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MICHAEL D. PLANET
Executive Officer and Clerk

BY: ELIZABETH MULLER Deputy

1 Edwin Aiwazian (SBN 232943)
2 Arby Aiwazian (SBN 269827)
3 Joanna Ghosh (SBN 272479)
4 **LAWYERS for JUSTICE, PC**
5 410 West Arden Avenue, Suite 203
6 Glendale, California 91203
7 Tel: (818) 265-1020 / Fax: (818) 265-1021

Attorneys for Plaintiff

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

ESTHER BETANCOURT; individually, and on
behalf of other aggrieved employees pursuant to
the California Private Attorneys General Act;

Plaintiff,

vs.

DATA EXCHANGE CORPORATION, a
California corporation; and DOBS 1 through 100,
inclusive,

Defendants.

Case No.: 56-2017-00494923-CU-OE-VTA

Honorable Kevin G. DeNoce
Department 43

~~PROPOSED~~ ORDER AND JUDGMENT
GRANTING APPROVAL OF PRIVATE
ATTORNEYS GENERAL ACT (CAL. LABOR
CODE § 2698, ET SEQ.) SETTLEMENT
AGREEMENT AND AWARD OF
ATTORNEYS' FEES AND COSTS,
INCENTIVE PAYMENT, AND
ADMINISTRATOR COSTS

Reservation ID: 2468129
Date: January 28, 2020
Time: 8:30 a.m.
Department: 43

Complaint Filed: April 10, 2017
Jury Trial Date: None Set

~~PROPOSED~~ ORDER AND JUDGMENT GRANTING APPROVAL OF PRIVATE ATTORNEYS GENERAL ACT (CAL. LABOR
CODE § 2698, ET SEQ.) SETTLEMENT AGREEMENT AND AWARD OF ATTORNEYS' FEES AND COSTS, INCENTIVE
PAYMENT, AND ADMINISTRATOR COSTS

1 This matter has come before the Honorable Kevin G. DeNoce in Department 43 of the above-
2 entitled Court, located at 800 South Victoria Avenue, Ventura, California 93009, on January 28, 2020 at
3 8:30 a.m. for Plaintiff Esther Betancourt's ("Plaintiff") Motion for Approval of Private Attorneys General
4 Act (Cal. Labor Code § 2698, *Et Seq.*) Settlement Agreement and Award of Attorneys' Fees and Costs,
5 Incentive Payment, and Administrator Costs. Lawyers for Justice, PC appeared for Plaintiff, and Drinker
6 Biddle & Reath LLP appeared for Data Exchange Corporation ("Defendant").

7 On December 6, 2019, Plaintiff and Defendant (together, the "Parties") executed the Private
8 Attorneys General Act Settlement Agreement and Release ("Settlement," "Settlement Agreement," or
9 "Agreement").

10 The Court has reviewed and considered: (1) the Notice of Motion and Motion for Approval of
11 Private Attorneys General Act (Cal. Labor Code § 2698, *Et Seq.*) Settlement Agreement and Award of
12 Attorneys' Fees and Costs, Incentive Payment, and Administrator Costs and supplemental papers in
13 support thereof; (2) the Declaration of Plaintiff's Counsel Edwin Aiwazian; (3) the Declaration of
14 Plaintiff; and (4) the Settlement Agreement.

15 Having duly considered the Parties' papers and oral argument, and good cause appearing,

16 **IT IS HEREBY ORDERED AND ADJUDGED AS FOLLOWS:**

17 1. All capitalized terms used herein shall have the same meanings as defined in the Settlement
18 Agreement.

19 2. The Court finds that Plaintiff has satisfied the prerequisites under the California Private
20 Attorneys General Act (Cal. Labor Code § 2698, *et seq.*) ("PAGA"), including, but not limited to,
21 providing the Labor and Workforce Development Agency ("LWDA") and Defendant with notice of the
22 specific provisions of the California Labor Code alleged to have been violated, including, but not limited
23 to, the facts and theories to support the alleged violations, in conformity with California Labor Code §
24 2699.3(a).

25 3. The Court also finds that the Settlement Agreement has been submitted to the LWDA in
26 conformity with California Labor Code § 2699(1)(2), and that the LWDA has not sought to intervene or
27 appear in the Action.

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1 4. The aggrieved employees covered under the Settlement consist of the following
2 individuals:

3 All current and former non-officer employees who worked for the Company during the period
4 from February 2, 2016 to the date of entry of this Order as salaried exempt including, without
5 limitation, E-Commerce Sales Representatives, Customer Service Representatives, Inside Sales
6 Representatives, eBay Customer Services, E-Commerce Account Managers, Liquidation Team
7 Member, Buyers, Financial Client Services Managers, Client Services Managers, Client
8 Services Manager Customer Account Managers, Project Managers, and job titles that
9 performed the same or similar job duties as the aforementioned job titles ("PAGA Group
10 Members").

11 5. The Court finds that the Parties reached the Settlement as a result of arms-length
12 negotiations.

