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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO
UNLIMITED JURISDICTION

CHRISTOPHER TORNO 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]

JOINT STIPULATION OF CLASS ACTION AND PAGA SETTLEMENT

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

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

I. DEFINITIONS

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

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

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

"Class" or "Class Members" means all persons employed by Defendant in hourly or non-exempt positions in California during the Class Period. The Class consists of approximately 66 Class Members.

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

"Class Counsel" means D.Law, Inc.

"Class Period" means the time from September 27, 2019 through April 13, 2024.

"Complaint" means the operative Complaint filed in the Action on or about September 27, 2023, and all amendments thereto.

"Court" means the San Francisco County Superior Court or any other court taking jurisdiction of the Settlement.

"Defendant" means EMERALD FUND, INC.

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

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

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

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

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

"LWDA" means California's Labor and Workforce Development Agency.

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

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

"Net Settlement Amount" means the portion of the Gross Settlement Amount remaining after deductions for the Court-approved Enhancement Award, Settlement Administrator's Fees, the Attorneys' Fees and Costs, and the LWDA Payment. The Net Settlement Amount will be distributed to Participating Class Members.

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

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

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

"PAGA" means California's Labor Code Private Attorneys General Act of 2004, as amended (Cal. Labor Code §§ 2698 *et seq.*).

"PAGA Settlement Amount" means the Ten Thousand Dollars ($10,000.00) of the Gross Settlement Amount that the Parties agree will be allocated to the resolution of Participating Class Members' claims arising under PAGA.

"Participating Class Members" means all Class Members who do not submit timely and valid Requests for Exclusion.

"Parties" means Plaintiff and Defendant collectively.

"Preliminary Approval" means the court order preliminarily approving this Joint Stipulation.

"Preliminary Approval Hearing" means the court hearing held on the motion for Preliminary Approval of the Joint Stipulation.

"Released Claims" means 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 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 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 (collectively, the "Released Claims."). The period of the Release shall extend to the limits of the Settlement Class Period. The *res judicata* effect of the Judgment will be the same as that of the Release.

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

"Request for Exclusion" means a timely writing submitted by a Class Member to the Settlement Administrator indicating a request to be excluded from the Settlement. The Request for Exclusion must: (i) set forth the full name, address, telephone number and last four digits of the Social Security Number of the Class Member requesting exclusion; (ii) be signed by the Class Member; (iii) be returned to the Settlement Administrator; (iv) clearly state that the Class Member does not wish to be included in the Settlement; and (v) be faxed or postmarked on or before the Response Deadline.

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

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

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

"Settlement Fund Account" means the qualified settlement fund within the meaning of Treasury Regulation § 1.468B-1, 26 CFR § 1.468B-1 *et seq.*, that is established by the Settlement Administrator for the benefit of Participating Class Members, from which all monies payable under this Joint Stipulation shall be paid, as set forth herein.

II. PRE-TRIAL PROCEEDINGS AND NEGOTIATIONS

A. Discovery, Investigation, and Research

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

B. Allegations of the Plaintiff and Benefits of Settlement

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

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

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

C. Defendant's Denial of Wrongdoing and Benefits of Settlement

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

D. Intent of the Settlement

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

III. PROCEDURAL ISSUES

A. Preliminary Approval

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

B. Settlement Administrator

The Settlement Administrator will handle: (1) preparing, printing, and mailing to Class Members simultaneously the Notice Packet"); (2) receiving and reviewing any Opt-Outs; (3) calculating payments under the Settlement; (4) handling inquiries from Class Members concerning the Notice Packet; (5) resolving any workweek disputes; (6) providing weekly status reports to Defendant's counsel and Class Counsel regarding the mailings, Opt-Outs, and Settlement payments; (7) distributing Settlement payments to Class Members and payment to other parties under the terms of this Joint Stipulation; (8) providing due diligence declarations for submission to the Court, as needed; (9) tax reporting and printing and providing Participating Class Members and Plaintiff with tax forms as required under this Joint Stipulation and applicable law, including the issuance of IRS 1099 and W-2 forms, and providing copies of the same to Defendant; (10) sending, and/or responding to submissions of Opt-Outs, or contact information updates; and (11) such other tasks as the Parties mutually agree or the Court orders the Settlement Administrator to perform.

