid meal
6 periods, including having to carry and monitor their personal cellular phones and company issued
7 radios. Plaintiff also alleges that Defendant failed to provide Class Members with sick pay at the
8 appropriate rate of pay.

9 34. Defendant contends that it paid for all reported hours worked, that Class Members
10 were trained to record all hours worked, and that it paid proper minimum wages. Defendants also
11 maintain that the allegations regarding failure to pay wages for hours worked in excess of eight
12 hours in a day did not constitute a basis for violation of Labor Code § 510. Defendant argues that
13 given their written policies and practices, any unrecorded hours were likely subject to
14 individualized inquiry and unlikely to be certified. Given the difficulty in certifying this claim,
15 Class Counsel had to apply a significant discount to damages based on this theory.

16 35. Based on the above detailed facts, Class Counsel estimated Defendant's maximum
17 total exposure on the unpaid wages claim at approximately \$109,746 (3,120 workweeks x 1 (one
18 hour of unpaid time per week x \$35.17, which is 1.5 times the average hourly rate of pay.
19 However, Class Counsel believes this estimate is high given that many individualized issues
20 would apply making certification of this claim difficult to achieve.

21 **Meal Periods and Rest Breaks**

22 36. Plaintiff alleges that Defendants consistently failed to provide timely and uninterrupted
23 meal breaks to Class Members. *See Brinker Restaurant Corp. v. Super. Ct.* (2012) 53 Cal.4th
24 1004, 1040 (“[T]he wage order’s meal period requirement is satisfied if the employee (1) has at
25 least 30 minutes uninterrupted, (2) is free to leave the premises, and (3) is relieved of all duty for
26 the entire period.”).

27 37. Plaintiff argues that Defendant had a common practice and policy of denying compliant
28 meal periods and that Defendant’s meal policies were facially defective. Specifically, Plaintiff and

1 Class Members were not relieved of all work duties during unpaid meal periods and were
2 required to keep working during meal breaks., never being provided the opportunity to take
3 uninterrupted thirty (30) minute meal periods in accordance with California law. Moreover, due to
4 understaffing and heavy workloads, Plaintiff and Class Members were denied the opportunity to
5 take timely meal periods prior to the completion of their fifth hour of work. Furthermore, Plaintiff
6 and Class Members were required to carry and monitor their company-issued radios and be
7 available to respond to management's calls during meal periods.

8 38. This practice of providing untimely and late meal periods comports with Defendant's
9 defective meal period policy, which uniformly applied to all Class Members and required Class
10 Members to take their meal periods "approximately in the middle of the workday" and wait for
11 the supervisor to schedule meal and rest periods. For each meal period missed, of less than 30
12 minutes, or taken late for which the employee was not provided a reasonable opportunity to take a
13 complete and timely meal period, an employer must pay the employee an additional one hour of
14 compensation. Labor Code § 226.7. This additional hour of compensation is referred to as
15 "premium pay." To comply with these laws, every employer must keep, for each employee,
16 accurate time records showing when the employee begins and ends each work period and takes
17 his or her meal periods. *See* Wage Order 1-2001(7)(A)(3).

18 39. Defendant disagrees with Class Counsel's interpretation of the law and facts.
19 Defendant contends that Class Members were given a reasonable opportunity to take their meal
20 periods, and in fact received their meal periods most of the time. Defendant argues it has a high
21 meal period compliance rate.

22 40. Class Counsel estimated Defendant's maximum total exposure on the meal break claim
23 at approximately \$36,582 (3,120 workweeks x 1 (1 meal break violation each week) x \$23.45
24 average hourly pay). However, Class Counsel believes this estimate is high given that many
25 individualized issues would apply making certification of this claim difficult to achieve.

26 41. The same argument applied to rest breaks. Plaintiff contends that Defendant did not
27 provide Class Members with paid 10-minute rest breaks for every four hours or major fraction
28 thereof. Class Members consistently worked in excess of consecutive four-hour shifts and were

1 entitled to paid rest breaks of not less than ten minutes for each consecutive four hour shift which
2 they were denied. Class Members were required to work through their rest breaks, which were not
3 properly scheduled by Defendant, and had to keep and monitor their cellular phones and
4 company-issued radios during breaks.

5 42. Defendant maintains that it did provide the reasonable opportunity for Class Members
6 to take duty-free rest breaks. Defendant also pointed out that, unlike meal periods, rest breaks
7 need not be recorded, and Defendant disputes all allegations that breaks were not received. As
8 these considerations would likely depress the damages *vel non* ultimately awarded, Class Counsel
9 applied significant and appropriate discounts to the rest-break claim.

10 43. Class Counsel estimated Defendant's maximum total exposure on the rest break claim
11 at approximately \$36,582 (3,120 workweeks x 1 (1 rest break violation each week) x \$23.45
12 average hourly pay. Combined with the meal violations, the grand total would be \$73,164 in
13 exposure for both causes of action. However, Class Counsel believes this estimate is high given
14 that Defendant's rest break policy was valid and many individualized issues would apply making
15 certification of this claim difficult to achieve.

16 **Paystub Violations**

17 44. Plaintiff also contends that Defendant failed to provide Class Members with accurate,
18 itemized wage statements in writing as required by California Labor Code § 226(a) because the
19 wage statements failed to accurately account for unpaid wages and overtime due to unlawful
20 rounding and underreporting of hours and off the clock work. Moreover, Plaintiff contends the
21 wage statements failed to accurately account for premium pay for deficiently provided meal and
22 rest breaks which Defendant knew or reasonably should have known were owed to Plaintiff and
23 Class Members. As a direct and proximate cause of Defendant's violation of Labor Code §
24 226(a), the Class Members suffered injuries, including among other things confusion over
25 whether they received all wages owed them. Pursuant to Labor Code §§ 226(a) and 226(e),
26 employees are entitled to recover the greater of all actual damages or fifty dollars (\$50) for the
27 initial pay period in which a violation occurs and one hundred dollars (\$100) for each violation in
28 a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000).

1 They are also entitled to an award of costs and reasonable attorneys' fees.

2 45. Defendant contends that Plaintiff's claim for further Labor Code § 226(e) penalties
3 would depend in large part on their underlying meal period and wage claims, and thus be subject
4 to the same defenses. Additionally, Defendant argues this claim has little or no value. *See*
5 *Maldonado v. Epsilon Plastics, Inc.*, 22 Cal. App. 5th 1308, 1336-1337 (2018) (wage statements
6 that accurately report wages paid to employees do not violate Labor Code § 226, even if it is later
7 determined that employer did not properly pay all wages due). Defendant further contends that
8 Labor Code § 226(e) penalties are not automatic. Rather, the employee must show (1) that he or
9 she "suffered injury" from the employer's failure to provide compliant wage statements, *see*
10 *Elliot v. Spherion Pacific Work, LLC* (2008) 572 F.Supp.2d 1169, 1181 (applying California law)
11 (holding employee was not entitled to penalties because no injury was shown), and (2)
12 Defendant's noncompliance was "knowing and intentional." Finally, because the damages for this
13 cause of action are penalties, the statute of limitations only runs from one year prior to the filing
14 of the original complaint. *See* Cal. Civ. Pro. § 340.

15 46. Class Counsel estimated Defendant's maximum total exposure on the section 226 claim
16 at approximately \$59,200 (\$50/\$100 x 1,184 number of paystubs during the one-year statutory
17 period; based on 66 employees). Class Counsel believes it may be difficult to prevail on this
18 claim because Class Members would need to show that they suffered an injury and that
19 Defendant's noncompliance was knowing and intentional (on top of the challenges described
20 above with the underlying wage and break claims) which are both subject to many individualized
21 issues making certification of this claim difficult to achieve.

22 **Failure to Pay Final Wages**

23 47. In failing to pay the California Class Members their minimum wages, overtime wages,
24 sick pay and premium pay for deficiently provided meal periods and rest breaks, all discussed
25 above, Defendant willfully failed to pay these the California Class Members all wages due and
26 certain at the time of termination or within seventy-two (72) hours of resignation, as required
27 under Labor Code § 203.

28 48. Labor Code § 203 provides that if an employer willfully fails to pay an employee all

1 wages due at termination or within 72 hours of resignation, then that employee's wages shall
2 continue as a penalty until paid for a period of up to thirty (30) days from the date they were due.
3 Because Class Members stopped working for Defendant but again were not paid their full
4 compensation for the reasons discussed above, Class Members did not receive all wages due upon
5 termination of employment.

6 49. Defendant argues that, under Labor Code § 203, employers are only obligated to pay
7 waiting-time penalties if they "willfully" fail to pay wages due and owing at the time of
8 termination or resignation. As Title 8, California Code of Regulations, § 13520 states:

9 A willful failure to pay wages within the meaning of Labor Code Section 203
10 occurs when an employer intentionally fails to pay wages to an employee when
11 those wages are due. However, a good faith dispute that any wages are due will
preclude imposition of waiting time penalties under Section 203.

12 A "good faith dispute" that any wages are due occurs when an employer presents a
13 defense, based in law or fact, which, if successful, would preclude any recovery on
14 the part of the employee. The fact that a defense is ultimately unsuccessful will not
15 preclude a finding that a good faith dispute did exist. Defenses presented which,
under all the circumstances, are unsupported by any evidence, are unreasonable, or
are presented in bad faith, will preclude a finding of a "good faith dispute."

16 Defendant maintains that because it has viable defenses in both law and fact, especially in light of
17 the *Brinker* holding, that waiting-time penalties could not be awarded and, in any case, such
18 penalties were subject to a three-year limitations period under Labor Code § 203(b).

19 50. Class Counsel estimated Defendant's maximum total exposure on the section 203 claim
20 at approximately \$371,448 (8 hours x 30 days x \$23.45 per hour x 66 Class Members). Class
21 Counsel estimates it would be difficult to recover waiting time penalties given that Plaintiff would
22 need to show willfulness on top of proving the underlying wage and break claims which are both
23 subject to many individualized issues making certification of this claim difficult to achieve.

24 **PAGA Penalties**

25 51. The Labor Code Private Attorneys General Act, Labor Code § 2699 et seq., allows
26 Plaintiff to obtain civil penalties on behalf of herself and other Class Members for Defendant's
27 violation of any provision of the Labor Code enumerated under Labor Code § 2699.5. Where civil
28 penalties are provided in the statute, those civil penalties are recoverable; where no civil penalties

1 are recoverable, Labor Code § 2699(f) establishes civil penalties of one hundred dollars (\$100)
2 for each aggrieved employee per pay period for the initial violation and two hundred dollars
3 (\$200) for each aggrieved employee per pay period for each subsequent violation. Pursuant to
4 Labor Code § 2699(i), seventy-five (75) percent of the penalties recovered must be allocated to
5 the Labor and Workforce Development Agency (LWDA), with the remaining twenty-five (25)
6 percent allocated to the affected employees. The limitations period as for all penalties is one year
7 prior to the filing of the complaint.

8 52. The provisions of the Labor Code potentially triggering PAGA penalties in this case
9 include but are not limited to Labor Code §§ 201, 202, 203, 204, 223, 226(a), 226.7, 246, 510,
10 512, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 2698, 2699, *et seq.*, and 2802.
11 Defendants asserted that if PAGA penalties were mandatory, an employer's PAGA liability
12 would be huge because of the possibility of collecting multiple civil penalties for a single
13 violation, and thus such penalties would almost always dwarf the damages available under the
14 causes of action proper. However, PAGA penalties are not mandatory but permissive. Labor
15 Code § 2699(e)(2) states that "a court may award a lesser amount than the maximum civil penalty
16 amount specified by this part if, based on the facts and circumstances of the particular case, to do
17 otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory." *See*,
18 *e.g.*, *Lopez v. Friant & Assocs., LLC*, 15 Cal. App. 5th 773, 788 (2017), *rev. denied* (2018),
19 (recognizing court's ability to reduce PAGA penalties). Courts have held that situations similar to
20 the current one (e.g. injuryless violations, technical errors, and substantial compliance) should
21 lead to reductions in penalties. *See Thurman v. Bayshore Transit Management, Inc.*, 203 Cal.
22 App. 4th 1112, 1134-1135 (2012) (holding that reduction was justified when employer
23 "attempted to comply with the law"); *Fleming v. Covdien, Inc.*, No. ED CV10-01487 RGK
24 (OPx), 2011 U.S. Dist. LEXIS 154590 at *8-9 (C.D. Cal. August 12, 2011) (reducing PAGA
25 penalties more than 80% – from \$2.8 million to \$500,000 – when "employees suffered no injury"
26 employers were "not aware" of the violation and "took prompt steps to correct all violations once
27 notified"). Defendants here maintains that it had a strong argument that it would be unjust to
28 award maximum PAGA penalties.

53. Furthermore, PAGA penalties are also derivative of each and every other claim, and Defendants therefore argues the PAGA claims would be subject to the same defenses to the underlying claims. Finally, under *Amaral v. Cintas Corp.* (2008) 163 Cal.App.4th 1157, it can be argued that penalties under PAGA could, at best, be awarded only at the rates obtainable for initial violations under the applicable statutes, because Defendants have never been notified of the alleged violations. *Id.* at 1208-1209. Moreover, Section 2699(e)(1) authorizes the Court to exercise the same discretion as the DLSE whether to award civil penalties. *Amaral* 163 Cal. App. 4th 1157, 1211-12. Therefore if Labor Commissioner - on whose behalf Plaintiff is prosecuting this action for civil penalties - would not impose civil penalties in a case like this, the Court may not award civil penalties. Moreover, in *Thurman v. Bayshore Transit Mgmt., Inc.* (2012) 203 Cal.App.4th 1112, 1136, the Court of Appeal affirmed the trial court's reduction of PAGA civil penalties by 30 percent, finding that awarding the full penalties would have been "unjust" because "...a court may award a lesser amount than the maximum civil penalty amount specified by this part if, 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."

54. Class Counsel estimated Defendants' maximum total exposure on the PAGA claim at approximately \$118,400 (\$100 x 1,184 number of paystubs during the PAGA Period). However, Class Counsel notes that owing to the discretionary nature of PAGA penalties and the foregoing case law it is unlikely the Court would award the full penalty and that it would be substantially reduced. Class Counsel applied discounts in light of the countervailing arguments with regard to the other causes of action, and moreover the Court's power to award "a lesser amount than the maximum civil liability." The parties also considered that the purpose of PAGA is to "achieve maximum compliance with state labor laws," *Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal. 4th 348, 379. This makes the settlement's contemplated PAGA payment of \$10,000 appropriate.

Unfair Business Practices

55. Plaintiff pled this cause of action in order to augment their other causes of action and aid in their prosecution. Business & Professions Code § 17208 extends the statute of limitations

1 on Plaintiff wage claims, which qualify as unfair business practices, to four years rather than the
2 three years provided by statute.

3 **Summary**

4 56. The foregoing discussion has sought to explain how the settlement amount is adequate
5 in light of the merits of Plaintiff case. It has done this by explaining the legal basis for each of
6 Plaintiff causes of action, summarizing the evidence that Class Counsel gathered in support of
7 those causes of action, and relating Defendants' legal and factual arguments that worked to
8 derogate from the strength of Plaintiff case.

9 57. Class Counsel had to apply appropriate discounts in light of the facts and law as
10 discussed above. In addition, Class Counsel determined that the likelihood of success on the
11 claims for unpaid wages, including sick pay, waiting time penalties were not as strong, because
12 various defenses including issues not suitable for class treatment, no detriment to the class
13 members over time, and *de minimis* defenses. Thus, this settlement, like most others, was the
14 product of compromise. Because of these and other risks, a recovery of \$125,000.00 under the
15 Settlement Agreement is an excellent result. Under the Settlement, each of the approximately 66
16 Class Members will receive on average, assuming they worked throughout the class period, \$806
17 after expenses.

18 **THE RISK, EXPENSE, AND LIKELY DURATION OF FURTHER LITIGATION,** 19 **AS WELL AS THE RISK OF MAINTAINING CLASS ACTION** 20 **STATUS THROUGH TRIAL**

21 58. The next *Clark/Kullar* factors recognize that settlements take into consideration the
22 risks and expenses posed by further litigation and, in the class-action context, the risk of non-
23 certification. Consequently, it is proper that trial courts should keep these considerations in mind
24 when judging the adequacy of class action settlements.

25 59. Further litigation of this case posed real risks for a number of reasons. First, there were
26 the risks of unfavorable rulings on the merits of the various indeterminate legal issues outlined in
27 the previous section. In that section, it was observed that almost every cause of action was subject
28 to some unique indeterminacy of its own, and that the derivative causes of action were thus

1 subject to a double indeterminacy, both their own and those of the causes of action on which they
2 were based.

3 60. The parties disputed the effect of these and other issues on class certification and
4 decertification. Class Counsel maintains that there were several legal and factual questions at
5 issue in the case that could best be decided on a class wide basis. Class Counsel contends that the
6 same policies and practices applied to all Class Members and therefore common questions
7 obtained and were likely to predominate over individual inquiries. Defendants disputed these
8 contentions. Defendants also argues that its policies were compliant with the law, while Plaintiff
9 disputed that the policies were lawful, and argues the lawfulness of such policies would give rise
10 to common questions amenable to certification. Thus, the parties had set positions on the
11 propriety of certifiability and liability that did not admit of an easy resolution.