13 6. Pursuant to California Labor Code § 2699(1)(2), the Court has reviewed the sum allocated
14 for payment of penalties under PAGA ("Net Settlement Amount"), and determines that the Net Settlement
15 Amount is fair, just, reasonable, and adequate. The Court hereby approves the Net Settlement Amount.
16 The Net Settlement Amount shall be the Total Settlement Amount (\$505,000) less the approved
17 Attorneys' Fees and Costs, Incentive Payment, and Administrator Costs. Seventy-five percent (75%) of
18 the Net Settlement Amount shall be distributed to the LWDA ("LWDA Payment") and twenty-five
19 percent (25%) of the Net Settlement Amount shall be distributed to the PAGA Group Members in
20 accordance with this Order and Judgment and the Settlement Agreement.

21 7. The Court has considered the Settlement, and the monetary allocations provided thereby,
22 and finds that they are fair, just, reasonable, and adequate. The Court hereby directs the Settlement
23 Administrator to administer the Settlement and to make the payments as provided by, and consistent with,
24 this Order and Judgment and the Settlement Agreement.

25 8. The Court approves the payment of \$176,750 to Lawyers for Justice, PC for attorneys' fees.
26 The Settlement Administrator shall disburse this amount in accordance with this Order and Judgment and
27 the Settlement Agreement.

28 9. The Court approves the payment of \$17,603.11 to Lawyers for Justice, PC for
reimbursement of litigation costs and expenses incurred in the Action. The Settlement Administrator shall
disburse this amount in accordance with this Order and Judgment and the Settlement Agreement.

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1 10. The Court approves the payment of up to \$6,000 to Phoenix Settlement Administrators, the
2 Settlement Administrator, for Administrator Costs, which the Settlement Administrator shall pay itself in
3 accordance with this Order and Judgment and the Settlement Agreement.

4 11. The Court approves payment in the amount of \$12,000 to Plaintiff Esther Betancourt for
5 her Incentive Payment. The Settlement Administrator shall disburse this amount in accordance with this
6 Order and Judgment and the Settlement Agreement.

7 12. The Parties are directed to perform in accordance with the terms set forth in this Order and
8 Judgment and the Settlement Agreement.

9 13. The Court further finds that notice of the settlement need not be provided to the PAGA
10 Group Members, however, the Settlement Administrator is ordered to distribute payments to the PAGA
11 Group Members under cover letter. The Court has reviewed and approves the Settlement Cover Letter,
12 attached hereto as "EXHIBIT 1," for distribution to the PAGA Group Members at the same time that
13 Settlement Share checks are distributed to the PAGA Group Members.

14 14. The Settlement Administrator is directed to establish an account into which the Total
15 Settlement Amount is to be deposited by Defendant, and provide Defendant with the wire transfer
16 information for the account, within five (5) business days after the Settlement becomes Final.

17 15. Defendant is directed to provide the PAGA Group Information to the Settlement
18 Administrator and deposit the Total Settlement Amount into an account established by the Settlement
19 Administrator, in accordance with this Order and Judgment and the Settlement Agreement, within fifteen
20 (15) business days after the Settlement Administrator provides Defendant with wire transfer information
21 for the account into which the Total Settlement Amount is to be deposited.

22 16. The Settlement Administrator shall distribute the Settlement Shares, LWDA Payment,
23 Incentive Payment, and Attorneys' Fees and Costs, as provided for by this Order and Judgment and the
24 Settlement Agreement, within fifteen (15) business days after Defendant deposits the Total Settlement
25 Amount into the account established by the Settlement Administrator.

26 17. Checks issued to PAGA Group Members shall expire one hundred and eighty (180)
27 calendar days from the date the checks are mailed by the Settlement Administrator. If any check is not
28 redeemed or deposited within ninety (90) calendar days after the date of mailing of the check, the

1 Settlement Administrator shall mail the PAGA Group Member who has not redeemed or deposited his or
2 her check, a reminder postcard, in accordance with the Settlement Agreement. The Settlement
3 Administrator shall cancel any and all checks that have not been cashed or deposited within ninety (90)
4 calendar days after the mailing of the reminder postcard, and transmit the funds associated with such
5 canceled checks to the California State Controller's Office Unclaimed Property Division in the name(s)
6 and amount(s) of the cancelled check(s).

7 18. As of the date the Settlement becomes Final, Plaintiff, PAGA Group Members, and the
8 State of California (only with respect to Plaintiff and PAGA Group Members) are hereby deemed to
9 release and discharge any and all claims or causes of action for civil penalties under PAGA, whether
10 known or unknown, that they had, now have, have asserted, or may hereafter assert against the Company
11 or any of its present or former parent and affiliated companies, subsidiaries, partners, agents, insurers and
12 each of their respective officers, directors, shareholders, representatives, successors and assigns, that are
13 based upon or arise from the factual allegations in the Complaint or Notice to LWDA, for the Covered
14 Period, including but not limited to, PAGA claims for violation of California Labor Code sections §§ 201,
15 202, 203, 204, 226(a), 226.7, 510, 512(a), 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and
16 2802, and applicable Industrial Welfare Commission Wage Orders, and all claims for attorneys' fees and
17 costs and statutory interest associated with the aforementioned claims. Plaintiff, PAGA Group Members,
18 and the State of California shall be deemed to have expressly waived and relinquished, to the fullest extent
19 permitted by law, the provisions, rights and benefits they otherwise may have had related to the Released
20 Claims. The res judicata effect of this Order and Judgment will be the same as that of a release.