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

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

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

C. <u>Notice to Class Members</u>

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

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

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

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

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

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

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

D. <u>Procedure for Opting Out of the Class</u>

Class Members who wish to exclude themselves from the Class must submit to the Settlement Administrator a valid, written Request for Exclusion on or before the Response Deadline, unless the Court orders otherwise. The Request for Exclusion must be signed by the Class Member and contain all information required by this Joint Stipulation. In the case of Requests for Exclusion that are mailed to the Settlement Administrator, the postmark date will be the exclusive means to determine whether a Request for Exclusion has been timely submitted. At no time will any of the Parties or their counsel seek to directly or indirectly solicit or otherwise encourage any Class Member to opt out of the Settlement Class, but may, if warranted by the circumstances, advise individual Class Members of the consequences of opting out.

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

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

E. <u>Procedure for Disputing Workweeks</u>

The Settlement Administrator's determination of eligibility for, and the amount of, any Settlement payment under this Joint Stipulation will be conclusive, final, and binding on all Parties, including all Participating Class Members. To dispute the number of workweeks with which he or she has been credited, a Class Member must timely produce evidence to the Settlement Administrator showing that the workweek information is inaccurate by the Response Deadline. The delivery date is deemed to be the date the dispute is deposited in the U.S. Mail as evidenced by the postmark. The Settlement Administrator shall decide the dispute. Defendant's records will be presumed correct, but the Settlement Administrator will evaluate the evidence submitted by the Class Member and will make the final decision on the merits of the dispute. The Settlement Administrator may ask Defendant to produce the personnel and payroll files of the Class Member disputing his or her credited workweeks in order for the Settlement Administrator to resolve the dispute. All disputes will be decided within ten (10) business days after the Response Deadline.

F. Procedure for Objecting to Settlement

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

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

G. Reports from Settlement Administrator

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

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H. Final Approval

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

IV. SETTLEMENT TERMS

A. Gross Settlement Amount and Minimum Settlement Payments

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

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

B. Allocation of Settlement Proceeds

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

i. Attorneys' Fees and Costs, which is the amount the Court awards to Class Counsel for their attorneys' fees in an amount not exceeding one-third (or $41,666.67) of the Gross Settlement Amount, and reasonable litigation costs;

ii. The Enhancement Award, which comprises the amount the Court awards to the named Plaintiff as class representative, in an amount not exceeding $5,000.00;

iii. The Settlement Administrator's Fees;

iv. The PAGA Settlement Amount; and

v. The Net Settlement Amount, which is the total money available for payout to Participating Class Members;

Payment to each Participating Class Member shall be allocated eighty percent (75%) as nonwage penalties and interest, for which IRS Forms 1099-MISC will be issued, and twenty percent (25%) wages, for which IRS Forms W-2 will be issued. The Settlement Administrator will be responsible for issuing to Plaintiff, Participating Class Members, and Class Counsel any W-2, 1099, or other tax forms as may be required by law for all amounts paid pursuant to this Settlement. The Settlement Administrator will also be responsible for forwarding all payroll taxes and penalties to the appropriate government authorities.

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

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

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

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

C. <u>Circular 230 Disclaimer</u>

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

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

D. <u>Distribution of Settlement Proceeds</u>

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

1. Initial Payment

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

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

2. Payment to Participating Class Members

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

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

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

E. <u>Uncashed Settlement Checks</u>

Any checks issued to Participating Class Members shall be negotiable for at least 200 calendar days. The aggregate value of all Settlement Checks that remain uncashed after one-hundred eighty (180) days after the checks are mailed will be distributed pursuant to Cal. Code Civ. Proc. § 384(b) to The Interdisciplinary Center for Healthy Workplaces at U.C. Berkeley. Regardless of whether the checks are cashed, this Agreement will be binding on every Class Member who does 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.