12 61. Finally, it is always preferable to reach a relatively early resolution of a dispute
13 because, in addition to what has already been said, such resolutions save time and money that
14 would otherwise go to litigation. In light of the risk and expense of the lawsuit proceeding to trial
15 there was a need to resolve this matter soon than later. Most cases settle sooner or later. If this
16 case settled after further litigation, the settlement amount would have taken into account the
17 additional costs incurred, and there might have been less available for Class Members after all
18 was said and done. This is not just an abstract contention. The parties were moving into the phase
19 of this litigation where they would have had to depose a number of people such as managers,
20 supervisors, and employees in order to establish liability for trial. Discovery disputes would have
21 been in the offing. The parties were also aware that a class action trial would be a complicated
22 and expensive proceeding as it would have required the retention of expensive expert witnesses,
23 the accrual of extensive litigation costs, and the parties would have had to spend a substantial
24 amount of time on preparing the case for trial. Then there was also the likelihood of a long,
25 drawn-out appeals process. In contrast, the settlement provides real benefits for Class Members in
26 the immediate future. The benefits are not insignificant for anyone, especially given the current
27 economic climate. Consequently, the risk and expense of further litigation outweighed any benefit
28 that might have been gained otherwise.

NOTICE TO AND REACTION OF CLASS MEMBERS
TO THE PROPOSED SETTLEMENT

62. It is premature to address this factor now, at the preliminary approval stage; however, some observations are in order. First, the notification procedure set out in the Settlement Agreement provides the greatest likelihood that each and every Class Member will receive the Notice of Class Action Settlement (“Class Notice”), attached to the Settlement Agreement as **Exhibit 1**. Under the Settlement Agreement, the Settlement Administrator will send the Class Notice to each Class Member via First Class U.S. mail. (**Exh. A**, page 11, lines 27 – 28.) Before mailing, the Settlement Administrator will perform a search based on the National Change of Address Database for information to update and correct for any known or identifiable address changes. (**Exh. A**, page 12, lines 1 – 3.) If the Class Notice is returned as non-deliverable on or before the Response Deadline and a new address is obtained by way of a returned Class Notice, then the Settlement Administrator will promptly forward the original Class Notice to the updated address via first-class regular U.S. mail, indicating on the original packet the date of such re-mailing. (**Exh. A**, page 12, lines 4 – 7.) Thus, most, if not all, Class Members will likely receive the Class Notice.

63. The Class Notice itself fully apprises Class Members of the nature of the lawsuit, the claims involved, the terms of the settlement, and their options thereunder. They provide for a specific procedure to seek exclusion from the Class, and for lodging objections to the settlement. The efforts taken to ensure that Class Members receive the Class Notice and are well informed about the settlement augur a favorable response rate.

64. All Class Members will benefit because Defendants who have been sued is generally more likely to comply with the law in the future. If a Class Member disputes the number of workweeks stated for that Class Member in the Class Notice, the Class Member must ask the Settlement Administrator to resolve the matter by submitting in writing the workweeks that the Class Member claims to have actually worked for Defendant during the Class Period, with supporting documentation. (Exh. 1, §7.5.) After consultation with Class Counsel and Defendant’s Counsel, the Class Action Administrator will make a determination of the Class Member’s total

workweeks during the applicable period. *Id.*

CONCLUSION OF THE CLARK/KULLAR ANALYSIS

65. The foregoing discussion establishes the fairness of the class-action settlement in the instant case. It has done this by analyzing the settlement in light of the appellate decisions in *Clark* and *Kullar*. This analysis has concluded that the settlement is fair, reasonable, and adequate. Class Counsel conducted a thorough investigation of the subject wage-and-hour practices and engaged in non-collusive, arm's-length negotiations in order to reach a settlement. Defendant has agreed to pay fair value to settle Plaintiff's claims given the existence of legal uncertainty, particularly with regard to Plaintiff's claim for failure to provide proper meal periods. From Class Counsel's substantial experience with wage-and-hour class action lawsuits Class Counsel believe that this case could not have settled on better terms under the circumstances. Request therefore is made that the settlement be granted preliminary approval so that those persons whom it was intended to benefit shall be afforded the opportunity to determine its adequacy.

REQUEST FOR ATTORNEYS' FEES

66. Under the Settlement, Class Counsel also requests, without opposition from Defendant, an award of Attorneys Fees and Costs consisting of: (1) no more than Forty-One Thousand and Six Hundred Sixty-Six Dollars and Sixty-Seven Cents (\$41,666.67) and (2) actual reasonable litigation costs in an amount not to exceed Twelve Thousand Five Hundred-Twenty-Five Dollars and Thirty-Five Cents (\$12,525.35) for reimbursement of Class Counsel's costs. (Exh. A, page 3, lines 22 – 27.) This request is fair, reasonable, and adequate to compensate Class Counsel for the substantial work they have put into this case and, moreover, the risk they assumed by taking it in the first place. The attorneys' fees award is intended to reimburse Class Counsel for all uncompensated work that they have already done and for all the work they will continue to do in carrying out and overseeing the notification to Class Members, communicating with Class Members regarding their claims, and assisting in the administration of the settlement if it is preliminarily approved.

67. D.Law, Inc. took this case on a contingent-fee basis against a business represented by a

1 reputable defense firm. When we take contingent cases, we must pay careful attention to the
2 economics involved or one bad case can destroy years of work. Accordingly, when we take
3 contingency cases, we anticipate that we shall, if successful, receive a fee that exceeds our normal
4 hourly rate; otherwise, the risk is often too great to bear. Even when we work long hours, the
5 number of hours in a day is limited. Because of this, when we take on one particular matter, we
6 are unable to take on other matters. When Class Counsel became involved in this case, we
7 realized the time commitment that it would entail and we were forced to turn down matters that
8 we otherwise should have been able to handle. In sum, this case claimed a significant portion of
9 Class Counsel's time and attention throughout its pendency.

10 68. The requested fee is reasonable for the services provided to Class Members and for the
11 benefits they are to receive. Indeed, even with a modest multiplier under the lodestar theory, *see*
12 *Bihun v. AT&T Information System* (1993) 13 Cal.App.4th 976, 997, Class Counsel's fees would
13 still be justified. Here, the lodestar may exceed the requested fees. Class Counsel will more fully
14 brief the Court on its lodestar in the motion for final approval.

15 **ENHANCEMENT TO PLAINTIFF AS THE CLASS REPRESENTATIVE**

16 69. Plaintiff herein is entitled to reasonable service payment for his efforts and initiative in
17 bringing and helping to prosecute this action. Plaintiff spent a considerable amount of time better
18 apprising himself of his rights, deciding whether remedial action should be taken, how it should
19 be taken, searching for attorneys, and finally contacting Class Counsel, who spent many hours
20 with Plaintiff discussing the case and the law. In the end, Plaintiff decided to vindicate not only
21 his own rights but also those of their co-workers by filing a class action lawsuit.

22 70. The courage it took to stand up to Defendant by filing and litigating this action in this
23 way should not be underestimated. By suing Defendant, Plaintiff increased her risk of retaliation
24 by prospective employers. Plaintiff's lawsuit has now required Defendant to expend considerable
25 resources, and Plaintiff justifiably fears the fact that he served as class representative in a wage
26 and hour class action will not be lost on a prospective employer who has to choose between an
27 applicant who has never sued a prior employer and one who has. Plaintiff contends this risk is
28 particularly real in the information age, where employers can, more easily than ever, perform

1 background checks of prospective employees, sometimes with the stroke of a key. It is common
2 for employers to screen employee candidates to determine whether they have ever filed suit, and
3 employee candidates who might be branded “litigious” are likely to be screened out of the
4 process. In fact, an entire industry has developed for providing employers with background
5 information on employee candidates.

6 71. But Plaintiff did not allow his fear of the potential repercussions of being class
7 representative to deter him from acting for the benefit of Class Members. To the contrary,
8 Plaintiff has been intimately involved in this case since its inception. He has devoted a substantial
9 amount of time to helping Class Counsel effectively develop and prosecute this action at every
10 stage of the litigation. Both before and after the filing of this lawsuit, Plaintiff conferred with
11 Class Counsel on numerous occasions to discuss every aspect of their case. Plaintiff provided
12 Class Counsel with information about Defendant and about the industry generally, reviewed
13 documents, consulted Class Counsel throughout the litigation repeatedly and at length,
14 participated in the mediation process, monitored the progress of the litigation with Class Counsel,
15 and reviewed and signed the Settlement Agreement.

16 72. Plaintiff has spent a significant amount of time with Class Counsel detailing his
17 knowledge of Defendant’s practices and helping Class Counsel with the prosecution of this
18 action. He has diligently, adequately, and fairly represented Class Members, and has not placed
19 her interests above any member of the putative class. The payment to Plaintiff is intended to
20 recognize his time and effort on behalf of the Class. The amount requested is fair and appropriate
21 based on his contribution and involvement. For example, Plaintiff instigated the lawsuit by
22 bringing these violations to the attention of Class Counsel. He spent several hours answering
23 questions and providing information to Class Counsel throughout the pendency of this action. He
24 explained to Class Counsel day to day business practices of Defendant with regard to work
25 schedules and meal breaks, etc. The parties are in agreement that Plaintiff is entitled to an
26 enhancement for his time and effort in this matter. This sort of payment to a class representative
27 has been a common feature of settlements negotiated by Class Counsel and has been routinely
28 approved by trial courts.

73. In light of the foregoing, Class Counsel believes that the Class Representative Enhancement payment in the amount of Five Thousand Five Hundred Dollars and Zero Cents (\$5,000.00) is fair and reasonable. This amount is a far cry from the \$50,000 of enhancement awards to the two named plaintiff approved by the trial court in *Clark*. See *Clark, supra*, 175 Cal.App.4th at 807. Although Class Counsel appreciate that the Court has a duty to ensure that class representative are not overcompensated at the expense of the class, modest incentive awards in employment class actions, such as the one here, are necessary not only to compensate class representative for the time they spend in the case, but also, and more importantly, to encourage aggrieved employees to challenge questionable employment practices notwithstanding the very real consequences they may face.

CRITERIA SATISFIED FOR CERTIFICATION OF SETTLEMENT CLASS

74. The proposed Classes satisfy the criteria for certification of a settlement class under California law, as embodied in California Code of Civil Procedure § 382. Defendant has agreed to the certification of the class for settlement purposes. In general, courts may take a proposed settlement into account in evaluating the propriety of class certification. See *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1807 fn. 19. Indeed, a “lesser standard” of scrutiny applies in certifying classes for settlement purposes. *Ibid*. Therefore the Court should take into consideration the fact that the parties have settled their claims and stipulated to certification for settlement purposes when assessing typicality and adequacy.

a. Numerosity. The putative classes are so numerous that joinder of all members is impractical. Class Members are “all persons employed by Defendants, collectively or separately, and/or any staffing agencies and/or any other third parties in hourly or non-exempt positions in California during the Class Period” from September 27, 2019, through April 13, 2024, and who have not released their claims against Defendant. There are approximately 66 persons answering to this definition. Thus, there are a sufficient number of Class Members to warrant certifying this as a class action for settlement purposes.

b. Ascertainability. The putative classes are defined in a manner that is precise, objective, and ascertainable. The Class Members have already been identified by reference to

1 Defendants' payroll and personnel records.

2 c. Typicality. A class representative's claims are typical when they arise from the
3 same event, practice, or course of conduct that gives rise to the claims of other putative class
4 members, and if their claims rest on the same legal theories. The class representative's claims
5 must be "typical" but not necessarily identical to the claims of other class members. It is
6 sufficient that the representative is similarly situated so that he or she will have the motive to
7 litigate on behalf of all Class Members. *Classen v. Weller* (1983) 145 Cal.App.3d 27, 47; *B.W.I.*
8 *Custom Kitchens v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d 1341, 1347 ("[I]t has never been
9 the law in California that the class representative must have identical interests with the class
10 members."). Thus, it is not necessary that the class representative should have personally incurred
11 all of the damages suffered by each of the other class members. *Wershba v. Apple Computer, Inc.*
12 (2001) 91 Cal.App.4th 224, 228.

13 Plaintiff's claims are typical of Class Members' claims because they arose from the same
14 factual basis and are based on the same legal theories. Plaintiff was employed by Defendant
15 during the Class Period subject to the allegedly unlawful meal and rest break policies and pay
16 practices at issue in this litigation. Accordingly, Plaintiff is a member of the class. The central
17 issues of this litigation (whether Defendant failed to pay all wages, whether Defendant failed to
18 provide meal and rest periods etc.), which would arise if this were an individual action brought by
19 Plaintiff, apply to the other Class Members as well, and the answer to these questions would
20 determine Defendants' liability to the entire putative class. Thus, Plaintiff's claims are typical of
21 the claims of the putative class. Accordingly, the typicality requirement is satisfied.

22 d. Adequacy. A class representative must possess the same interest and suffer the
23 same injury as the class members. "To assure 'adequate' representation, the class representative's
24 personal claim must not be inconsistent with the claims of other members of the class." *J.P.*
25 *Morgan & Co., Inc. v. Sup.Ct. (Heliotrope General, Inc.)* (2003) 113 Cal.App.4th 195, 212. Thus,
26 the adequacy requirement is satisfied when the class representative's interests are not antagonistic
27 to those of the class. *McGhee v. Crocker-Citizens Nat. Bank* (1976) 60 Cal.App.3d 442, 451.

28 Plaintiff does not have any conflicts with the class and in fact her interests are aligned

1 with those of the class. Because Plaintiff's claims are identical to those that would be asserted by
2 the unnamed Class Members were they before the Court, Plaintiff has every interest in zealously
3 representing the unnamed class members. Plaintiff has not shrunk from this responsibility.
4 Indeed, Plaintiff has devoted a substantial amount of time and energy to litigating this action and
5 effecting a settlement. Furthermore, as detailed above, Class Counsel are experienced in wage-
6 and-hour litigation, especially class actions, and have zealously represented the interests of the
7 class in litigating this case. *See infra* ¶¶3-9. Accordingly, the adequacy requirement is satisfied.

8 e. Commonality. Common questions of law or fact in this case predominate over
9 individual questions. This action involves, *inter alia*, a determination about Defendant's alleged
10 failure to provide meal and rest periods, failure to pay minimum wages, failure to pay all wages
11 due to allegedly common and unlawful policies, failure to pay sick pay at the proper rates of pay,
12 failure to pay final wages when required, failure to provide accurate wage statements, failure to
13 pay employees on a timely basis, and largely derivative claims under the Business & Professions
14 Code and PAGA. Plaintiff contends these practices, including an alleged practice of failing to
15 provide complete meal periods, related meal period policies applicable to the class, and the
16 alleged failure to provide corresponding premium payments, that affected class members in the
17 same way. All class members were employed during the Class Period. Therefore, the operative
18 complaint delineates a common course of conduct applicable to all Class Members. Therefore,
19 based on Class Counsel's investigation, the review of the discovery produced by Defendants, and
20 their discussions with Plaintiff, Plaintiff contends the evidence supports their position that the
21 employment practices and policies of Defendant's business were consistent and uniform.

22 f. Predominance. Individualized issues do not predominate over the issues of law and
23 fact that are common to the class as a whole. The principal issues of controversy are whether
24 Class Members were paid for all hours worked and provided lawful meal breaks. As explained,
25 *supra*, there are common issues of law and fact given that Plaintiff and all Class Members were
26 subjected to the same policies and pay practices during the relevant time period. Plaintiff and
27 Class Members seek meal and rest break premiums, unpaid wages and overtime, sick pay, and
28 penalties for work performed as non-exempt employees for Defendant. These issues are suitable

1 for common adjudication because all Class Members were subject to the same employment
2 policies and Plaintiff contends the practices applied uniformly to all Class Members.

3 g. Superiority. Class resolution is superior to other available methods for the fair and
4 efficient adjudication of the controversy. There is little interest or incentive for Class Members to
5 individually control the prosecution of separate actions. Although the injury resulting from
6 Defendant's policies and practices are real and significant, the cost of individually litigating each
7 such case against Defendant would easily exceed the value of any relief that could be obtained by
8 any one Class Member individually. If Class Members are forced to litigate their claims
9 individually this would result in about 73-75 individual actions against Defendant. Here, the
10 alternative methods of resolution are individual suits for relatively small amounts. Hence, an
11 individual suit would prove uneconomical for potential plaintiff because litigation costs would
12 dwarf a potential recovery.

13 h. Except for Plaintiff's case before this Court, Plaintiff is unaware of any other
14 actions by Class Members against Defendant asserting similar claims as here. Furthermore, San
15 Diego County is a compelling forum for this action given that Defendant's location is in San
16 Diego County and numerous Class Members work in this County.

17 i. There are no serious manageability difficulties presented by preliminarily
18 approving the case for settlement purposes. As this case will not go to trial if finally approved, all
19 that would remain is settlement administration and responding to possible objectors.