21 19. PAGA Group Members shall not have the right to opt out of, or object to, the Settlement.
22 All Parties, PAGA Group Members, and the State of California are bound by the Settlement, including
23 without limitation, its release of Released Claims, as well as this Order and Judgment.

24 20. The Court shall retain jurisdiction as to the implementation and enforcement of the terms of
25 the Settlement Agreement.

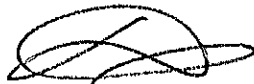
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1 21. Notice of this Order and Judgment shall be given to the LWDA by submission through the
2 online system established for the filing of notices and documents, in conformity with California Labor
3 Code § 2699(1)(3).

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5 Date: 1/27/20



Honorable Kevin G. DeNoce
Judge of the Superior Court

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EXHIBIT 1

Date: / / 2019

To:

Re: Settlement Payment from Betancourt v. Data Exchange Corporation
Ventura County Superior Court, Case No. 56-2017-00494923-CU-OE-VTA

Dear :

Please find enclosed a check in the amount of ("Settlement Share"). This check is your payment from the settlement of a lawsuit entitled *Betancourt v. Data Exchange Corporation* Case No. 56-2017-00494923-CU-OE-VTA ("Action"), pending in the Superior Court of California for the County of Ventura ("Court").

The lawsuit was commenced by Esther Betancourt ("Plaintiff"), a former employee of Data Exchange Corporation ("Company"), for herself and on behalf of the State of California and other alleged aggrieved employees, pursuant to the California Private Attorneys General Act of 2004, California Labor Code § 2698, et seq. ("PAGA"). Prior to commencing the lawsuit, Plaintiff submitted a letter to the State of California Labor & Workforce Development Agency ("LWDA") on February 2, 2017, providing notice of her intent to pursue her a lawsuit under PAGA ("Notice to LWDA"). On April 2, 2017, Plaintiff filed the Complaint for Enforcement Under the Private Attorneys General Act, California Labor Code § 2698 ("Complaint"). Plaintiff alleges that the Company violated the wage and hour rights of various salaried employees employed in California from February 2, 2016 to ("Covered Period"). The Company denies these allegations and denies that it owes any penalties to the government or to you.

The other aggrieved employees on whose behalf the lawsuit was filed are: all current and former non-officer employees who worked for the Company during the Covered Period as salaried exempt including, without limitation, E-Commerce Sales Representatives, Customer Service Representatives, Inside Sales Representatives, eBay Customer Services, E-Commerce Account Managers, Liquidation Team Member, Buyers, Financial Client Services Managers, Client Services Managers, Client Services Manager Customer Account Managers, Project Managers, and job titles that performed the same or similar job duties as the aforementioned job titles ("PAGA Group" or PAGA Group Member(s)). You have been identified as a PAGA Group Member.

On , the settlement was approved by the Court with a portion to be paid to the State of California and a portion to be paid to the PAGA Group Members. You are receiving a portion of the settlement (your "Settlement Share") based on the number of pay periods you were employed by and actively worked for the Company during the Covered Period in California as a non-officer salaried exempt E-Commerce Sales Representative, Customer Service Representative, Inside Sales Representative, eBay Customer Service, E-Commerce Account Manager, Liquidation Team Member, Buyer, Financial Client Services Manager, Client Services Manager, Client Services Manager Customer Account Manager, Project Manager, and/or similar job title that performed the same or similar job duties as the aforementioned job titles.

The Settlement Share is for civil penalties recoverable under PAGA. You are responsible for paying any and all taxes that may be due as a result of any payment issued to you under the settlement, and should consult a tax advisor regarding the tax consequences of such payment.

As a result of the settlement, Plaintiff, PAGA Group Members, and the State of California (only with respect to Plaintiff and PAGA Group Members) are hereby deemed to release and discharge any and all claims or causes of action for civil penalties under PAGA, whether known or unknown, that they had, now have, have asserted, or may hereafter assert against the Company or any of its present or former parent and affiliated companies, subsidiaries, partners, agents, insurers and each of their respective officers, directors, shareholders, representatives, successors and assigns, that are based upon or arise from the factual allegations in the Complaint or Notice to LWDA, for the Covered Period, including but not limited to, PAGA claims for violation of California Labor Code sections §§ 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802, and applicable Industrial Welfare Commission Wage Orders, and all claims for attorneys' fees and costs and statutory interest associated with the aforementioned claims. Plaintiff, PAGA Group Members (such as yourself), and the State of California shall be deemed to have expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights, and benefits they otherwise may have had related to these claims.

~~Do not call or write the Court or Office of the Clerk of the Court to ask questions about the settlement. If you have any questions, you may call the Settlement Administrator: .~~