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H. Certificate of Completion by Settlement Administrator

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

I. Settlement Administrator's Fees

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

J. PAGA Settlement Amount

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

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

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

V. RELEASE OF CLAIMS BY THE CLASS

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

VI. RELEASE OF CLAIMS BY PLAINTIFF

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

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

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

VII. NULLIFICATION OF THE JOINT STIPULATION

If (a) the Court should for any reason fail to approve this Joint Stipulation in the form agreed to by the Parties, or (b) the Court should for any reason fail to enter a judgment in the Action, or (c) the judgment is reversed, modified, or declared or rendered void, this Joint Stipulation will be null and void, and neither this Joint Stipulation, nor any of the related negotiations or proceedings, will be of any force or effect, and all Parties will stand in the same position, without prejudice, as if the Joint Stipulation had not been entered into or filed. Invalidation of any material portion of this Joint Stipulation will invalidate this Joint Stipulation in its entirety, unless the Parties subsequently agree in writing that the remaining provisions of the Joint Stipulation are to remain in full force and effect.

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

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

VIII. <u>DUTIES OF THE PARTIES</u>

A. <u>Confidentiality</u>

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

B. <u>Mutual Cooperation</u>

The Parties agree to cooperate to accomplish and implement the terms of this Joint Stipulation. Such cooperation will include, but is not necessarily limited to, execution of such other documents and taking such other actions as maybe reasonably necessary to fulfill the terms of this Joint Stipulation. The Parties will use their best efforts, including all efforts contemplated by this Joint Stipulation and any other efforts that may become necessary by Court order, or otherwise, to effectuate this Joint Stipulation and the terms set forth herein. As soon as practicable after execution of this Joint Stipulation, Class Counsel, with the cooperation of Defendant and its counsel, will try to secure Preliminary Approval and Final Approval.

C. Duty to Support and Defend the Settlement

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

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

IX. MISCELLANEOUS PROVISIONS

A. No Media Comments or Publicity

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

B. Waiver of Appeals

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

C. No Admission of Liability

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

D. Non-Disparagement

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

E. Construction

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

F. Choice of Law

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

G. Captions and Interpretations

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

H. Modification

No waiver, modification or amendment of the terms of this Joint Stipulation, whether purportedly made before or after the Court's approval of this Joint Stipulation, shall be valid or binding unless in writing, signed by or on behalf of all Parties and then only to the extent set forth in such written waiver, modification or amendment, subject to any required Court approval. This Joint Stipulation may not be discharged except by performance under its terms or by a writing signed by the Parties.

I. Integration Clause

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

J. Successors and Assigns

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

K. No Assignment

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

L. Notices to Parties

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

If to Defendant, then to both:

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

If to Class Counsel or Plaintiff, then to both:

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
880 E Broadway
Glendale, CA 91205
Telephone: (818) 962-6465
Facsimile: (818) 962-6469

M. Class Counsel Signatories

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

N. Authorization To Enter Into Settlement Agreement

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

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P. Representation by Counsel

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

Q. Severability

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

R. Execution in Counterparts

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

S. Continuing Jurisdiction

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

READ CAREFULLY BEFORE SIGNING

PLAINTIFF/CLASS REPRESENTATIVE

DocuSigned by:

DATED: June 24, 2024

By: 42577A3B1D17494...
Plaintiff CHRISTOPHER TORNO BACLAY

DEFENDANT

Marc Babsin

DATED: _June 24, 2024 By:______________________________

Authorized to sign on behalf of Defendant
EMERALD FUND, INC.

APPROVED AS TO FORM:

DATED: June 24, 2024

SEYFARTH SHAW LLP

By:______________________________

Andrew M. McNaught
Robin E. Devaux
Attorneys for Defendant
EMERALD FUND, INC.

DATED: June 24, 2024

DLAW, INC.

By:______________________________

David Yeremian
David Keledjian
David Arakelyan
Attorneys for Plaintiff and the Class

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.