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 75. On January 27, 2025, Plaintiff uploaded the Settlement Agreement and the
2 Memorandum of Points and Authorities in Support of Plaintiff's Motion for an Order
3 Preliminarily Approving the Class Action Settlement, Approving Notice of Class Action
4 Settlement, and Setting Hearing for Final Approval. A true and correct copy of the confirmatory
5 email from the LWDA is attached hereto as **Exhibit C**.

6 I declare under penalty of perjury under the laws of the State of California that the
7 foregoing is true and correct.

8 Executed this 27th day of January, 2025, at Glendale, California.

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



David Keledjian

EXHIBIT A

EXHIBIT A

1 D.LAW, INC.
2 Emil Davtyan (SBN 299363)
3 emil@d.law
4 David Yeremian (SBN 226337)
5 d.yeremian@d.law
6 David Keledjian (SBN 309135)
7 d.keledjian@d.law
8 David Arakelyan (SBN 337076)
9 d.arakelyan@d.law
10 880 E Broadway
11 Glendale, CA 91205
12 Telephone: (818) 962-6465
13 Facsimile: (818) 962-6469

14 Attorneys for Plaintiff CHRISTOPHER
15 TORNÓ BACLAY

16 [counsel continued on next page]

17
18 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
19 **FOR THE COUNTY OF SAN FRANCISCO**
20 **UNLIMITED JURISDICTION**

21 CHRISTOPHER TORNÓ BACLAY, on behalf
22 of himself and all others similarly situated, and
23 the general public,

24 *Plaintiff,*

25 v.

26 EMERALD FUND, INC., a California
27 corporation; and DOES 1 through 50, inclusive,

28 *Defendants.*

Case No. CGC-23-609362

[Assigned for all purposes to the Hon. Ethan P. Shulman, Dept. 304]

**JOINT STIPULATION OF CLASS
ACTION AND PAGA SETTLEMENT**

Complaint filed:	September 27 2023
FAC filed:	December 1, 2023
Trial date:	None set

1 SEYFARTH SHAW LLP
2 Andrew M. McNaught (SBN 209093)
3 amcnaught@seyfarth.com
4 Robin E. Devaux (SBN 233444)
5 rdevaux@seyfarth.com
6 560 Mission Street, 31st Floor
7 San Francisco, California 94105
8 Telephone: (415) 397-2823
9 Facsimile: (415) 397-8549

10 Attorneys for Defendant

11 EMERALD FUND, INC.

1 This Joint Stipulation of Class Action and PAGA Settlement (“Joint Stipulation” or
2 “Settlement”) is made and entered by and between CHRISTOPHER TORNØ BACLAY, in his
3 individual capacity, as a class representative, and as a private attorney general (hereinafter referred
4 to as “Plaintiff”) on one hand, and Defendant EMERALD FUND, INC. (hereinafter referred to as
5 “Defendant”) on the other hand. Subject to the Court’s approval, the above-referenced action is
6 being compromised and settled under the terms and conditions set forth below. This Joint Stipulation
7 will be binding on Plaintiff and the individuals purported to be represented thereby, and Defendant,
8 subject to the terms and conditions set forth below and the approval of the Court.

9 **I. DEFINITIONS**

10 To the extent any terms or phrases used in this Joint Stipulation are not specifically defined
11 in this section (i.e., Section I), but are defined elsewhere in this Joint Stipulation, they are
12 incorporated herein by reference.

13 “Action” means the above-entitled putative class and PAGA action pending in the Superior
14 Court of the State of California, County of San Francisco.

15 “Attorneys’ Fees and Costs” means attorneys’ fees agreed upon by the Parties and approved
16 by the Court for Class Counsel’s litigation and resolution of the Action, and all costs incurred and
17 to be incurred by Class Counsel in the Action, including but not limited to costs associated with
18 documenting the Settlement, providing any notices required as part of the Settlement or Court order,
19 securing the Court’s approval of the Settlement, administering the Settlement, obtaining entry of a
20 judgment terminating the Action, and expenses for any experts. Class Counsel will request
21 attorneys’ fees not to exceed one-third of the Gross Settlement Amount, or Forty One Thousand Six
22 Hundred Sixty-Six Dollars and Sixty-Seven Cents (\$41,666.67). The Attorneys’ Fees and Costs will
23 also mean and include the additional reimbursement of any reasonable costs and expenses associated
24 with Class Counsel’s litigation and settlement of the Action, not to exceed Twelve Thousand Five
25 Hundred Twenty-Five Dollars and Thirty-Five Cents (\$12,575.35), subject to the Court’s approval.
26 Defendant has agreed not to oppose Class Counsel’s request for fees and reimbursement of costs as
27 set forth above.

28 “Class” or “Class Members” means all persons employed by Defendant in hourly or non-

1 exempt positions in California during the Class Period. The Class consists of approximately 66 Class
2 Members.

3 “Class Member” means a single person employed by Defendant, in an hourly or non-exempt
4 position in California during the Class Period who did not execute any agreement to arbitrate the
5 claims of the Action.

6 “Class Counsel” means D.Law, Inc.

7 “Class Period” means the time from September 27, 2019 through April 13, 2024.

8 “Complaint” means the operative Complaint filed in the Action on or about September 27,
9 2023, and all amendments thereto.

10 “Court” means the San Francisco County Superior Court or any other court taking
11 jurisdiction of the Settlement.

12 “Defendant” means EMERALD FUND, INC.

13 “Effective Date” means the later of March 14, 2025 or the date by which the Court’s order
14 granting Final Approval of this Joint Stipulation becomes final. Such order becomes final upon the
15 following events: (i) upon the Court issuing an order granting Final Approval of this Joint
16 Stipulation if no objections to the settlement are filed, or if an objection is filed but is withdrawn
17 prior to the Court’s Final Approval Hearing; or (ii) in the event there are written objections filed
18 prior to the Final Approval Hearing which are not thereafter withdrawn prior to the hearing, the later
19 of the following events: (a) the day after the last day by which a notice of appeal of the order may
20 be timely filed with the California Court of Appeal, and none is filed; (b) if an appeal is filed and is
21 finally disposed of by ruling, dismissal, denial, or otherwise, the day after the last date for filing a
22 request for further review of the Court of Appeal’s decision passes and no further review is
23 requested; (c) if an appeal is filed and there is a final disposition by ruling, dismissal, denial, or
24 otherwise by the Court of Appeal, and further review of the Court of Appeal’s decision is requested,
25 the day after the request for review is denied with prejudice and/or no further review of the order
26 can be requested; or (d) if review is accepted, the day the Supreme Court of the State of California
27 affirms the Settlement.

28 “Enhancement Award” means the amount to be paid to Plaintiff in recognition of his effort

1 and work in prosecuting the Action on behalf of Class Members, and for his general release of
2 claims, including a Civil Code § 1542 waiver. Subject to the Court granting Final Approval of this
3 Settlement and subject to the exhaustion of any and all appeals, Plaintiff will request Court approval
4 of an Enhancement Award of Five Thousand Dollars (\$5,000), as approved by the Court, which
5 Defendant agrees not to oppose.

6 “Final Approval” means the date upon which the Court enters an order granting approval of
7 this Joint Stipulation, after having determined that the settlement is fair, adequate, and reasonable
8 to the Class following notice to the Class and a hearing on the fairness of the settlement.

9 “Final Approval Hearing” means the final hearing held to ascertain the fairness,
10 reasonableness, and adequacy of the Joint Stipulation, after which the Court will enter its order
11 approving the Joint Stipulation finally.

12 “Gross Settlement Amount” means up to One Hundred Twenty-Five Thousand Dollars
13 (\$125,000.00) that Defendant will pay in the aggregate to resolve this Action, on a non-reversionary
14 basis. The Gross Settlement Amount is all-inclusive. The following costs will be deducted from the
15 Gross Settlement Amount, as approved by the Court: (1) Class Counsels’ Attorneys’ Fees and
16 Costs); (2) an Enhancement Award to the named Plaintiff; (3) Settlement Administrator’s Fees; and
17 (4) \$10,000.00 for penalties under PAGA. Defendant’s corporate payroll tax obligation shall be paid
18 separately, and in addition to, the Gross Settlement Amount. The GSA was calculated based on the
19 estimate that 66 Class Members worked a total of 3,120 workweeks during the Class Period. If the
20 total number of workweeks is 5% higher (3,276 workweeks), then Defendant shall have the option
21 to either: (1) de-escalate the Settlement so that the Class Period ends on the date that the workweek
22 count totals no more than 3,120; or (2) permit the GSA to be increased proportionally by the
23 workweeks worked in excess of 5%, (or 3,276 workweeks) multiplied by the per workweek value
24 of \$22.21.

25 “LWDA” means California’s Labor and Workforce Development Agency.

26 “LWDA Payment” means the amount that the Parties have agreed to pay to the LWDA in
27 connection with PAGA. Pursuant to PAGA, Seventy-Five Percent (75%), or Seven Thousand and
28 Five Hundred Dollars (\$7,500.00) of the PAGA Settlement Amount will be paid to the LWDA, and

1 Twenty-Five Percent (25%) or Two Thousand and Five Hundred Dollars (\$2,500.00) of the PAGA
2 Settlement Amount will be included in the Net Settlement Amount.

3 “Net Settlement Amount” means the portion of the Gross Settlement Amount remaining
4 after deductions for the Court-approved Enhancement Award, Settlement Administrator’s Fees, the
5 Attorneys’ Fees and Costs, and the LWDA Payment. The Net Settlement Amount will be distributed
6 to Participating Class Members.

7 “Notice of Objection” means a Class Member’s valid and timely written objection to the
8 Settlement. For the Notice of Objection to be valid, it must include: (i) the Lawsuit’s name and case
9 number; (ii) the objector’s full name, signature, address, and telephone number, (iii) a written
10 statement of all grounds for the objection accompanied by any legal support for such objection; (iv)
11 copies of any papers, briefs, or other documents upon which the objection is based; and (i) a
12 statement whether the objector intends to appear at the Final Approval hearing. Any Class Member
13 who does not submit a timely written objection to the Settlement, or who fails to otherwise comply
14 with the specific and technical requirements of this section, will be foreclosed from objecting to the
15 Settlement and seeking any adjudication or review of the Settlement, by appeal or otherwise. Class
16 Members who submit Notices of Objection must make themselves available for deposition.

17 “Notice Packet” means the form mailed by the Settlement Administrator to Class Members
18 regarding this Settlement, substantially in the form attached as **Exhibit 1**.

19 “Opt-Out” means all Class Members who timely submit a valid Request for Exclusion.

20 “PAGA” means California’s Labor Code Private Attorneys General Act of 2004, as
21 amended (Cal. Labor Code §§ 2698 *et seq.*).

22 “PAGA Settlement Amount” means the Ten Thousand Dollars (\$10,000.00) of the Gross
23 Settlement Amount that the Parties agree will be allocated to the resolution of Participating Class
24 Members’ claims arising under PAGA.

25 “Participating Class Members” means all Class Members who do not submit timely and
26 valid Requests for Exclusion.

27 “Parties” means Plaintiff and Defendant collectively.

28 “Preliminary Approval” means the court order preliminarily approving this Joint Stipulation.

1 “Preliminary Approval Hearing” means the court hearing held on the motion for Preliminary
2 Approval of the Joint Stipulation.

3 “Released Claims” means all claims, rights, demands, liabilities, penalties, wages, and
4 causes of action, arising from, or related to, or that were pled, or that could have been pled, based
5 on the facts and allegations in the operative Complaint in the Action during the Class Period,
6 including, but not limited to, for alleged violation of Labor Code sections 201-204, 223, 226(a),
7 226.7, 246, 510, 512, 558, 1174, 1174.5, 1182.2, 1185, 1194, 1194.2, 1197, 1997.1, 1198, 1199,
8 2698 *et seq.*, and 2802, or any claims based on the following allegations under any theory: failure
9 to provide meal and rest periods; failure to pay minimum, regular, or hourly wages, and/or alleged
10 off-the-clock work; failure to pay overtime wages or accurate overtime wages; failure to pay timely
11 wages during employment or upon separation; failure to provide accurate and/or complete wage
12 statements; failure to pay proper sick pay; failure to indemnify; or violation of Cal. Bus. & Prof.
13 Code section 17200 *et seq.* by engaging in the foregoing conduct. Settlement Class Members’
14 Released Claims include all claims for unpaid wages, overtime wages, statutory penalties, damages
15 of any kind, interest, attorneys’ fees, costs, injunctive relief, restitution, and any other equitable
16 relief under California statute, ordinance, regulation, common law, or other source of law, including
17 but not limited to the California Labor Code, California Business and Professions Code, and
18 California Civil Code, and California Industrial Welfare Commission Wage Orders (collectively,
19 the “Released Claims.”). The period of the Release shall extend to the limits of the Settlement Class
20 Period. The *res judicata* effect of the Judgment will be the same as that of the Release.

21 “Released Parties” means Defendant and all of its past, present and/or future owners,
22 officers, directors, shareholders, members, employees, agents, principals, representatives, assigns,
23 attorneys, insurers, parent companies, subsidiaries, joint venturers, and affiliates, if any.

24 “Request for Exclusion” means a timely writing submitted by a Class Member to the
25 Settlement Administrator indicating a request to be excluded from the Settlement. The Request for
26 Exclusion must: (i) set forth the full name, address, telephone number and last four digits of the
27 Social Security Number of the Class Member requesting exclusion; (ii) be signed by the Class
28 Member; (iii) be returned to the Settlement Administrator; (iv) clearly state that the Class Member

1 does not wish to be included in the Settlement; and (v) be faxed or postmarked on or before the
2 Response Deadline.

3 “Response Deadline” means the deadline by which Class Members must postmark or fax to
4 the Settlement Administrator Requests for Exclusion and/or Notices of Objection. The Response
5 Deadline will be sixty (60) calendar days after the initial mailing of the Notice Packet by the
6 Settlement Administrator, unless the sixtieth (60th) calendar day falls on a Sunday or State holiday,
7 in which case the Response Deadline will be extended to the next day on which the U.S. Postal
8 Service is open.

9 “Settlement Administrator” means Phoenix Class Action Administration Solutions or any
10 other third-party class action settlement administrator agreed to by the Parties and approved by the
11 Court for the purposes of administering this Settlement. The Parties each represent that they do not
12 have any financial interest in the Settlement Administrator or otherwise have a relationship with the
13 Settlement Administrator that could create a conflict of interest.

14 “Settlement Administrator’s Fees” means all fees, costs, and expenses as approved by the
15 Court relating to the administration of the Settlement in this Action, including without limitation,
16 printing and mailing Class Notice Forms, posting a public website where Class Members can access
17 the Settlement Agreement and receive updates on the progress of the case, receiving and processing
18 Opt-Outs, calculating and determining payments and percentages, tax reporting, distributing the
19 Settlement Amount, regularly updating counsel on the status of administration, and the accounting
20 and maintenance of the Settlement Fund Account. The Settlement Administrator’s Fees will be paid
21 from the Gross Settlement Amount, including, if necessary, any such costs in excess of the amount
22 represented by the Settlement Administrator as being the maximum costs necessary to administer
23 the Settlement. The Settlement Administrator’s Fees are currently estimated to be Five Thousand
24 Dollars (\$5,000.00). Any Settlement Administrator’s Fees that exceed the amount approved by the
25 Court shall be subtracted from the Gross Settlement Amount.

26 “Settlement Fund Account” means the qualified settlement fund within the meaning of
27 Treasury Regulation § 1.468B-1, 26 CFR § 1.468B-1 *et seq.*, that is established by the Settlement
28 Administrator for the benefit of Participating Class Members, from which all monies payable under

1 this Joint Stipulation shall be paid, as set forth herein.

2 **II. PRE-TRIAL PROCEEDINGS AND NEGOTIATIONS**

3 **A. Discovery, Investigation, and Research**

4 The Parties investigated facts and law throughout the Action. Investigation included the
5 exchange of information under informal discovery, including expert witness consultations. It also
6 included preparing for and attending private mediation with wage and hour class action mediator,
7 Michael Mandel. The Parties also investigated relevant law as applied to the facts of this case,
8 potential defenses, and damages claimed by Plaintiff on behalf of himself and the Class. Informal
9 discovery largely focused on Plaintiff's allegations that Class Members were not provided with meal
10 and rest breaks, did not receive minimum and overtime wages, received improper wage statements,
11 and were not paid all owed and due wages upon separation of employment. Informal discovery
12 included Class Members' time and pay records, the relevant policies and practices of Defendant,
13 and Class data regarding the Released Claims. The Parties conducted their own evaluations of the
14 potential recoveries based on the claims alleged in the Action, including consulting experts.

15 **B. Allegations of the Plaintiff and Benefits of Settlement**

16 This Joint Stipulation was reached after arm's length bargaining by the Parties with the
17 assistance of an experienced mediator, and after Class Counsel thoroughly reviewed all available
18 evidence. The information exchanged between the Parties allowed them to assess the merits of the
19 claims and defenses, and to reach a compromise of the issues.

20 Plaintiff and Class Counsel all contend the claims asserted in the Action have merit.
21 However, they also acknowledge the expense and delay of continued litigation. Class Counsel has
22 considered the uncertain outcome and risk of litigation, and the difficulties and delays inherent in
23 such litigation. Class Counsel also considered the potential difficulty of maintaining the Action as
24 a class and/or PAGA action and the likelihood of appeals.

25 Class Counsel determined this Joint Stipulation confers substantial benefit to the Class and
26 respectfully submits that an independent review by the Court will confirm this conclusion. Class
27 Counsel has determined that this Joint Stipulation is in the best interests of Plaintiff and the Class
28 Members.

1 **C. Defendant’s Denial of Wrongdoing and Benefits of Settlement**

2 Defendant generally denies all claims alleged in the Action and further denies class and/or
3 representative treatment is appropriate for any purpose other than this Settlement. Defendant
4 contends it complied with all applicable laws. It is Defendant’s position that if litigation continued,
5 class certification would not be granted, or if it were, that it would be reversed. The named Plaintiff
6 is not an adequate class representative, his claims are not typical of the Class Members, and
7 individual issues predominate over common ones. However, Defendant has concluded that further
8 litigation would be protracted and expensive. Thus, Defendant has determined that it is desirable
9 that the Action be fully and finally settled in the manner and upon the terms and conditions herein.

10 **D. Intent of the Settlement**

11 This Joint Stipulation intends to achieve the following: (1) entry of an order approving the
12 Joint Stipulation and granting the monetary relief set forth herein, including the LWDA Payment
13 under PAGA; (2) entry of final judgment on Plaintiff’s alleged claims; (3) a general release of claims
14 by Plaintiff; and (4) discharge of Released Parties from liability for all Released Claims.

15 **III. PROCEDURAL ISSUES**

16 **A. Preliminary Approval**

17 Class Counsel will submit this Joint Stipulation to the Court with a Motion for Preliminary
18 Approval of Class and PAGA Action Settlement on or before **July 19, 2024**. Defendant will review
19 Plaintiff’s motion prior to submission and will not oppose the Motion for Preliminary Approval of
20 Class and PAGA Action Settlement.

21 **B. Settlement Administrator**

22 The Settlement Administrator will handle: (1) preparing, printing, and mailing to Class
23 Members simultaneously the Notice Packet”); (2) receiving and reviewing any Opt-Outs; (3)
24 calculating payments under the Settlement; (4) handling inquiries from Class Members concerning
25 the Notice Packet; (5) resolving any workweek disputes; (6) providing weekly status reports to
26 Defendant’s counsel and Class Counsel regarding the mailings, Opt-Outs, and Settlement payments;
27 (7) distributing Settlement payments to Class Members and payment to other parties under the terms
28 of this Joint Stipulation; (8) providing due diligence declarations for submission to the Court, as

1 needed; (9) tax reporting and printing and providing Participating Class Members and Plaintiff with
2 tax forms as required under this Joint Stipulation and applicable law, including the issuance of IRS
3 1099 and W-2 forms, and providing copies of the same to Defendant; (10) sending, and/or
4 responding to submissions of Opt-Outs, or contact information updates; and (11) such other tasks
5 as the Parties mutually agree or the Court orders the Settlement Administrator to perform.

6 The Settlement Administrator will skip trace and re-mail all returned, undeliverable mail
7 within seven days of receiving notice the mailing was undeliverable. The Settlement Administrator
8 will also handle payments to Plaintiff for his Enhancement Award, payment of Attorneys' Fees and
9 Costs, and the LWDA Payment to the LWDA, each as approved by the Court. The Settlement
10 Administrator will also handle the distribution of any remaining amounts from uncashed checks in
11 accordance with California Code of Civil Procedure § 384(b) and this Joint Stipulation, as approved
12 by the Court.

13 Settlement Administrator's Fees are to be paid from the Gross Settlement Amount.

14 Not later than ten (10) business days prior to the Final Approval Hearing, the Settlement
15 Administrator will serve on the Parties a draft declaration of due diligence setting forth its
16 compliance with its obligations under this Joint Stipulation, which the Settlement Administrator
17 shall update and finalize prior to the Final Approval Hearing.

18 **C. Notice to Class Members**

19 If the Court grants Preliminary Approval, notice will be provided to Class Members as
20 follows:

21 Within ten (10) calendar days after Preliminary Approval, Defendant will provide the
22 Settlement Administrator with the following information from Defendant's records about each Class
23 Member: (1) first and last name; (2) last known mailing address; (3) social security number; (4)
24 dates of employment; and (5) total workweeks worked during the Class Period (the "Class Data").
25 The Class Data will be treated as confidential, disclosed only to the Settlement Administrator, and
26 used for Settlement purposes only.

27 Within ten (10) calendar days after the Settlement Administrator's receipt of the Class Data,
28 it will mail the Notice Packet to Class Members via first-class regular U.S. mail.

1 Prior to mailing, the Settlement Administrator will perform a search based on the National
2 Change of Address Database for information to update and correct any known or identifiable address
3 changes. Efforts to locate updated address for undeliverable notices will continue for forty-five (45)
4 calendar days from the date the Notice Packet is first mailed to Opt-Out of the Class. If a new address
5 is obtained by way of a returned Notice Packet, then the Settlement Administrator will within five
6 (5) business days forward the original Notice Packet to the updated address via first-class regular
7 U.S. mail, indicating on the original packet the date of such re-mailing. If no forwarding address is
8 provided, the Settlement Administrator shall promptly attempt to determine a correct address by the
9 use of skip-tracing, or other type of automated search, using the name, address and/or Social
10 Security number of the Class Member involved, and shall then perform a re-mailing to the Class
11 Member whose Notice Packet was returned as non-deliverable, assuming another mailing address
12 is identified by the Settlement Administrator.

13 Those Class Members who receive a re-mailed Notice Packet, whether by skip-trace or by
14 request, will have between the later of (a) an additional fifteen (15) calendar days, or (b) the
15 Response Deadline to submit a Request for Exclusion or a Notice of Objection to the Settlement.

16 A returned Notice Packet will be forwarded only once by the Settlement Administrator.
17 Upon completion of these steps by the Settlement Administrator, the Parties will be deemed to have
18 satisfied their obligation to provide notice of the Settlement to Class Members. Each and all Class
19 Members will be bound by all terms of the Joint Stipulation (including the Released Claims) and
20 the Court's Preliminary Approval and Final Approval orders and final judgment, unless the Class
21 Member submits a timely and valid Request for Exclusion to Opt-Out of the Class.

22 All Class Members will have until the Response Deadline to submit a file a Notice of
23 Objection, to dispute their workweek totals, or to Opt-Out of the Class by submitting a Request for
24 Exclusion.

25 **D. Procedure for Opting Out of the Class**

26 Class Members who wish to exclude themselves from the Class must submit to the
27 Settlement Administrator a valid, written Request for Exclusion on or before the Response Deadline,
28 unless the Court orders otherwise. The Request for Exclusion must be signed by the Class Member

1 and contain all information required by this Joint Stipulation. In the case of Requests for Exclusion
2 that are mailed to the Settlement Administrator, the postmark date will be the exclusive means to
3 determine whether a Request for Exclusion has been timely submitted. At no time will any of the
4 Parties or their counsel seek to directly or indirectly solicit or otherwise encourage any Class
5 Member to opt out of the Settlement Class, but may, if warranted by the circumstances, advise
6 individual Class Members of the consequences of opting out.

7 Any Class Member who submits a valid, timely Request for Exclusion will not be entitled
8 to recovery under the Settlement and will not be bound by the Settlement, judgment, or order in this
9 Action, but will still receive their share of the PAGA payment and release PAGA claims. Nor can
10 the Class Member object, appeal, or comment on the Settlement. Class Members who fail to timely
11 submit a valid Request for Exclusion will be bound by all the terms of this Joint Stipulation, and
12 any judgment and order entered by the Court in the Action.

13 If a Class Member's Request for Exclusion is defective as to the requirements listed in this
14 Joint Stipulation, that Class Member will be given an opportunity to cure the defect(s). The
15 Settlement Administrator will mail the Class Member a cure letter within three (3) business days of
16 receiving the defective submission to advise the Class Member that his or her submission is
17 defective and that the defect must be cured to render the Request for Exclusion valid. The Class
18 Member will have until the later of the Response Deadline or fifteen (15) calendar days from the
19 date of the cure letter, whichever date is later, to postmark or fax a revised Request for Exclusion.
20 If the revised Request for Exclusion is not postmarked or received by fax within that period, it will
21 be deemed untimely.

22 **E. Procedure for Disputing Workweeks**

23 The Settlement Administrator's determination of eligibility for, and the amount of, any
24 Settlement payment under this Joint Stipulation will be conclusive, final, and binding on all Parties,
25 including all Participating Class Members. To dispute the number of workweeks with which he or
26 she has been credited, a Class Member must timely produce evidence to the Settlement
27 Administrator showing that the workweek information is inaccurate by the Response Deadline. The
28 delivery date is deemed to be the date the dispute is deposited in the U.S. Mail as evidenced by the

1 postmark. The Settlement Administrator shall decide the dispute. Defendant's records will be
2 presumed correct, but the Settlement Administrator will evaluate the evidence submitted by the
3 Class Member and will make the final decision on the merits of the dispute. The Settlement
4 Administrator may ask Defendant to produce the personnel and payroll files of the Class Member
5 disputing his or her credited workweeks in order for the Settlement Administrator to resolve the
6 dispute. All disputes will be decided within ten (10) business days after the Response Deadline.

7 **F. Procedure for Objecting to Settlement**

8 Any Class Member who seeks to object to the settlement may serve a Notice of Objection
9 to the Settlement Administrator at the address set forth in the Notice Packet. All Notices of Objection
10 must be submitted to the Settlement Administrator by the Response Deadline. The Notice of
11 Objection must be signed by the Class Member and contain all information required by this
12 Settlement Agreement. For mailed Notices of Objection, the postmark will be deemed the exclusive
13 means for determining that the Notice of Objection is timely. Class Members who do not serve
14 written objections or appear at the Final Approval Hearing to explain their objection(s) shall be
15 deemed to have waived any objections and shall be foreclosed from making any objections (whether
16 by appeal or otherwise) to the Settlement.

17 At no time will any of the Parties or their counsel seek to solicit or otherwise encourage any
18 Class Member to submit objections to the Settlement Agreement or to appeal from the Final
19 Approval order and judgment. Class Counsel will not represent any Class Members with respect to
20 any such objections to this Settlement.

21 **G. Reports from Settlement Administrator**

22 The Settlement Administrator will provide counsel for the Parties with weekly updates about
23 the number of Class Members who submit Requests for Exclusion, Notices of Objection to the
24 Settlement, and whether any Class Member has submitted a challenge to any information contained
25 in their Notice Packet. Copies of any Requests for Exclusion will be provided to counsel for
26 Defendant. Additionally, the Settlement Administrator will provide to counsel for both Parties any
27 updated reports regarding the administration of the Settlement Agreement as needed or requested.

28 ///

1 **H. Final Approval**

2 At the Final Approval Hearing, Class Counsel will move the Court for the entry of judgment
3 under Rule 3.769(h) of the California Rules of Court, incorporating the Joint Stipulation. Class
4 Counsel will seek approval of the Joint Stipulation as being fair, adequate, and reasonable to the
5 Class Members. Class Counsel will submit to the Court such pleadings and evidence as required for
6 the Court's determination.

7 **IV. SETTLEMENT TERMS**

8 **A. Gross Settlement Amount and Minimum Settlement Payments**

9 Pending Final Approval of this Settlement, Defendant will pay up to the aggregate Gross
10 Settlement Amount on an all-inclusive, non-reversionary basis. Defendant will not be required to
11 contribute additional sums to fund the Settlement or otherwise resolve this action. Defendant will
12 wire or mail the entire Gross Settlement Amount and the employer's share of payroll taxes to the
13 Settlement Fund Account within ten (10) calendar days after the Effective Date.

14 All Class Members will be eligible to participate in the Settlement. Class Members will
15 receive a pro-rata share of the Net Settlement Amount under a workweek formula, as set forth below.

16 **B. Allocation of Settlement Proceeds**

17 The Gross Settlement Amount is inclusive of and will be allocated as follows, subject to
18 Court approval:

- 19 i. Attorneys' Fees and Costs, which is the amount the Court awards to Class Counsel
20 for their attorneys' fees in an amount not exceeding one-third (or \$41,666.67) of the
21 Gross Settlement Amount, and reasonable litigation costs;
- 22 ii. The Enhancement Award, which comprises the amount the Court awards to the
23 named Plaintiff as class representative, in an amount not exceeding \$5,000.00;
- 24 iii. The Settlement Administrator's Fees;
- 25 iv. The PAGA Settlement Amount; and
- 26 v. The Net Settlement Amount, which is the total money available for payout to
27 Participating Class Members;

28 Payment to each Participating Class Member shall be allocated eighty percent (75%) as non-

1 wage penalties and interest, for which IRS Forms 1099-MISC will be issued, and twenty percent
2 (25%) wages, for which IRS Forms W-2 will be issued. The Settlement Administrator will be
3 responsible for issuing to Plaintiff, Participating Class Members, and Class Counsel any W-2, 1099,
4 or other tax forms as may be required by law for all amounts paid pursuant to this Settlement. The
5 Settlement Administrator will also be responsible for forwarding all payroll taxes and penalties to
6 the appropriate government authorities.

7 If the Court approves a lesser amount in Attorneys' Fees and Costs, the Enhancement Award,
8 Settlement Administrator's Fees, or the PAGA Settlement Amount than set forth in this Joint
9 Stipulation, then the Net Settlement Fund will increase proportionately.

10 Defendant makes no representation as to the tax treatment or legal effect of the payments
11 called for hereunder, and Plaintiff and Class Members are not relying on any statement,
12 representation, or calculation by Defendant or by the Settlement Administrator in this regard. No
13 Gross Settlement Amount funds will revert to Defendant.

14 The Settlement Administrator shall deposit the Settlement Amount Fund entirely into an
15 FDIC insured interest bearing account, and interest from such interest-bearing account will become
16 part of the Net Settlement Fund and be held by the Settlement Administrator in escrow.

17 The individual Settlement payments made to Participating Class Members under this
18 Settlement, as well as any other payments made pursuant to this Settlement, will not be utilized to
19 calculate any additional benefits under any benefit plans to which any Class Members may be
20 eligible, including but not limited to profit-sharing plans, bonus plans, 401(k) plans, stock purchase
21 plans, vacation plans, sick leave plans, paid time off plans, and any other benefit plan. Rather, it is
22 the Parties' intention that this Joint Stipulation will not affect any rights, contributions, or amounts
23 to which any Class Members may be entitled under any benefit plans.

24 **C. Circular 230 Disclaimer**

25 EACH PARTY TO THIS AGREEMENT (FOR PURPOSES OF THIS PARAGRAPH, THE
26 "ACKNOWLEDGING PARTY" AND EACH PARTY TO THIS AGREEMENT OTHER THAN
27 THE ACKNOWLEDGING PARTY, AN "OTHER PARTY") ACKNOWLEDGES AND AGREES
28 THAT (1) NO PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION

1 OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND
2 OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR WILL ANY SUCH
3 COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED
4 UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY
5 DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE
6 ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER, OR ITS
7 OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX
8 ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS
9 AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR ANY
10 ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY
11 UPON ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO
12 ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE
13 ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER
14 PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY OF
15 ANY SUCH ATTORNEY'S OR ADVISER'S TAX STRATEGIES (REGARDLESS OF
16 WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE
17 ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY
18 TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS
19 AGREEMENT.

20 **D. Distribution of Settlement Proceeds**

21 The Settlement Administrator will keep Defendant's counsel and Class Counsel apprised of
22 all distributions from the Settlement Fund Account. No person will have any claim against
23 Defendant, Defendant's counsel, Plaintiff, Class Counsel, or the Settlement Administrator based on
24 distributions and payments made under this Joint Stipulation. Distribution of the Gross Settlement
25 Amount will be as follows:

26 **1. Initial Payment**

27 Within ten (10) calendar days after Defendant wires the funds to the Settlement
28 Administrator, the Settlement Administrator will pay the Attorneys' Fees and Costs awarded to

1 Class Counsel, the Enhancement Award, the LWDA Payment to the LWDA, and the Settlement
2 Administrator's Fees, based on how the Court rules at the Final Approval Hearing. The remainder
3 of the Gross Settlement Amount, known as the Net Settlement Amount, will be calculated and
4 distributed to Participating Class Members as set forth below.

5 **2. Payment to Participating Class Members**

6 The Settlement Administrator will calculate the individual settlement payments to
7 Participating Class Members. The settlement payments to Settlement Class Members will be made
8 pro rata based on the number of class-eligible workweeks that each Settlement Class Member
9 worked between September 27, 2019 through April 13, 2024. Individual settlement payments will
10 be calculated as follows: $[(\text{Settlement Class Member's individual qualifying workweeks}) \div (\text{all}$
11 $\text{Settlement Class Members' qualifying workweeks})] \times [\text{Net Settlement Amount}]$. The individual
12 Settlement payments to Participating Class Members will be paid within twenty-one (21) calendar
13 days after the Effective Date.

14 The payments to Settlement Class Members shall be transmitted by U.S. Mail to the last-
15 known addresses, and the settlement payment checks shall contain language in the endorsement
16 section which states.

17 No later than 200 days after the mailing of the settlement payment checks, the Settlement
18 Administrator shall prepare and sign a declaration attaching as an exhibit all the settlement payment
19 checks that have been cashed by the Settlement Class Members. Class Counsel shall file the
20 declaration and exhibit with the Court as the current record of all consents by Settlement Class
21 Members to opt into the action and release their FLSA claims.

22 **E. Uncashed Settlement Checks**

23 Any checks issued to Participating Class Members shall be negotiable for at least 200
24 calendar days. The aggregate value of all Settlement Checks that remain uncashed after one-
25 hundred eighty (180) days after the checks are mailed will be distributed pursuant to Cal. Code Civ.
26 Proc. § 384(b) to The Interdisciplinary Center for Healthy Workplaces at U.C. Berkeley. Regardless
27 of whether the checks are cashed, this Agreement will be binding on every Class Member who does
28 not timely opt out. Regardless of whether the checks are cashed, this Agreement will be binding on

every Settlement Class Member who does not timely opt out. The Parties agree that this disposition results in no “unpaid residue” under California Civil Procedure Code § 384, as the entire Net Settlement Amount will be paid out to Settlement Class Members, whether or not they all cash their Settlement Checks. Therefore, Defendant will not be required to pay any interest on said amounts.

F. Settlement Amounts Payable as Attorneys’ Fees and Costs

Defendant will not oppose a request for attorneys’ fees to Class Counsel up to one-third (\$41,666.67) of the Gross Settlement Amount. All fees awarded by the Court to Class Counsel will be deducted from the Gross Settlement Amount. Class Counsel’s attorney fee application will be submitted with supporting documentation and heard during the Final Approval Hearing. The Fee Award will be determined by the Court.

Defendant will not oppose a request for reasonable litigation expenses to Class Counsel. All costs approved by the Court to Class Counsel will be deducted from the Gross Settlement Amount. Class Counsel’s request for costs must be submitted with its fee application and with supporting documentation, and heard during the Final Approval Hearing. The Costs Award will be determined by the Court.

The Court-approved Attorneys’ Fees and Costs shall be deemed to cover all work performed, costs, and expenses related to the investigation, prosecution, and settlement of the Action incurred by Class Counsel. Any fees or costs sought by Class Counsel but not approved by the Court shall become part of the Net Settlement Fund to be distributed to Participating Class Members.

G. Enhancement Award

Defendant will not object to an Enhancement Award of \$5,000.00 to the named Plaintiff. The Enhancement Award will be considered miscellaneous income. The Settlement Administrator will issue a Form 1099, and any other tax forms, to Plaintiff relating to the Enhancement Award. The Enhancement Award will be determined by the Court. The Enhancement Payment will be paid from the Gross Settlement Amount and will be in addition to Plaintiff’s individual Settlement payment paid pursuant to this Settlement. Plaintiff will be solely and legally responsible to pay any and all applicable taxes on the Enhancement Payment.

///

1 **H. Certificate of Completion by Settlement Administrator**

2 Within ten (10) calendar days after final disbursement of all funds from the Gross Settlement
3 Account, the Settlement Administrator will provide Class Counsel and Defendant's Counsel a
4 declaration certifying completion of its duties and a final report on the disbursement of all funds
5 from the Gross Settlement Amount.

6 **I. Settlement Administrator's Fees**

7 The Parties agree Settlement Administrator's Fees will be deducted from the Gross
8 Settlement Amount, subject to approval by the Court.

9 **J. PAGA Settlement Amount**

10 The Parties agree to allocate \$10,000.00 of the Gross Settlement Amount to the resolution
11 of all claims for penalties under PAGA. Under Labor Code § 2699(i), 75% of that amount will be
12 paid to the LWDA, and the other 25% will be paid to Participating Class Members as part of the
13 Net Settlement Amount.

14 The Parties agree that this Joint Stipulation is not contingent upon the Court's (or an
15 appellate court's) approval of the PAGA Settlement Amount in the amount requested by Class
16 Counsel, and that the Court's (or an appellate court's) decision to approve a PAGA Settlement
17 Amount in an amount less or more than requested by Class Counsel shall not invalidate this Joint
18 Stipulation, which shall remain fully effective and enforceable.

19 If the Court (or an appellate court) awards a PAGA Settlement Amount in an amount less
20 than the amount requested by Class Counsel, only the awarded amounts shall be paid and shall
21 constitute satisfaction of the obligations set forth in this Joint Stipulation and full payment
22 thereunder. The difference between the requested and awarded amounts shall also be reallocated to
23 the Net Settlement Amount.

24 **V. RELEASE OF CLAIMS BY THE CLASS**

25 Upon the Effective Date, Plaintiff and Participating Class Members will be deemed to have
26 released the Released Parties of and from all of the Released Claims during the Class Period.

27 **VI. RELEASE OF CLAIMS BY PLAINTIFF**

28 In addition to the Released Claims applicable to the Participating Class Members, and in

1 consideration for the Enhancement Payment, Plaintiff generally releases the Released Parties from
2 all claims, demands, rights, liabilities and causes of action of every nature and description
3 whatsoever, known or unknown, asserted or that might have been asserted, whether in tort, contract,
4 or violation of any local, state or federal statute, rule or regulation arising out of, relating to, or in
5 connection with any act or omission by or on the part of any of the Released Parties committed or
6 omitted through the Effective Date. This general release is intended to have the broadest possible
7 application but excludes any current and/or future claims that are not waivable as a matter of law.
8 Nothing in this Agreement is intended to or shall be interpreted: (i) to restrict or otherwise interfere
9 with Plaintiff's obligation to testify truthfully in any forum; or (ii) to restrict or otherwise interfere
10 with Plaintiff's right and/or obligation to contact, cooperate with, provide information to, or
11 participate in any investigation conducted by, any government agency or commission. Plaintiff's
12 release as set forth herein includes a waiver of all rights under California Civil Code section 1542,
13 which includes a release of all known and unknown claims against the Released Parties that have
14 been alleged or could have been alleged arising out of the facts, circumstances, causes of action, and
15 primary rights alleged in the Action. Civil Code section 1542 provides:

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

22 Upon the Effective Date, Plaintiff will be deemed to have expressly waived his rights under
23 Civil Code section 1542, as set forth above. Plaintiff's execution of this Joint Stipulation will be
24 deemed a consent by Plaintiff to this general release of claims and Section 1542 waiver.

25 **VII. NULLIFICATION OF THE JOINT STIPULATION**

26 If (a) the Court should for any reason fail to approve this Joint Stipulation in the form agreed
27 to by the Parties, or (b) the Court should for any reason fail to enter a judgment in the Action, or (c)
28 the judgment is reversed, modified, or declared or rendered void, this Joint Stipulation will be null

1 and void, and neither this Joint Stipulation, nor any of the related negotiations or proceedings, will
2 be of any force or effect, and all Parties will stand in the same position, without prejudice, as if the
3 Joint Stipulation had not been entered into or filed. Invalidation of any material portion of this Joint
4 Stipulation will invalidate this Joint Stipulation in its entirety, unless the Parties subsequently agree
5 in writing that the remaining provisions of the Joint Stipulation are to remain in full force and effect.

6 The Parties agree to stipulate to class action certification for purposes of the Settlement only.
7 If, for any reason, the Settlement is not approved, the stipulation to certification will be void and the
8 Court shall, either *sua sponte* or on the motion of any party, decertify the class. The Parties further
9 agree that certification for purposes of the Settlement is not an admission that class action
10 certification is proper under the standards applied to contested certification motions, and that this
11 Joint Stipulation will not be admissible in this or any other proceeding as evidence that either (i) a
12 class action should be certified, or (ii) Defendant is liable to Plaintiff or any Class Member, other
13 than according to the Settlement's terms.

14 If the number of Class Members who submit valid Requests for Exclusion reaches 5%,
15 Defendant may rescind this Joint Stipulation. If Defendant rescinds, it must do so in writing to Class
16 Counsel, and Defendant will be responsible for reasonable Settlement Administrator's Fees incurred
17 through that date.

18 **VIII. DUTIES OF THE PARTIES**

19 **A. Confidentiality**

20 The Parties, Class Counsel and counsel for Defendant each agree to treat all terms,
21 conditions and provisions of this Joint Stipulation as confidential through the date of Preliminary
22 Approval. This provision does not preclude any attorney-client privileged communications.

23 **B. Mutual Cooperation**

24 The Parties agree to cooperate to accomplish and implement the terms of this Joint
25 Stipulation. Such cooperation will include, but is not necessarily limited to, execution of such other
26 documents and taking such other actions as maybe reasonably necessary to fulfill the terms of this
27 Joint Stipulation. The Parties will use their best efforts, including all efforts contemplated by this
28 Joint Stipulation and any other efforts that may become necessary by Court order, or otherwise, to

1 effectuate this Joint Stipulation and the terms set forth herein. As soon as practicable after execution
2 of this Joint Stipulation, Class Counsel, with the cooperation of Defendant and its counsel, will try
3 to secure Preliminary Approval and Final Approval.

4 **C. Duty to Support and Defend the Settlement**

5 The Parties agree the Settlement is fair, adequate, and reasonable and will so represent to the
6 Court. The Parties agree to abide by all terms of the Joint Stipulation in good faith and to support
7 the Joint Stipulation fully, and to use their best efforts to defend this Settlement from any legal
8 challenge, whether by appeal or collateral attack.

9 If the Court fails to enter a Final Approval Order at or after the Final Approval Hearing, or
10 if the Final Approval Order is set aside by appeal, the Settlement Administrator will within ten (10)
11 calendar days provide notice to Class Members that the Agreement did not receive Final Approval
12 and that, as a result, no payments will be made to Class Members under the Agreement. The content
13 of such notice shall be agreed to by the Parties, and such notice shall be mailed by the Settlement
14 Administrator via first class U.S. mail, postage prepaid, and email to the addresses used by the
15 Settlement Administrator in mailing the Notice Packets.

16 **IX. MISCELLANEOUS PROVISIONS**

17 **A. No Media Comments or Publicity**

18 If contacted by the media, the Parties and Class Counsel will merely inform them that the
19 Action has been resolved, and refer them to the public filings. In addition, there shall be no publicity
20 sought or undertaken whatsoever with regard to the Action or the terms of this Joint Stipulation.

21 **B. Waiver of Appeals**

22 The Parties and Class Members agree to waive any appellate rights; provided, however,
23 Plaintiff may appeal any reduction in the Attorneys' Fees and/or Cost award as well as any order
24 granting any objection to the approval of this Settlement. The outcome of any proceeding related to
25 Class Counsel's application for Attorneys' Fees and Costs shall not terminate this Joint Stipulation
26 or otherwise affect the Court's ruling on the motion for Final Approval.

27 **C. No Admission of Liability**

28 The Parties enter into this Joint Stipulation to resolve the dispute that has arisen between

1 them and to avoid the burden, expense and risk of continued litigation. In entering into this Joint
2 Stipulation, Defendant does not admit, and specifically denies, that it violated any federal, state, or
3 local law; violated any regulations or guidelines promulgated pursuant to any statute or any other
4 applicable laws, regulations or legal requirements; breached any contract; violated or breached any
5 duty; engaged in any misrepresentation or deception; or engaged in any other unlawful conduct with
6 respect to its current and former employees. This Joint Stipulation is not an admission of liability
7 by Defendant or any of the Released Parties. Except as necessary in a proceeding to enforce the
8 terms of this Settlement, this Joint Stipulation and its terms and provisions will not be offered or
9 received as evidence in any action or proceeding to establish any liability or admission on the part
10 of Defendant or to establish the existence of any condition constituting a violation of, or a non-
11 compliance with, federal, state, local or other applicable law.

12 **D. Non-Disparagement**

13 Plaintiff and Class Counsel agree not to publicly disparage Defendant or any of the Released
14 Parties.

15 **E. Construction**

16 The Parties agree this Joint Stipulation resulted from lengthy, intensive, arm's-length
17 negotiations, and it is not to be construed for or against either of the Parties for any reason.

18 **F. Choice of Law**

19 This Joint Stipulation is intended to and will be interpreted and governed by the laws of the
20 State of California, without regard to conflicts of law principles. The Court will retain continuing
21 jurisdiction to enforce the Settlement.

22 **G. Captions and Interpretations**

23 Paragraph, titles, or captions contained herein are inserted as a matter of convenience and
24 for reference only, and in no way define, limit, extend, or describe the scope of this Joint Stipulation
25 or any provision thereof.

26 **H. Modification**

27 No waiver, modification or amendment of the terms of this Joint Stipulation, whether
28 purportedly made before or after the Court's approval of this Joint Stipulation, shall be valid or

1 binding unless in writing, signed by or on behalf of all Parties and then only to the extent set forth
2 in such written waiver, modification or amendment, subject to any required Court approval. This
3 Joint Stipulation may not be discharged except by performance under its terms or by a writing signed
4 by the Parties.

5 **I. Integration Clause**

6 This Joint Stipulation, including the exhibits attached hereto and incorporated by reference,
7 constitutes the entire agreement between the Parties with regard to the subject matter contained
8 herein. All prior or contemporaneous agreements, understandings, representations, and statements,
9 whether oral or written, between the Parties are merged herein. No rights under this Joint Stipulation
10 may be waived except in writing.

11 **J. Successors and Assigns**

12 This Joint Stipulation will be binding upon and inure to the benefit of the Parties and their
13 respective heirs, trustees, executors, administrators, successors, and assigns.

14 **K. No Assignment**

15 Class Counsel and Plaintiff, on behalf of the individual Class Members, represent and
16 warrant that they have not assigned or transferred, or purported to assign or transfer, to any person
17 or entity, any claim or any portion thereof or interest therein, including, but not limited to, any
18 interest in the Action, or any related action.

19 **L. Notices to Parties**

20 Whenever this Joint Stipulation requires or contemplates that one Party, the Court, or the Settlement
21 Administrator give notice to another, notice shall be provided by email or next-day (excluding Sundays and
22 Court holidays) express delivery service as follows:

23 If to Defendant, then to both:

24 SEYFARTH SHAW LLP
25 Andrew M. McNaught (SBN 209093)
26 amcnaught@seyfarth.com
27 Robin E. Devaux (SBN 233444)
28 rdevaux@seyfarth.com
560 Mission Street, 31st Floor
San Francisco, California 94105
Telephone: (415) 397-2823
Facsimile: (415) 397-8549

1 If to Class Counsel or Plaintiff, then to both:

2 D.LAW, INC.
3 Emil Davtyan (SBN 299363)
4 emil@d.law
5 David Yeremian (SBN 226337)
6 d.yeremian@d.law
7 David Keledjian (SBN 309135)
8 d.keledjian@d.law
9 David Arakelyan (SBN 337076)
10 d.arakelyan@d.law
11 880 E Broadway
12 Glendale, CA 91205
13 Telephone: (818) 962-6465
14 Facsimile: (818) 962-6469

15 **M. Class Counsel Signatories**

16 Because the Class Members are so numerous, the Parties agree it is impossible or impractical
17 to have each Class Member sign this Joint Stipulation. This Joint Stipulation may be executed on
18 behalf of the Class by Class Counsel and the named Plaintiff.

19 **N. Authorization To Enter Into Settlement Agreement**

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

O. Plaintiff's Waiver of Right to be Excluded or Object

Named Plaintiff agrees not to Opt-Out of the Class and agrees not to object to any terms of
this Joint Stipulation. Non-compliance by Plaintiff with this paragraph will be void and of no force
or effect. Any such request for exclusion or objection by Plaintiff will therefore be void and of no
force or effect.

///

1 **P. Representation by Counsel**

2 The Parties acknowledge that they have been represented by competent counsel throughout
3 all negotiations that preceded the execution of this Joint Stipulation, and that this Joint Stipulation
4 has been executed with the consent and advice of counsel. The Parties further acknowledge that they
5 have had an opportunity to consult with their counsel regarding the fairness and reasonableness of
6 this Joint Stipulation. Further, Plaintiff and Class Counsel warrant and represent that there are no
7 liens on the Joint Stipulation.

8 **Q. Severability**

9 If any provision of this Joint Stipulation is held by a court of competent jurisdiction to be
10 void, voidable, unlawful or unenforceable, then that portion shall be severed, and the remaining
11 portions of this Joint Stipulation will remain in full force and effect.

12 **R. Execution in Counterparts**

13 This Joint Stipulation will become effective upon its execution by all of the undersigned.
14 The Parties may execute this Joint Stipulation in counterparts, and execution of counterparts will
15 have the same force and effect as if all Parties signed the same instrument. Any signature made and
16 transmitted by facsimile or email for the purpose of executing this Joint Stipulation shall be deemed
17 an original signature for purposes of this Agreement and shall be binding upon the party whose
18 counsel transmits the signature page by facsimile or email.

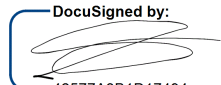
19 **S. Continuing Jurisdiction**

20 The Court shall retain jurisdiction over the interpretation and implementation of this Joint
21 Stipulation as well as any and all matters arising out of, or related to, the interpretation or
22 implementation of this Joint Stipulation and of the Settlement contemplated thereby. The Court shall
23 not have jurisdiction or authority to modify the terms of the Joint Stipulation.

24
25 **READ CAREFULLY BEFORE SIGNING**

26 **PLAINTIFF/CLASS REPRESENTATIVE**

27
28 DATED: June 24, 2024

DocuSigned by:

By: 42577A3B1D17494
Plaintiff CHRISTOPHER TORN0 BACLAY

1 **DEFENDANT**

2
3 DATED: June 24, 2024

Marc Babsin
By: _____
Authorized to sign on behalf of Defendant
EMERALD FUND, INC.

4 **APPROVED AS TO FORM:**

5
6 DATED: June 24, 2024

SEYFARTH SHAW LLP

7 *Robin Devaux*
By: _____
Andrew M. McNaught
Robin E. Devaux
Attorneys for Defendant
EMERALD FUND, INC.

8
9
10
11
12 DATED: June 24, 2024

DLAW, INC.

13 *David Yerejian*
By: _____
David Yerejian
David Keledjian
David Arakelyan
Attorneys for Plaintiff and the Class

EXHIBIT 1

EXHIBIT 1

**NOTICE OF PROPOSED CLASS ACTION SETTLEMENT AND
HEARING DATE FOR COURT APPROVAL**

Christopher Torno Baclay v. Emerald Fund, Inc. Case No. CGC-23-609362

As a current or former hourly employee of Emerald Fund, Inc., you may be entitled to receive money from a putative class action settlement.

Admin ID: <<Admin ID>>

<<Name>>

<<Address1>>

<<Address2>>

<<City>>, <<State>> <<Zip Code>>

Please provide current address (if different) here:

The San Francisco County Superior Court has authorized this Class Notice.

This is not a solicitation from a lawyer.

YOU MAY BE ENTITLED TO RECEIVE MONEY FROM A PUTATIVE CLASS ACTION AND PRIVATE ATTORNEYS GENERAL ACT SETTLEMENT IF YOU ARE A CURRENT OR FORMER NON-EXEMPT (HOURLY) EMPLOYEE WHO WORKED FOR EMERALD FUND, INC. IN CALIFORNIA AT ANY TIME BETWEEN SEPTEMBER 27, 2019, THROUGH APRIL 14, 2024.

- A proposed settlement of \$125,000 (the “Gross Settlement Amount”) will be used to pay claims to: all persons employed by Emerald Fund, Inc. in hourly or non-exempt positions in California between September 27, 2019, and April 14, 2024, (such periods of time, the “Class Period” and such employees, the “Class Members”).
- The settlement resolves a lawsuit entitled *Christopher Torno Baclay v. Emerald Fund, Inc.*, Case No. CGC-23-609362, filed in San Francisco County Superior Court on September 27, 2023, and all amendments to the complaint in that lawsuit (the “Lawsuit”) over whether Emerald Fund, Inc. provided employees with meal and rest periods; properly paid employees for regular and overtime hours worked, paid wages on time, improperly deducted from wages, provided legally compliant wage statements, paid proper sick pay; indemnified employees for business expenses and the related claims and penalties that would follow from not doing so. This settlement avoids the costs and risks from continuing the Lawsuit, pays money to Class Members like you, and releases Emerald Fund, Inc. and related parties from alleged liability.
- **The Court has not made a determination of the validity of any of the claims in the Lawsuit. Emerald Fund, Inc. adamantly denies any and all liability** arising from any of the claims and contends that, at all relevant times, Emerald Fund, Inc. properly compensated all employees and fully complied with all applicable laws. Also, Emerald Fund, Inc. denies that this Lawsuit is appropriate to maintain as a class or representative action.
- The parties to the Lawsuit disagree as to the probable outcome of the Lawsuit with respect to liability and damages had the Lawsuit not been settled. Nonetheless, in light of the risks and expenses associated with continued litigation, the parties believe the settlement is fair and appropriate under the circumstances. Accordingly, each Class Member who does not exclude himself or herself from the settlement will receive a payment based on the number of workweeks worked during the Class Period, rounded up to the nearest full workweek.

PLEASE READ THIS CLASS NOTICE CAREFULLY. YOUR LEGAL RIGHTS ARE AFFECTED BY IT.

HOW MUCH WILL I GET?

You worked a total number of <<Work Weeks>> during the Class Period.

Based on your workweeks it is expected that your gross settlement payment before payroll taxes is approximately <<EstISP>>

Each settlement payment will be allocated as follows for tax purposes: 25% as wages, to be reported on an IRS W-2, and which will be reduced for the Class Member's share of taxes and withholdings; and 75% as interest, penalties, and liquidated damages, which portion shall be reported on an IRS Form 1099, and which will not be subject to reduction for taxes and withholdings.

If you do nothing, it is expected that you will receive approximately <<EstISP>> pursuant to the Settlement, and you will be bound by the release of "Released Claims" described in paragraph 8 below.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

DO NOTHING	Receive a payment and give up your legal rights to pursue claims released by the settlement of the Lawsuit. If the Court grants final approval of the Settlement, the Administrator will mail your check to the address on file for you. You will have 180 days to cash the check. If you do not cash the check, the money will revert to the state, but you will still be deemed to have released your claims.
OPT OUT	Receive no payment and retain your legal rights to pursue claims that would otherwise be released by the settlement of the Lawsuit. You may opt out by following the procedures set forth below.
OBJECT TO THE SETTLEMENT	If you do not opt out, you may write to the Settlement Administrator, Phoenix Class Administration Solutions about why you do not like the settlement, and they will forward your concerns to counsel, which will then be provided to the Court. More information on this process is set forth below.
OBJECT TO THE WORKWEEK CALCULATION	If you feel that you worked a different amount of workweeks than identified above, you may object to that calculation by following the procedures set forth below.
ATTEND A HEARING	You have the right to attend a fairness hearing that will be conducted by the Court, but you are not required to attend. Regardless of whether you timely file and serve a written objection, you may ask to speak about your objection at the hearing. You can also send a letter to the Settlement Administrator, Phoenix Class Administration Solutions, providing notice of your intention to appear and speak at the hearing.

IMPORTANT INFORMATION ABOUT THE PROPOSED SETTLEMENT

1. Why did I get this Class Notice?

You were sent this Class Notice because you have a right to know about the proposed settlement in the Lawsuit and about all of your options before the Court rules on whether to finally approve the settlement. If the Court approves the settlement, and after any objections and appeals are resolved, a "Settlement Administrator" appointed by the Court will make the payments that the settlement allows. This Class Notice explains the Lawsuit, the proposed settlement, your legal rights, and what benefits are available and how to receive them.

The Court in charge of this case is the San Francisco County Superior Court. The person who sued is called "Plaintiff,"

and the organization he sued is called “Defendant.”

2. What is the Lawsuit about?

In the Lawsuit, Christopher Torno Baclay, the Plaintiff, alleged multiple violations of the California Labor Code, the California Business and Professions Code, and the California Private Attorneys General Act (“PAGA”), including causes of action for: (1) failure to provide meal periods; (2) failure to provide rest periods; (3) failure to pay hourly wages and overtime; (4) failure to pay proper sick pay; (5) failure to provide accurate wage statements; (6) failure to pay all final wages upon separation of employment; (7) failure to indemnify; (8) violation of California Business and Professions Code §§ 17200, *et seq.*; (9) violations of PAGA; and related claims for penalties, interest, attorneys’ fees and costs.

3. Why is there a settlement?

The parties disagree on the probable outcome of the case with respect to liability, damages, and how much money could be recovered if the Plaintiff won at trial. Defendant believes that the Plaintiff would not prevail if this case went to trial. The Court has not decided in favor of the Plaintiff or Defendant. There has been no trial in this case. Instead, both sides recognize the risks, expenses, and disruption associated with continued litigation and they have therefore chosen to resolve their differences by entering into a settlement. By doing so, the parties can avoid the cost of a trial, yet Class Members are still entitled to receive payments if they comply with the instructions in this Class Notice. The parties entered into this settlement after arms-length negotiations while using the services of an experienced and neutral mediator. The Plaintiff and Class Counsel believe that the proposed settlement is fair and reasonable and is in the best interest of the Class Members.

4. What is a class action settlement?

On [DATE], the Court granted preliminary approval of the proposed settlement. However, the Court must still approve the terms of the proposed settlement as fair and reasonable. Once approved, the settlement will affect all Class Members, except those who have properly opted out. This Class Notice explains your legal rights, the terms of the settlement, what you must do to participate, and the estimated amount of money you may receive. *Please read this entire Class Notice carefully.*

5. What should I do?

You can do nothing, and if you are entitled to a payment you will be paid. Be mindful, however, that if this Class Notice reaches you and the address where you now live is different, you need to contact the Settlement Administrator and provide updated information so that any future correspondence or the settlement check itself reaches you and is not returned as an address unknown.

6. How much will my payment be?

Under the proposed settlement, Emerald Fund, Inc. will pay \$125,000.00 to fully and finally resolve all claims in the Action (the “Gross Settlement Amount”). The amount to be distributed to Class Members who do not exclude themselves from the settlement (the “Net Fund Value”) will be the Gross Settlement Amount, minus the following amounts: (a) Settlement Administration Costs of \$5,000; (b) enhancement payment to Plaintiff not to exceed \$5,000.00 for his work and efforts in prosecuting this case; (c) Class Counsel’s attorney’s fees not to exceed one-third of the Gross Settlement Amount, or \$41,666.67; (d) reimbursement of Class Counsel’s actual litigation costs and expenses; and (e) payment of \$10,000.00 to the Labor and Workforce Development Agency for its share of the penalties under the PAGA (“LWDA Payment”). The attorneys’ fees, litigation costs and expenses, enhancement payment, Settlement Administration Costs, and LWDA Payment are all subject to Court approval. The Net Fund Value will be used to pay

Class Members a pro-rata payment based on the number of workweeks each Class Member worked during the Class Period.

If you do not dispute your workweek calculation, and do not opt out of the settlement, you will be bound by the settlement and release of claims and will receive a settlement payment. **In other words, you do not need to take any action to receive a settlement payment.**

7. When would I get my payment?

The Court will hold a hearing on **[ENTER DATE AND TIME]** at **[ADDRESS]** to decide whether to grant final approval of the proposed settlement. If the Court approves the settlement and anyone objects, there may be appeals. It is always uncertain when these objections and appeals can be resolved, and resolving them can take time. To check on the progress of the settlement, call the Settlement Administrator at 1-800-523-5573, or contact Class Counsel (see below for Class Counsel's contact information.). *Please be patient.*

Class Members will have 200 days to cash their checks after receipt. The value of all settlement checks that remain uncashed after 200 days will be distributed to the Interdisciplinary Center for Healthy Workplaces at U.C. Berkeley.

8. What am I releasing?

Upon the Court's final approval of the settlement, and except as to such rights or claims as may be created by the settlement, Plaintiff and Class Members who have not effectively opted-out of the settlement as described below, fully release and discharge Emerald Fund, Inc. and all of its past, and present and/or future owners, officers, directors, shareholders, members, employees, agents, principals, representatives, assigns, attorneys, insurers, parent companies, subsidiaries, and affiliates, and their respective predecessors, successors, and assigns, if any, without limitation ("Released Parties") of and from all claims, rights, demands, liabilities, penalties, wages, and causes of action, arising from, or related to, or that were pled, or that could have been pled, based on the facts and allegations in the operative First Amended Complaint in the Action during the Class Period, including, but not limited to, for alleged violation of Labor Code sections 201-204, 223, 226(a), 226.7, 246, 510, 512, 558, 1174, 1174.5, 1182.2, 1185, 1194, 1194.2, 1197, 1997.1, 1198, 1199, 2698 *et seq.*, and 2802, or any claims based on the following allegations under any theory: failure to provide meal and rest periods; failure to pay minimum, regular, or hourly wages, and/or alleged off-the-clock work; failure to pay overtime wages or accurate overtime wages; failure to pay timely wages during employment or upon separation; failure to provide accurate and/or complete wage statements; failure to pay proper sick pay; failure to indemnify; or violation of Cal. Bus. & Prof. Code section 17200 *et seq.* by engaging in the foregoing conduct. Settlement Class Members' Released Claims include all claims for unpaid wages, overtime wages, statutory penalties, damages of any kind, interest, attorneys' fees, costs, injunctive relief, restitution, and any other equitable relief under California or federal statute, ordinance, regulation, common law, or other source of law, including but not limited to the California Labor Code, California Business and Professions Code, and California Civil Code, and California Industrial Welfare Commission Wage Orders.

The time period covered by this release is September 27, 2019 through April 13, 2024. This release does not apply to claims for workers' compensation benefits, unemployment insurance benefits, or any other claim or right that as a matter of law cannot be waived or released.

9. How can I opt out of this settlement?

You can opt out of this settlement and retain your rights. To do so, you must submit a written, signed request to opt out of the settlement. You will have 60 days from the date of mailing of this Class Notice to do so. A request to opt out of the settlement must be in writing and include all of the following: (i) your first and last name, address, telephone number, and last four digits of your Social Security Number; (ii) your signature; and (iii) a clear statement by you that you do not wish to be included in the settlement.

Your Opt-Out request must be faxed or mailed to the Settlement Administrator, Phoenix Class Administration Solutions P.O. Box 7208, Orange, CA 92863, fax: 949-209-2503 and be postmarked no later than [ENTER DATE], or it will not be considered and you will be bound by the settlement.

10. Do I have a lawyer in this case?

The Court has appointed Emil Davtyan, David Yeremian, David Keledjian, David Arakelyan of D.LAW, INC., 880 E. Broadway Blvd., Glendale, California 91205, telephone 818.962.6465 to represent you and other Class Members in the Lawsuit. These lawyers are called Class Counsel. They will be compensated from the Gross Settlement Amount as discussed in this Class Notice. If you want to be represented by your own lawyer, you may hire one at your own expense.

11. How will the lawyers be paid?

Class Counsel will ask the Court to award them fees up to 1/3 (one-third) of the Gross Settlement Amount and reasonable litigation costs. Class Counsel will also ask the Court to award them costs incurred in connection with the Lawsuit. The Court may choose to award less than the amount requested by Class Counsel.

12. How do I tell the Court that I do not like the settlement?

You can ask the Court to deny approval by filing an objection. You cannot ask the Court to order a larger settlement; the Court can only approve or deny the settlement. If the Court denies the settlement, no settlement payments will be sent out and the Lawsuit will continue. If that is what you want to happen, you must object.

You may object to the proposed settlement in writing. You may also appear at the Final Approval Hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for paying that attorney. All written objections and supporting papers must (a) clearly identify the case name and number (*Christopher Torno Baclay v. Emerald Fund, Inc.*, Case No. CGC-23-609362), (b) be submitted to the Settlement Administrator, Phoenix Class Administration Solutions located at P.O. Box 7208, Orange, CA 92863, and (c) be filed or postmarked on or before [ENTER DATE].

13. How do I dispute my workweek calculation?

To dispute the number of workweeks with which you have been credited, you must submit evidence to the Settlement Administrator showing that the workweek information is inaccurate. Such evidence must be mailed to the Settlement Administrator at Phoenix Class Administration Solutions, P.O. box 7208, Orange, CA 92863 and postmarked on or before [ENTER DATE]. The Settlement Administrator shall decide the dispute. Emerald Fund, Inc.'s records will be presumed correct, but the Settlement Administrator will evaluate the evidence submitted and make a final decision on the merits of the dispute.

14. When and where will the Court decide whether to approve the settlement?

The Court will hold a fairness hearing on **[ENTER DATE AND TIME]** at the San Francisco County Superior Court, Department 304, 400 McAllister St., San Francisco, CA 94102. At this hearing, the Court will consider whether the settlement is fair, reasonable, and adequate. If there are objections and they have been properly lodged, the Court will consider them. The Court will also listen to people who have asked to speak at the hearing. The Court may also decide how much to pay to Class Counsel. At or after the hearing, the Court will decide whether to approve the settlement. We do not know how long this decision will take.

15. Do I have to come to the hearing?

No. Class Counsel will answer any questions that the Court may have but, you are welcome to come at your own expense. If you sent an objection, you do not have to come to Court to talk about it. As long as you mailed your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not required.

17. What happens if I do nothing at all?

You will participate in the settlement and receive payment. You will be bound by the release as set forth herein.

GETTING MORE INFORMATION

This Class Notice summarizes the proposed settlement. You may call or contact Class Counsel or the Settlement Administrator if you would like more information about the case. You may call 1-800-523-5773 write the Settlement Administrator, Phoenix Class Administration Solutions, located at P.O. Box 7208, Orange, CA 92863.

You can also access the San Francisco Superior Court Case Calendar and Query at <https://sf.courts.ca.gov/online-services/case-information>, or by visiting the Clerk's Office at the San Francisco County Superior Court, located at 400 McAllister St., San Francisco, CA 94102, between 8:00 a.m. and 5:00 p.m., Monday through Friday, excluding Court holidays.

The Settlement Administrator has also set up a website which has links to this Class Notice and other documents related to the proposed settlement, including the Joint Stipulation of Class Settlement. The website is: **[ENTER WEBSITE URL]**.

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS.

EXHIBIT B

EXHIBIT B

VIA ON-LINE SUBMISSION AND MAIL:

<https://dir.tfaforms.net/128> (copy by certified mail to all Defendants)

September 27, 2023

Private Attorneys General Act
Attn. PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

Emerald Fund, Inc.

Silvanus Osborn Erickson, Registered Agent for Service of Process
155 Montgomery Street, Suite 1100
San Francisco, CA 94101
Certified Mail Tracking Number: 9414 8112 0620 3607 6324 83

LWDA Case No.:

**Re: Labor Code § 2698, *et seq.* Penalties – PAGA Notice Letter to the LWDA
*Christopher Torno Baclay v. Emerald Fund, Inc., et al.***

Gentlepersons:

This office represents Plaintiff Christopher Torno Baclay (“Plaintiff”) and other similarly situated aggrieved employees (collectively “Aggrieved Employees”) for violations of California Labor Code §§ 201, 202, 203, 204, 210, 212, 213, 226, 226.3, 226.7, 226.8, 246, 510, 512, 515, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 2698, 2699, *et seq.*, and 2802; provisions of the Industrial Welfare Commission (IWC) Wage Order(s); and California Business & Professions Code § 17200 *et seq.*

The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698 *et seq.* (“the Act”). Unless specified below, Plaintiff would like to bring a representative action, pursuant to the Act, on behalf of himself and all other similarly situated, Aggrieved Employees, and the State of California, against Defendants, Emerald Fund, Inc., and DOES 1 through 50 inclusive (all defendants being referred to herein collectively as “Defendants”).

Additionally, this correspondence will serve to satisfy the notice requirements under the Act, along Plaintiff’s Class Action Complaint, which is attached hereto and incorporated by reference herein. The Complaint is being concurrently filed in San Francisco County Superior Court and will be assigned a local case number. The Complaint allegations and claims are incorporated into this Notice Letter.

We also set forth herein the facts and theories and the California Labor Code violations which Defendants engaged in with respect to Plaintiff and all of their Aggrieved Employees in California. The Class Action Complaint provides the details of Plaintiff’s class-wide claims and claims under the Act, and the applicable California law governing them. It, along with this Notice Letter,



addresses in detail numerous violations that subject Defendants to civil and statutory penalties under the Act.

Relevant Facts

Plaintiff was employed by Defendants as a non-exempt hourly employee in California. Aggrieved Employees include all non-exempt hourly employees of Defendants within the state of California from one year prior to the date of this letter and continuing through the present (Plaintiff and Aggrieved Employees are collectively referred to herein as “Aggrieved Employees”).

Defendants had a common policy and practice of systemically failing to pay Aggrieved Employees proper wages and overtime for all hours worked, at the proper rates of pay. First, Defendants implemented an unlawful time-rounding policy and practice which rounded down and reduced the actual working hours recorded by Aggrieved Employees, and upon which their pay was based, and generally did so to the detriment of the Aggrieved Employees, and these unlawfully rounded time entries were inputted into Defendants’ payroll system from which wage statements and payroll checks were created. Defendants did so with the ostensible intent of paying Aggrieved Employees only for the hours they were scheduled to work, rather than the hours they were actually under Defendants’ control. Plaintiff contends this policy is not neutral and results, over time, to the detriment of the Aggrieved Employees by systematically undercompensating them.

Aggrieved Employees were also consistently required to perform work, off-the-clock, for which they were not paid wages. Specifically, Aggrieved Employees had to come to work earlier than their assigned time and begin work before clocking in for the day. Upon arrival, Aggrieved Employees spent time booting up and logging into the computer and check the work orders for the day prior to clocking in. Aggrieved Employees were systemically required to continue working after they had officially clocked out of work at the end of their shift. Additionally, Aggrieved Employees were required to perform work-related tasks during unpaid meal periods, including having to carry and monitor their personal cellular phones and company- issued radios. The forgoing and uncompensated working time was under the direction and control of Defendants, for which no wages were paid.

This uncompensated time caused Aggrieved Employees to work in excess of eight (8), ten (10) and/or twelve (12) hours a day and/or forty (40) hours a week, entitling Aggrieved Employees to minimum and overtime wages, which they were systemically denied.

Defendants had a common policy and practice of systemically denying Aggrieved Employees the opportunity to take meal periods in compliance with California Law. Specifically, due to understaffing and heavy workloads, Aggrieved Employees were denied the opportunity to take timely meal periods prior to the completion of their fifth hour of work. Additionally, Aggrieved Employees were denied the opportunity to take a second meal period prior to the completion of the tenth hour of work. Furthermore, Aggrieved Employees were not relieved of all work duties during unpaid meal periods and were required to keep working during meal breaks. Aggrieved Employees were required to carry and monitor their company-issued radios and be available to respond to management’s calls during meal breaks.

Aggrieved Employees were not provided with meal periods of at least thirty (30) minutes for each



five (5) hour work period due to (1) Defendants' policy of not scheduling each meal period as part of each work shift; and (2) Defendants' practice of requiring Aggrieved Employees to continue working through their meal and rest periods due to the excessive workload.

Defendants had a common policy and practice of systemically denying Aggrieved Employees the opportunity to take rest breaks in compliance with the California Law. Aggrieved Employees were not provided with rest periods of at least ten (10) minutes for each four (4) hour work period, or major fraction thereof, due to (1) Defendants' policy of not scheduling each rest period as part of each work shift, including second rest breaks for shifts of six (6) hours or more; and (2) Defendants' policy and practice of requiring putative class members to continue working through their rest breaks due to the excessive workload, as well as having to keep and monitor their cell phones and company-issued radios during breaks.

Furthermore, Defendants failed to pay Aggrieved Employees premium pay wages at their appropriate regular rates of pay for each meal and rest period denied.

Aggrieved Employees were not provided with accurate wage statements as mandated by law pursuant to Labor Code section 226. Specifically, Defendants failed to issue wage statements as "a detachable part of the check, draft, or voucher paying the employee's wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing." Additionally, the wage statements issued to Aggrieved Employees were not recorded in "ink or other indelible form."

Defendants failed to comply with Labor Code section 226(a)(1) as "gross wages earned" were not accurately reflected in that: all hours worked, including overtime, were not included.

Defendants failed to comply with Labor Code section 226(a)(2) as "total hours worked by the employee" were not accurately reflected in that: all hours worked, including overtime, were not included.

Defendants failed to comply with Labor Code section 226(a)(5) as "net wages earned" were not accurately reflected in that: all hours worked, including overtime, were not included.

Defendants failed to comply with Labor Code section 226(a)(9) as "all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee" were not accurately reflected in that: all hours worked, including overtime, were not included.

Furthermore, Defendants failed to provide Aggrieved Employees with paper pay stubs as required by Labor Code § 226, applicable Wage Orders, and DLSE Opinion Letters. Plaintiff's and Aggrieved Employees' wage statement were only provided in electronic format in violation of Labor Code § 226.

Aggrieved Employees were not reimbursed for business expenses incurred in executing their duties under Defendant's employ. Specifically, Aggrieved Employees were required to pay the costs of purchasing, maintaining and cleaning their uniforms necessary to perform their duties



under Defendants' employ. Additionally, Aggrieved Employees were required to use their personal cellular phones for work. Aggrieved Employees were not reimbursed for these necessary work-related expenses.

Finally, Defendants had a common policy and practice of systemically failing to pay Aggrieved Employees the requisite sick time pay in accordance with California Law. Specifically, Aggrieved Employees worked for Defendants for more than 30 days, but were not paid at least one hour of sick pay for every 30 hours of work, or at least 3 days of sick time for every 12 month period of work.

PAGA Claim Details, Legal Bases for Violations and Penalties:

As addressed above and in further detail in the Class Action Complaint, the Aggrieved Employees complain of the following violations committed by Defendants:¹

Failure to Pay Minimum Wages

Defendants violated the law by failing to pay Aggrieved Employees minimum wages for all hours worked. California Labor Code § 1197, entitled "Pay of Less Than Minimum Wage" states, "[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful." The applicable minimum wages fixed by the commission for work during the relevant period is found in the Wage Orders.

In California, employees must be paid at least the then applicable state minimum wage for all hours worked, including under Labor Code § 1197, IWC Wage Order MW-2014, and paragraphs 2(K), 2(S), and 4(A)-4(C) of the applicable IWC Wage Orders. Paragraph 2(H) of the applicable IWC Wage Orders defines "Hours Worked" as "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." Additionally, pursuant to Labor Code § 204, other applicable laws and regulations, and public policy, an employer must timely pay its employees for all hours worked. Defendants failed to do so.

California Labor Code § 1197, entitled "Pay of Less Than Minimum Wage" states: "The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful." The minimum wage provisions of California Labor Code are enforceable by private civil action pursuant to Labor Code § 1194(a) which states: "Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees and costs of suit."

¹ Plaintiff hereby reserves the right to seek penalties on behalf of all Aggrieved Employees, for Defendants' violations of the applicable provisions of the Labor Code, suffered by Aggrieved Employees, but not directly suffered by Plaintiff under *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745.



As described in California Labor Code §§ 1185 and 1194.2, any action for wages incorporates the applicable Wage Order of the California Industrial Welfare Commission. Also, California Labor Code §§ 1194, 1197, 1197.1 and those Industrial Welfare Commission Wage Orders entitle non-exempt employees to an amount equal to or greater than the minimum wage for all hours worked. All hours must be paid at the statutory or agreed rate, or at the minimum rate in the absence of a contractually agreed upon one. The underpayment of wages to Aggrieved Employees is and has been a direct consequence of Defendants' unlawful compensation policies and practices, which applied uniformly to the Aggrieved Employees working at locations and work sites throughout California.

Defendants had a common policy and practice of systemically failing to pay Aggrieved Employees proper wages and overtime for all hours worked, at the proper rates of pay. First, Defendants implemented an unlawful time-rounding policy and practice which rounded down and reduced the actual working hours recorded by Aggrieved Employees, and upon which their pay was based, and generally did so to the detriment of the Aggrieved Employees, and these unlawfully rounded time entries were inputted into Defendants' payroll system from which wage statements and payroll checks were created. Defendants did so with the ostensible intent of paying Aggrieved Employees only for the hours they were scheduled to work, rather than the hours they were actually under Defendants' control. Plaintiff contends this policy is not neutral and results, over time, to the detriment of the Aggrieved Employees by systematically undercompensating them.

Aggrieved Employees were also consistently required to perform work, off-the-clock, for which they were not paid wages. Specifically, Aggrieved Employees had to come to work earlier than their assigned time and begin work before clocking in for the day. Upon arrival, Aggrieved Employees spent time booting up and logging into the computer and check the work orders for the day prior to clocking in. Aggrieved Employees were systemically required to continue working after they had officially clocked out of work at the end of their shift. Additionally, Aggrieved Employees were required to perform work-related tasks during unpaid meal periods, including having to carry and monitor their personal cellular phones and company- issued radios. The forgoing and uncompensated working time was under the direction and control of Defendants, for which no wages were paid.

Defendants have the ability to pay minimum and overtime wages for all time worked and have willfully refused to pay such wages with the intent to secure for Defendants a discount upon this indebtedness with the intent to annoy, harass, oppress, hinder, delay, or defraud Aggrieved Employees.

In light of the forgoing, the Aggrieved Employees seek to recover wages and penalties. Aggrieved Employees are entitled to recover the unpaid minimum wages (including double minimum wages), liquidated damages in an amount equal to the minimum wages unlawfully unpaid, interest thereon and reasonable attorney's fees and costs of suit pursuant to California Labor Code § 1194(a). the other Aggrieved Employees further request recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the assessment of any statutory and civil penalties against Defendants, in a sum as provided by the California Labor Code and/or other applicable statutes, including pursuant to Labor Code § 558, and Wage Order provisions. To the extent minimum wage



compensation is determined to be owed to the Aggrieved Employees who have terminated their employment, Defendants' conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals are also be entitled to waiting time penalties under California Labor Code § 203, which penalties are sought herein on behalf of these Aggrieved Employees. Defendants' failure to timely pay all wages owed also violated Labor Code § 204 and resulted in violations of Labor Code § 226 because they resulted in the issuance of inaccurate wage statements. Defendants' conduct as alleged herein was willful, intentional and not in good faith. Further, other Aggrieved Employees are entitled to seek and recover statutory costs.

Under the PAGA, and following exhaustion of the notice period, Plaintiff is seeking all civil and statutory penalties available and applicable under Labor Code §§ 510, 558, 1194.2, 1197.1, 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Failure to Pay Wages and Overtime in Violation of Labor Code § 510

Defendants violated the law by failing to pay Aggrieved Employees earned wages and overtime. Specifically, Aggrieved Employees consistently worked in excess of eight (8), ten (10), and twelve (12) hours a day, and/or forty (40) hours a week. However, Aggrieved Employees were not paid overtime wages for hours worked in excess of 8 hours a day. Moreover, the uncompensated time, discussed above caused Aggrieved Employees to work in excess of eight (8), ten (10), and twelve (12) hours a day and/or 40 hours a week, further entitling Aggrieved Employees overtime wages which they were consistently denied, all in violation of Labor Code § 510 and applicable Wage Orders.

Defendants have violated Labor Code § 1194 and Labor Code § 510 (and paragraphs 2(K), 2(S), 3(A) and 4(A)-4(B) of the relevant orders of the Industrial Welfare Commission) by failing to pay Employees: (a) time and one-half their regular hourly rates for hours worked in excess of eight hours in a workday or in excess of forty hours in any workweek or for the first eight hours worked on the seventh day of work in any one workweek; or (b) twice their regular rate of pay for hours worked in excess of twelve hours in any one day or for hours worked in excess of eight hours on any seventh day of work in a workweek. Defendants had a consistent policy of not paying Employees wages for all hours worked, including by requiring off the clock work as addressed above and by under-reporting actual hours worked. With work shifts generally requiring eight hours or more of work on a given day, this unpaid off the clock work resulted in Aggrieved Employees working past eight hours on a shift or more than forty hours in a week, which required that they be paid at the correct overtime rate of 1.5 times their regular rate.

When considered in combination with the other wage violations addressed above, Aggrieved Employees were not properly compensated, nor were they paid overtime and double time rates for hours worked in excess of 8, 10, and 12 hours in a given day, and/or forty hours in a given week. Defendants did not make available to Employees a reasonable protocol for correcting time records when Employees worked overtime hours or to fix incorrect time entries or those that Defendants unlawfully under-recorded to the Employee's detriment. Defendants have also violated these provisions by requiring other similarly situated Aggrieved Employees to work through meal



periods when they were required to be clocked out or to otherwise work off the clock to complete their daily job duties.

In light of the forgoing, Aggrieved Employees seek to recover wages and penalties pursuant to the California Labor Code, including Labor Code §§ 204, 510, 558, 1174, 1194, 1198, 1199, and the relevant paragraphs of the IWC Wage Orders, including paragraphs 2(K), 2(S), 3(A), 4, and 20. Defendants are liable to Employees for the full amount of all their unpaid wages and overtime compensation, with interest, plus their reasonable attorneys' fees and costs, as well as the assessment of any statutory penalties against Defendants, and each of them, and any additional sums as provided by the Labor Code and/or other statutes and Wage Order provisions.

Under the PAGA, and following exhaustion of the notice period, Plaintiff is seeking all civil and statutory penalties available and applicable under Labor Code §§ 510, 558, 1194.2, 1197.1, 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Meal-Period Liability Under Labor Code §§ 226.7 and 512 and Penalties

Defendants had a common policy and practice of systemically denying Aggrieved Employees the opportunity to take meal periods in compliance with California Law. Specifically, due to understaffing and heavy workloads, Aggrieved Employees were denied the opportunity to take timely meal periods prior to the completion of their fifth hour of work. Additionally, Plaintiff and Class Members were denied the opportunity to take a second meal period prior to the completion of the tenth hour of work. Furthermore, Plaintiff and Class Members were not relieved of all work duties during unpaid meal periods and were required to keep working during meal breaks. Plaintiff and Class Members were required to carry and monitor their company-issued radios and be available to respond to management's calls during meal breaks.

Aggrieved Employees were not provided with meal periods of at least thirty (30) minutes for each five (5) hour work period due to (1) Defendants' policy of not scheduling each meal period as part of each work shift; and (2) Defendants' practice of requiring Aggrieved Employees to continue working through their meal and rest periods due to the excessive workload.

Defendants also failed to pay Aggrieved Employees "premium pay," i.e. one hour of wages at each Aggrieved Employee's effective regular rate of pay, for each meal period that Defendants failed to provide or deficiently provided, including by miscalculating any premium payments they did make. Therefore, pursuant to Labor Code § 226.7 and paragraphs 11 and 20 of the applicable IWC Wage Order, Aggrieved Employees are entitled to damages in an amount equal to one hour of wages at their correctly calculated regular rate of compensation for each meal period not provided or deficiently provided, as well as the assessment of any statutory penalties against the Defendants, and each of them, in a sum as provided by the Labor Code, including Labor Code § 558 and other applicable statutes and Wage Order provisions.

Under the PAGA, and following exhaustion of the notice period, Plaintiff is seeking all civil and statutory penalties and wages as available and applicable under Labor Code §§ 226.7, 512, 558, including sections 558(a)(1)-(3), 1199, 2699(f)(2) and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).



Rest-Break Liability Under Labor Code § 226.7 and Penalties

Defendants have consistently failed to provide Aggrieved Employees with paid rest breaks of not less than 10 minutes for every work period of 4 or more consecutive hours, as required by Labor Code. Aggrieved Employees were not provided with rest periods of at least ten (10) minutes for each four (4) hour work period, or major fraction thereof, due to (1) Defendants' policy of not scheduling each rest period as part of each work shift, including second rest breaks for shifts of six (6) hours or more; and (2) Defendants' policy and practice of requiring putative class members to continue working through their rest breaks due to the excessive workload, as well as having to keep and monitor their cell phones and company-issued radios during breaks.

Defendants also failed to pay Aggrieved Employees premium pay for each day on which requisite rest breaks were not provided or were deficiently provided, or miscalculated any premiums paid. Therefore, pursuant to Labor Code § 226.7 and paragraphs 12 and 20 of the applicable IWC Wage Order, Aggrieved Employees are entitled to damages in an amount equal to one hour of wages at their correctly calculated regular rate of compensation for each rest period not provided or deficiently provided, as well as the assessment of any statutory penalties against the Defendants, and each of them, in a sum as provided by the Labor Code, including Labor Code § 558 and other applicable statutes and Wage Order provisions.

Under the PAGA, and following exhaustion of the notice period, Plaintiff is seeking all civil and statutory penalties and wages as available and applicable under Labor Code §§ 226.7, 512, 558, including sections 558(a)(1)-(3), 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Failure to Reimburse for Necessary Business Expenditures in Violation of Labor Code § 2802

Defendants have consistently required Aggrieved Employees to incur necessary business expenses in the execution of their duties under Defendants' employ. Specifically, Aggrieved Employees were required to pay the costs of purchasing, maintaining and cleaning their uniforms necessary to perform their duties under Defendants' employ. Additionally, Aggrieved Employees were required to use their personal cellular phones for work. Aggrieved Employees were not reimbursed for these necessary work-related expenses in violation of Labor Code § 2802.

Defendants systematically and uniformly failed to reimburse those lawful and necessary work related expenses or losses incurred in direct discharge of their job duties during employment with Defendants and at the direction of the Defendants pursuant to Labor Code § 2802(a) and the applicable IWC Wage Orders, paragraph 9. Defendants are liable for PAGA penalties resulting from their failure to reimburse necessary business expenses incurred by the Aggrieved Employees. Accordingly, Aggrieved Employees are entitled to recover, and hereby seek through this Representative Action, all civil and statutory penalties authorized for violations of California Labor Code §§ 1198 and 2802, and Section 9(B) of the applicable IWC Wage Orders, and Plaintiff seeks all civil and statutory penalties available and applicable under Labor Code §§ 2802 and 2699(f)(2), and also attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).



Failure to Pay Proper Sick Time Wages

Labor Code Section 246 affords an employee “who works in California for 30 or more days within a year from the commencement of employment [] paid sick days . . . of not less than one hour per every 30 hours worked” and “no less than 24 hours of accrued sick leave or paid time off by the 120th calendar day of employment or each calendar year, or in each 12-month period.”

Additionally, Subsection (l) of Section 246 provides:

For the purposes of this section, an employer shall calculate paid sick leave using any of the following calculations:

(1) Paid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek.

Defendants had a common policy and practice of systemically failing to pay Aggrieved Employees the requisite sick time pay in accordance with California Law, at the employees’ applicable regular rates of pay. Specifically, Aggrieved Employees worked for Defendants for more than 30 days, but were not paid at least one hour of sick pay for every 30 hours of work, or at least 3 days of sick time for every 12-month period of work

Under the PAGA, and following exhaustion of the notice period, Plaintiff is seeking all civil and statutory penalties available and applicable under Labor Code §§ 246, 510, 558, 1194.2, 1197.1, 1199, 2699(f)(2), and 2699.5, and also for attorneys’ fees and costs pursuant to Labor Code § 2699(g)(1).

Failure to Issue Accurate and Itemized Wage Statements in Violation of Labor Code § 226

California Labor Code § 226(a) requires an employer to furnish each employee with an accurate, itemized wage statements in writing. These statements must be appended to the detachable part of the check, draft, voucher, or whatever else serves to pay the employee’s wages; or, if wages are paid by cash or personal check, these statements may be given to the employee separately from the payment of wages; in either case the employer must give the employee these statements twice a month or each time wages are paid. As a direct and proximate cause of Defendants’ violation of Labor Code § 226(a), Aggrieved Employees suffered injuries, including among other things confusion over whether they received all wages owed them, the difficulty and expense involved in reconstructing pay records, and forcing them to make mathematical computations to analyze whether the wages paid in fact compensated them correctly for all hours worked.

Defendants failed to provide Aggrieved Employees with accurate itemized wage statements in writing, as required by the Labor Code. Specifically, Defendants failed to provide Employees with accurate itemized wage statements in writing, as required by the Labor Code. The wage statements given to Aggrieved Employees failed to accurately account for unpaid wages, overtime, premium pay for deficiently provided meal periods and rest breaks.

Additionally, for the purposes of Subsection (a)(9), Plaintiff seeks to expand the scope of the Aggrieved Employees she seeks to represent to extend to all individuals employed by Defendants



during the applicable period. The wage statements issued to Aggrieved Employees failed to state all applicable hourly rates for which Aggrieved Employees were paid as required by Labor Code § 226(a)(9).

In light of these violations, and pursuant to Labor Code §§ 226(a) and 226(e) and paragraphs 4(b), 7, and 20 of the applicable IWC Wage Orders, Aggrieved Employees are 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) for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000). They are also entitled to an award of costs and reasonable attorneys' fees.

Under the PAGA, and following exhaustion of the notice period, Plaintiff asserts PAGA claims for failure to provide Aggrieved Employees with accurate, itemized wage statements and failure to maintain employment records for Aggrieved Employees under Labor Code §§ 226, 1174, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage Order(s) seeking all civil and statutory penalties and wages available and applicable under Labor Code §§ 226(e), 226.3, 558, 1174.5, 1199, and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Order, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1). More specifically, by providing inaccurate wage statements and failing to maintain records as required under Labor Code § 226(a), Defendants committed ongoing violations giving rise to civil penalties under Labor Code § 226.3, which in addition to other penalties provided by law, subjects Defendants to "a penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, ..."

Failure to Issue Semimonthly Payments in Violation of Labor Code § 204

In failing to pay Aggrieved Employees wages, overtime, premium pay, etc., and failing to provide them with checks and wage statements, Defendants failed to timely pay Aggrieved Employees wages on a semimonthly basis as required under Labor Code § 204. Defendants failed to maintain records showing accurate hours worked daily and the wages paid to Aggrieved Employees, as well as the meal and rest periods taken by Aggrieved Employees, as required by Labor Code § 1174 and the applicable IWC wage orders.

Defendants also required Aggrieved Employees to work hours off the clock for which they were not compensated, including during interrupted or otherwise on-duty meal and rest periods. Defendants also failed to pay all overtime premium wages owed for work conducted on a work shift and a workday or miscalculated these premiums by not including all forms of remuneration in the regular rate, as addressed above. Therefore, when Aggrieved Employees received wage statements and pay checks, they did not compensate all hours worked on a timely basis, resulting in Defendants' systematic failure to pay all wages owed to Aggrieved Employees twice monthly in accordance with the requirements of Labor Code § 204. Additionally, by not providing wage statements as required under section 204, Defendants systematically violated Labor Code § 204 and § 226.

Given the above described off the clock work, Plaintiff was not paid at the correct overtime rate for all hours he worked after eight hours into a shift or over forty in a work week and that he was



not paid all double time owed either. Defendants' uniformly applied payroll policies and practices thus resulted in further systematic and ongoing violations of the requirements of Labor Code § 204.

In light of the foregoing, Aggrieved Employees seek to recover wages and penalties, interest, fees and costs pursuant to Labor Code §§ 201.3, 210, 218.5, 558, and 1194. In failing to pay Aggrieved Employees minimum wages and overtime, off the clock work, by not providing proper meal and rest periods, failing to provide accurate itemized wage statements, and failing to pay Employees wages upon termination or timely upon resignation, all discussed above, Defendants failed to timely pay Aggrieved Employees wages on a semimonthly basis as required under Labor Code § 204. Defendants also failed to maintain records showing accurate hours worked daily and the wages paid to Aggrieved Employees, as required by Labor Code § 1174 and paragraph 7 of the applicable IWC Wage Orders, entitling Aggrieved Employees to recover penalties pursuant to paragraph 20 of the applicable IWC Wage Orders.

Under the PAGA, and following exhaustion of the notice period, Plaintiff asserts PAGA claims for failure to timely pay all wages owed, including at least semi-monthly and upon separation or termination, under Labor Code §§ 203, 204, 2926, 2927, and 2699.5 seeking all civil penalties available and applicable under Labor Code §§ 204, 210, 558, 1197, 1198, 1199 and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Orders, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Failure to Keep Records In Accordance With Labor Code §§ 1174

Labor Code § 1174 requires employers to keep records showing payroll data and the hours worked daily by and the wages paid to employees. By failing to pay Aggrieved Employees proper wages, overtime, double time, premium pay, etc., and by not recording meal period start and end times, all discussed herein, Defendants failed to maintain proper employment records in accordance with Section 1174. In light of the foregoing, Aggrieved Employees seek to recover penalties pursuant to Labor Code §§ 1174.5 and 2699, *et seq.* Defendants have also failed to comply with paragraph 7 of the applicable California IWC Wage Orders by failing to maintain time records showing when the employee begins and ends each work period, meal periods, wages earned pursuant to Labor Code § 226.7, and total daily hours worked by itemizing in wage statements all deductions from payment of wages and accurately reporting total hours worked by the Aggrieved Employees, and they are entitled to recover penalties pursuant to paragraph 20 of the applicable IWC Wage Orders.

Under the PAGA, and following exhaustion of the notice period, Plaintiff asserts PAGA claims for failure to provide the Aggrieved Employees with accurate, itemized wage statements and failure to maintain employment records for Aggrieved Employees under Labor Code §§ 226, 1174, 1198, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage Order(s) seeking all civil and statutory penalties and wages available and applicable under Labor Code §§ 558, 1174.5, 1199, and 2699(f)(2), 2699.5, and paragraph 20 of the applicable IWC Wage Order, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).



Waiting Time Penalties Pursuant to Labor Code § 203

Some Aggrieved Employees no longer work for Defendants; they either resigned or were terminated from Defendants' employ. Based on the forgoing, Defendants have had a consistent policy of failing to pay all wages earned by and owed to Aggrieved Employees at the time of their termination of within seventy-two hours of their resignation, as required by California under Labor Code § 203. In light of the forgoing, Aggrieved Employees seek to recover wages and penalties pursuant to Labor Code § 558 and further specifically seek penalties and wages under Labor Code § 203, which provides that an employee's wages shall continue until paid for up to thirty (30) days from the date they were due.

Under the PAGA, and following exhaustion of the notice period, Plaintiff asserts PAGA claims for failure to timely pay all wages owed, including at least semi-monthly and upon separation or termination, under Labor Code §§ 201, 201, 203, 204, 1197.5, 2926, and 2927 seeking all civil penalties available and applicable under Labor Code §§ 201, 202, 203, 210, 558, 1197, 1198, 1199, 2699(f)(2), 2699.5, and paragraph 20 of the applicable IWC Wage Orders, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Unfair Competition Under Business and Professions Code § 17200, et seq.

Consequently, Defendants' conduct has been and continues to be unfair, unlawful, and harmful to Aggrieved Employees and the general public in violation of Business & Professions Code § 17200 et seq.

Plaintiff's PAGA Claim under Labor Code § 2698 et seq. and Recovery Bases:

After complying with the notice procedures of Labor Code § 2699.3 and the running of the notice period after the filing of the Class Action Complaint, Plaintiff will file an amended Complaint asserting, as a representative action on behalf of the California Attorney General and the other similarly Aggrieved Employees, a PAGA claim for violations of the above addressed underlying claims and seeking penalties as specified by the applicable corresponding provisions.

The Aggrieved Employees seek penalties under Labor Code §§ 2698 and 2699 for Defendants' violation of Labor Code provisions included under Labor Code § 2699.5, including the penalty provisions, without limitation, based, *inter alia*, on the following California Labor Code sections: §§ 201, 202, 203, 204, 210, 212, 213, 226, 226.3, 226.7, 246, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 2698, 2699, et seq., and 2802, including as follows:

(a) **Wage Claims:** For failure to provide the Aggrieved Employees all earned regular pay and minimum wages for regular hours worked and for failure to pay overtime premium wages for overtime hours worked, failure to pay proper sick pay under Labor Code §§ 246, 510, 1194(a), 1197, and 1198, and paragraphs 2(K), 3(A), 4(A), 4(B) and 20 of the applicable IWC Wage Order(s) seeking all civil and statutory penalties available and applicable under Labor Code §§ 246, 510, 558, 1194.2, 1197.1, 1198, 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);



(b) Meal and Rest Period Claims: For failure to provide the Aggrieved Employees off-duty, timely, and unpaid meal periods and failure to authorize and permit them to take off-duty, timely, and paid rest periods, or pay one hour of regular pay in lieu thereof, under Labor Code §§ 512, 1198, and 226.7, and Sections 11, 12(A), and 12(B) of the applicable IWC Wage Order(s) seeking all civil and statutory penalties available and applicable, including under paragraph 20 of the applicable IWC Wage Orders, and wages under Labor Code §§ 226.7, 512, 558, including sections 558(a)(1)-(3), 1199 and 2699(f)(2), and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

(c) Inaccurate Wage Statements and Failure to Maintain Records: For failure to provide the Aggrieved Employees with wage statements or with accurate, itemized wage statements and failure to maintain employment records for Aggrieved Employees under Labor Code §§ 226, 1174, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage Order(s) seeking all civil and statutory penalties and wages available and applicable under Labor Code §§ 226(e), 226.3, 558, 1174.5, 1199, and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Order, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1). More specifically, by providing inaccurate wage statements and failing to maintain records as required under Labor Code § 226(a), Defendants committed ongoing violations giving rise to civil penalties under Labor Code § 226.3, which in addition to other penalties provided by law, subjects Defendants to "a penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, ...";

(d) Failure to Timely Pay Wages: For failure to timely pay all wages owed, including at least semi-monthly and upon separation or termination, under Labor Code §§ 201, 201, 203, 204, 1197.5, 2926, and 2927 seeking all civil penalties available and applicable under Labor Code §§ 201, 202, 203, 210, 558, 1197, 1198, 1199 and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Orders, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

(e) Failure to Reimburse Business Expenses: For Defendants' failure to reimburse the necessary work related expenses incurred under Labor Code §§ 1197, 1197.1, 1198, and 2802, and Sections 2(K), 4, 9, and 20 of the applicable IWC Wage Order(s), seeking civil penalties available and applicable under Labor Code §§ 1197, 1197.1, 1198, 2802, 2699.5, and 2699(f)(2) and paragraph 9 and 20 of the IWC Wage Orders, and also attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

(f) All Alleged Violations of the IWC Wage Orders: For any above addressed violation of the applicable provisions of the IWC Wage Orders constituting violations of Labor Code § 1198 and Labor Code § 2699.5 and seeking penalties available and applicable under Labor Code § 2699(f)(2) and paragraph 20 of the applicable IWC Wage Orders, and for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

We have been constrained to initially move forward with the filing of this Complaint, alleging the causes of action discussed herein, without the PAGA claim. Thus, any action by the LWDA would



not resolve the entirety of the case, and the interest of judicial economy will be served by allowing the case to proceed as a cohesive whole.

This letter and the attached Complaint therefore provide the requisite notice under the Act to the LWDA and Defendants by setting forth the specific provisions of the Labor Code and related provisions Plaintiff alleges have been violated, including the facts and relevant theories alleged against Defendants and joint employers. To prevent the violations described in the Complaint and herein from occurring, and to remedy past violations, Plaintiff respectfully requests that the LWDA conduct an investigation into Defendants' employment practices in accordance with the Act.

Wherefore we request that you advise us, by certified mail within sixty days of the postmark on this letter, whether you intend to proceed with these claims or whether the Aggrieved Employees should include them in an amended Labor Code § 2698 *et seq.* claim under the Act in an amended Complaint.

Regards,
D.LAW, INC.



David Keledjian, Esq.

Cc: Emerald Fund, Inc., by Certified Mail

Wednesday, September 27, 2023 at 16:06:50 Pacific Daylight Time

Subject: Thank you for submission of your PAGA Case.

Date: Wednesday, September 27, 2023 at 4:06:08 PM Pacific Daylight Time

From: noreply@salesforce.com on behalf of LWDA DO NOT REPLY

To: Sasha Zambrano

Caution: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

9/27/2023

LWDA Case No. LWDA-CM-984199-23

Law Firm : D.Law, Inc.

Plaintiff Name : Christopher Torno Baclay other similarly aggrieved employees

Employer: Emerald Fund, Inc.

Filing Fee : \$75.00

IFP Claimed : No

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm