

PAGA SETTLEMENT AND RELEASE AGREEMENT

This PAGA Settlement Agreement (“PAGA Agreement”) under the California Labor Code Private Attorneys General Act of 2004 (“PAGA”) is made by and between Plaintiff April Stanford (“Plaintiff” or “Stanford”), on behalf of herself and on behalf of the State of California, on the one hand, and KJLewis Enterprises, Inc., a California corporation dba Point Break Cafe (“Point Break”) and Kevin Lewis (“Lewis”) (collectively referred to as “Defendants”), on the other, subject to approval by the Court in accordance with California Labor Code Section 2699(l), and subject to the following terms and conditions:

I. DEFINITIONS.

Unless otherwise defined herein, the following terms used in this PAGA Settlement Agreement shall have the meanings ascribed to them as set forth below:

- A. “Action” means only the PAGA Claims encompassed within the 9th cause of action contained in the civil action entitled *April Stanford v. KJLewis Enterprises, Inc. dba Point Break Café, et. al., Superior Court of California, County of San Diego, Case No.: 37-2021-00027564-CU-OE-CTL*, specifically, the First Amended Complaint filed on September 7, 2021, but relating back to the June 25, 2021, filing of the Original Complaint, hereinafter also referred to as the “Complaint”.
- B. “PAGA Agreement” and “PAGA Settlement,” mean this PAGA Settlement Agreement which encompasses only the PAGA claims and not the individual claims brought by Plaintiff against Defendants in the operative Complaint.
- C. “Complaint” means the PAGA Claims included in the First Amended Complaint filed by Plaintiff on September 7, 2021, in the Action described in Section A above.
- D. “Court” means the Superior Court for the State of California, County of San Diego.
- E. “Covered Period” means the period of time from December 25, 2019, to the date of execution of this PAGA Agreement by all Parties.
- F. “Defendants” means KJLewis Enterprises, Inc., a California corporation dba Point Break Cafe (“Point Break”) and Kevin Lewis (“Lewis”), and their agents, employees, officers and directors, attorneys, successors and assigns.
- G. “Defendants’ Counsel” means Nguyen Law Corporation including but not limited to Natalie T. Nguyen, Esq.
- H. “Effective Date” means date of the Order approving the PAGA Settlement in compliance with California Labor Code Section 2699(l)(3)

- I. "LWDA" means the California Labor & Workforce Development Agency.
- J. "LWDA Payment" means the portion of the payment from the Net PAGA Settlement Amount to be paid to the LWDA.
- K. "Net PAGA Settlement Amount" means the amount from the Total PAGA Settlement Amount that is available for distribution as the LWDA Payment and PAGA Settlement Shares to the PAGA Settlement Group Members after the deductions set forth in Section IV(D). The entire Net PAGA Settlement Amount (\$20,000) will be distributed to the LWDA and PAGA Settlement Group Members for settlement of PAGA penalties.
- L. "Order" means the date of the signed Order granting approval of the PAGA Settlement
- M. "PAGA" means the Labor Code Private Attorneys General Act of 2004, California Labor Code Section 2698, et seq.
- N. "PAGA Settlement Group Members" means all "Managers" who were classified as exempt who were employed by KJLewis Enterprises, Inc. dba Point Break Cafe during the Covered Period as defined in Paragraph I(E).
- O. "Plaintiff" means April Stanford.
- P. "Plaintiff's Counsel" means the Law Offices of Thomas M. Diachenko, APC, including but not limited to Thomas M. Diachenko, Esq.
- Q. "Parties" means Plaintiff and Defendants.
- R. "Released PAGA Claims" means any claim under the California Labor Code Private Attorneys General Act of 2004 ("PAGA"), Labor Code §§ 2698, et seq., against the Released Parties that were alleged or that could have been alleged against Defendants and the Release Parties based on or arising out of the facts, circumstances, and primary rights at issue in the Complaint, including but not limited to allegations of, and/or violation of, California Labor Code Sections set forth in the Complaint for the Covered Period.
- S. "Released Parties" means Defendants and all its past, present, and future owners, parents, subsidiaries, and all current, former, and future officers, directors, members, managers, partners, shareholders, joint venturers, successors, assigns, accountants, insurers, or legal representatives.
- T. "Releasing Parties" means Plaintiff, the LWDA, and all PAGA Settlement Group

Members, and each of their predecessors, successors, and assigns.

- U. “PAGA Settlement Share” means the portion of the Net Settlement Amount allocable to each PAGA Settlement Group Member as consideration for the settlement and release of claims for penalties under PAGA as provided by this Agreement.
- V. “Total PAGA Settlement Amount” means the total amount to be paid by Defendants as consideration for the release of the Released PAGA Claims as provided by this Agreement.

II. PROCEDURAL BACKGROUND.

A. Pursuant to Labor Code section 2698 *et seq.* (the Private Attorneys General Act, or “PAGA”), on June 25, 2021, Plaintiff served a notice letter to the California Labor and Workforce Development Agency (“LWDA”) and Defendant, pursuant to California Labor Code Section 2699.3, to notify the LWDA of the alleged California Labor Code violations. The LWDA did not respond to Plaintiff’s correspondence. Covid Emergency Rule allowed for an additional 180 days to be added to the front end of the PAGA claim period to begin on December 23, 2019.

B. On June 25, 2021, Plaintiff filed her lawsuit against Defendants, which included individual claims. On September 7, 2021, after the sixty-five (65) day notice period required by PAGA expired, Plaintiff filed her First Amended Complaint. Plaintiff sought on behalf of the State of California to represent herself and all California affected non-exempt employees (“PAGA Members”) of Defendant from December 23, 2019, to the date of execution of this PAGA Agreement (“Covered Period”).

C. On or about October 25, 2021, Defendants filed an Answer containing a general denial of all material allegations in the operative Complaint.

D. The Parties have engaged in formal and informal discovery, including written discovery propounded by Plaintiff and responses provide by Defendants, including hundreds of pages of document production, the deposition of Kevin Lewis and several conversations between counsel to settle this matter. Plaintiff’s counsel reviewed Defendants’ documents and data relevant to Plaintiff’s claims, including but not limited to, time and payroll records, workweeks data, texts, etc. Kevin Lewis was also questions about the business operations and employment policies, practices, and procedures. Defendants operate a bar and restaurant which suffered COVID-19 pandemic financial hardship. The total number of PAGA Members, including Plaintiff, is only three people.

E. The Parties wish to avoid the uncertainties and expense of trial. The Parties and their respective counsel are of the opinion that the settlement for the consideration and on the terms set forth in this Agreement is fair, reasonable, and adequate and is in the best interests of the

Plaintiff, the Aggrieved Employees, the State of California, and Defendant, considering all known facts and circumstances and the risks inherent in litigation, including the potential appellate issues. Further, in accordance with the Labor Code § 2699(e)(1) and (e)(2), the Court in a PAGA action has the same discretion “to assess a civil penalty” that the Labor Commissioner would have, as well as complete discretion to “award a lesser amount than the maximum civil penalty amount specified [by PAGA] if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.”

III. NO ADMISSION OF LIABILITY.

This PAGA Agreement is entered into solely for the purpose of compromising highly disputed claims. Nothing in this PAGA Agreement is intended or will be construed as an admission of liability or wrongdoing by Defendants.

IV. PAGA SETTLEMENT TERMS AND CONDITIONS.

A. **Stipulation for PAGA Settlement Only.** Consistent with this PAGA Agreement, Plaintiff will stipulate to the dismissal of the Action as alleged against Defendants, with prejudice. Plaintiff shall file the request for dismissal of the Action (which only includes the Cause of Action for the PAGA claims), with prejudice, within 14 days of receipt of all payments and proof of payment as described below.

B. **PAGA Settlement Group Members.** Defendant represents that there are three individuals that compose the PAGA Settlement Group Members.

C. **Total PAGA Settlement Amount.** Subject to the terms and conditions of this Agreement, the Total PAGA Settlement Amount is \$15,000. The Total PAGA Settlement Amount will cover: (a) the LWDA Payment; (b) all Settlement Shares to PAGA Settlement Group Members pursuant to the Settlement (described below in Section IV(F)); (c) Plaintiff’s attorneys’ fees, costs, and expenses related to the claims encompassed by this PAGA Agreement (which includes, but is not limited to, all such fees and costs incurred to date, as well as all such fees and costs incurred in documenting the settlement) in the amount of \$5,000. Said payments described in (b) above shall be accompanied by a letter with the text as set forth in **Attachment A**.

D. **Attorneys’ Fees and Costs.** The Parties have agreed that \$5,000 of the \$15,000 will be apportioned to Plaintiff’s costs and attorney fees incurred as it pertains to the PAGA claims. The appropriate 1099 tax forms shall be provided by the Defendants to Plaintiff’s Counsel for any payments made pursuant to this Section.

E. **PAGA Settlement Shares.** Subject to the terms and conditions of this PAGA Agreement, each PAGA Settlement Group Member (including Plaintiff) will be allocated a PAGA Settlement Share from 25% of the Net Settlement Amount; the remainder of the Net PAGA Settlement Amount shall be paid to the LWDA, as described in Section IV(G).

F. **Distribution of Settlement Shares to PAGA Settlement Group Members.** After deducting for the amounts for costs and fees (\$5,000), the LWDA Payment (of \$7,500), the remainder of the Net Settlement Amount (\$2,500) will be paid as PAGA Settlement Shares to each PAGA Settlement Group Member. The portion of the Net PAGA Settlement Amount available for distribution to PAGA Settlement Group Members (25% of the Net PAGA Settlement Amount) will be divided equally among all PAGA Settlement Group Members. Because these payments are for civil penalties, they will be made without withholdings and with the PAGA Settlement Administrator issuing IRS Form 1099s to the PAGA Settlement Group Members for each PAGA Settlement Share. PAGA Settlement Group Members will be responsible for any taxes due because of their PAGA Settlement Shares.

G. **Payment to LWDA.** The Defendants will pay 75% of the Net PAGA Settlement Amount (\$7,500) to the LWDA as its share of the PAGA Settlement attributable to civil penalties under Labor Code Section 2699(i) (the “LWDA Payment”).

H. **Procedure for Seeking Approval of the PAGA Settlement.**

1. The Parties will cooperate in seeking approval of the PAGA Settlement pursuant to California Labor Code Section 2699(l). The Parties will submit the following to the Court: a copy of this Agreement, a stipulation of settlement and proposed order granting approval of the PAGA Settlement, and any other documents or briefing required by the Court. The Parties agree to fully cooperate in the drafting and/or filing of any documents reasonably necessary to be prepared or filed and shall take all steps that may be requested by the Court relating to the approval and implementation of the PAGA Settlement.
2. Plaintiff shall submit a copy of the PAGA Settlement to the LWDA prior to or at the same time that the PAGA Settlement is submitted to the Court for approval, pursuant to California Labor Code Section 2699(l)(2).
3. If the Court does not issue an order approving the PAGA Settlement, under the specific terms requested, the Parties agree to meet and confer to determine whether resolution of the claims encompassed by the PAGA Settlement can be obtained in a manner consistent with the Court’s concerns.

I. **Submission of Order to LWDA.** Within 10 calendar days after entry of the Order approving the PAGA Settlement, Plaintiff shall submit a copy of the Order to the LWDA in compliance with California Labor Code Section 2699(l)(3).

J. **Compliance with All Required Notice to the LWDA.** Plaintiff’s compliance with the notice procedures described in Sections IV(H) and IV(I) shall constitute due and sufficient notice to the LWDA, and shall be deemed by the Parties to satisfy any requirement of due process.

Nothing else shall be required of, or done by, the Parties, Plaintiff's Counsel, or Defendants' Counsel to provide the LWDA with notice of the PAGA Settlement.

K. **No Right to Opt Out.** The Parties agree there is no statutory right for any PAGA Settlement Group Member to opt out or otherwise exclude themselves from the PAGA Settlement.

L. **Payment of Settlement Shares to PAGA Settlement Group Members.**

1. No later than ten (10) business days after the Effective Date, Defendants shall mail PAGA Settlement checks to the last known addresses of the PAGA Settlement Group Members.
2. Concurrent with the mailing of the Individual PAGA Settlement Shares Defendants shall include the PAGA Settlement Group Member Cover Letter (the "Cover Letter," attached hereto as **Attachment A**), the Defendants shall check the addresses provided using the National Change of Address database. If any Individual PAGA Settlement Shares with the PAGA Settlement Group Member Cover Letter are returned as undeliverable, but with a forwarding address the Defendants shall, within five (5) calendar days, re-mail the Individual PAGA Settlement Shares with the PAGA Settlement Group Member Cover Letter to the forwarding address. If any Individual Penalties Payments and Cover Letter are returned as undeliverable without a forwarding address, the Defendant shall, within five (5) calendar days, conduct a skip trace search for a more current address of the PAGA Settlement Group Member and re-mail the Individual PAGA Settlement Shares with the PAGA Settlement Group Member Cover Letter to any alternative or updated address obtained by the Defendant.
3. If a PAGA Settlement Group Member fails to cash the Check or deposit the check, the Defendant will distribute the funds represented by the uncashed check(s) to the California LWDA, or alternatively to a single recipient designated by the Court in its discretion in connection with the Court's consideration and approval of the PAGA Settlement.

M. **Timing of PAGA Settlement Payments.** Within 10 days after the Effective Date, Defendants shall deliver checks in the amount of \$5,000 to the "Law Offices of Thomas M. Diachenko, APC" located at 1916 Third Avenue, San Diego, CA 92101, \$7,500 to the LWDA and \$2,500 to the PAGA Group Members Settlement distributed equally to the PAGA Members.

N. **Waiver of Right to Appeal.** Provided that the Court's approval of this PAGA Settlement is consistent with the material terms of this PAGA Agreement, Plaintiff, Defendant, and their respective counsel hereby waive any rights to appeal the approval of the PAGA

Settlement, and the Order therefore will become non-appealable at the time it is entered.

O. **Representative Group Release.** Upon the Effective Date, this settlement forever bars Releasing Parties, for the period spanning December 25, 2019, to that date of execution by all Parties of this PAGA Settlement Agreement, from pursuing the Released PAGA Claims. This release applies whether or not a given PAGA Settlement Group Member receives or cashes his or her individual PAGA Settlement Share.

P. **General Release.** Plaintiff, on her individual behalf only, agrees to a complete release of claims against the Released Parties, of any nature whatsoever, whether known or unknown, arising out of her employment with Defendants, to the fullest extent permitted by law. This includes, but is not limited to, claims involving those addressed in the Individual Settlement Agreement and those which relate or could relate to the PAGA claims asserted.

The Parties shall also be deemed to have expressly waived and relinquished to the fullest extent permitted by law the provisions, rights, and benefits of Civil Code § 1542, or any other similar provision under federal or state law that purports to limit the scope of a general release. The Parties have read Civil Code § 1542, which 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.

Q. **No Injunctive Relief.** As part of this PAGA Settlement, Defendants shall not be required to enter any consent decree, nor shall Defendants be required to agree to any provision of injunctive relief.

R. **Interim Stay of Proceedings.** The Parties agree to refrain from further litigation of this matter, except such proceedings necessary to implement and obtain entry of the Order granting approval of the PAGA Settlement. The Parties further agree that the mutual, voluntary cessation of litigation shall terminate if the PAGA Settlement is not approved by the Court.

S. **Continued Jurisdiction.** Pursuant to CCP §664.6, after entry of the request for dismissal of the Action, with prejudice, the Court shall have continued jurisdiction solely for purposes of addressing: (i) the interpretation and enforcement of the terms of the PAGA Agreement, (ii) PAGA Agreement administration matters, and (iii) such matters as may be appropriate under court rules or applicable law, or as set forth in this PAGA Agreement.

T. **Fair PAGA Settlement.** The Parties and their respective counsel believe and

warrant that this PAGA Agreement reflects a fair, reasonable, and adequate settlement of the Action reached through arms-length negotiations, taking all relevant factors into account, current and potential. The PAGA allegations were disputed and the subject of a motion to adjudicate filed by Defendant. The Parties agree that the settlement is not “unjust, arbitrary and oppressive, or confiscatory.”

U. **Tax Liability.** The PAGA Settlement Group Members, including Plaintiff, shall be responsible for the reporting and payment of any federal, state, and/or local income or other tax or any other withholdings, if any, on any of the payments made pursuant to this PAGA Agreement. Defendants make no representations, and it is understood and agreed that Defendants have made no representations, as to the taxability of any portions of the PAGA Settlement Shares to any PAGA Settlement Group Members.

V. **Miscellaneous Terms.**

1. **Entire PAGA Agreement.** This PAGA Agreement contains the entire agreement between the Parties regarding this PAGA Settlement and the Released PAGA Claims and constitutes the complete, final, and exclusive embodiment of their agreement with respect to the subject matter hereof, and all prior or contemporaneous understandings, representations, and statements, oral or written, are merged into and superseded by this PAGA Agreement. No other promises or agreements, either expressed or implied, shall be binding unless signed in writing by Plaintiff and Defendants.
2. **Attorney Authorization.** Plaintiff's Counsel and Defendants' Counsel warrant and represent that they are authorized by Plaintiff and Defendants, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this PAGA Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this PAGA Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the PAGA Settlement. If the Parties are unable to reach agreement on the form or content of any document needed to implement this PAGA Agreement, or on any supplemental provisions that may become necessary to effectuate the terms of this PAGA Agreement, the Parties may seek the assistance of the Court to resolve such disagreement.
3. **Modification of PAGA Agreement.** This PAGA Agreement, and any parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their successors-in-interest.
4. **PAGA Agreement Binding on Successors.** This PAGA Agreement will be binding upon, and inure to the benefit of, the successors of the Parties.
5. **Applicable Law.** All terms and conditions of this PAGA Agreement will

be governed by and interpreted according to the laws of the State of California, without giving effect to any conflict of law principles or choice of law principles.

6. **Cooperation in Drafting.** The Parties have cooperated in the drafting and preparation of this PAGA Agreement. This PAGA Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
7. **Execution in Counterparts.** This PAGA Agreement may be executed in counterparts which shall be deemed to be part of one original, and facsimile signatures and signatures transmitted by PDF shall be equivalent to original signatures.
8. **Severability.** If any term or provision of this PAGA Agreement is held to be invalid or unenforceable, the remaining portions of this PAGA Agreement will continue to be valid and will be performed, construed and enforced to the fullest extent permitted by law, and the invalid or unenforceable term will be deemed amended and limited in accordance with the intent of the Parties, as determined from the face of the PAGA Agreement, to the extent necessary to permit the maximum enforceability or validation of the term or provision.

V. EXECUTION

The Parties have duly authorized and caused this PAGA Settlement Agreement to be executed on the date(s) set forth below.

Dated: 09/02
_____, 2022

April Stanford
April Stanford

Dated: Sep 5, 2022
_____, 2022

Kevin J. Lewis
Kevin J. Lewis (Sep 5, 2022 12:57 PDT)
Kevin Lewis

Dated: Sep 5, 2022
_____, 2022

KJLEWIS ENTERPRISES, INC. dba POINT BREAK
CAFE

Kevin J. Lewis
Kevin J. Lewis (Sep 5, 2022 12:57 PDT)

By: Kevin Lewis

Title: President

APPROVED AS TO FORM

Dated: _____

Sept 2, 2022
Thomas M. Diachenko
Counsel for Plaintiff, April Stanford, individually and as
the PAGA representative

Dated: September 3, 2022

[Signature]
Natalie T. Nguyen
Counsel for Defendants, KJLewis Enterprises, Inc. dba
Point Break Café and Kevin Lewis

EXHIBIT A

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

April Stanford, individually and on behalf of
all other aggrieved employees and the state of
California,

Plaintiffs,

v.

KJLewis Enterprises, Inc. dba Point Break
Café' and Kevin Lewis,

Defendants.

**NOTICE OF PAGA SETTLEMENT AND
RELEASE OF CLAIMS**

**San Diego Superior Court Case No. 37-
2021-00027564-CU-OE-CTL**

To [NAME]:

The enclosed check is your share of a court-approved representative claim settlement between Plaintiff April Stanford ("Plaintiff") and Defendants KJLewis Enterprises, Inc. dba Point Break Café and Kevin Lewis ("Defendants"). Plaintiff filed a lawsuit against Defendants including certain claims as a representative of the State of California and other selected alleged "aggrieved employees" who performed work for Defendants between December of 2019, to September 2022 ("PAGA Claim Period"). Plaintiff asserted these claims pursuant to California Labor Code § 2698 *et seq.*, also known as the Private Attorneys General Act ("PAGA"), based on the alleged failure by Defendants to pay wages and premiums, provide meal and rest periods, provide itemized wage statements, and pay all wages earned upon separation. Defendants deny liability. This Notice is not an expression of any opinion by the Court as to the merits of Plaintiff's claims.

You are receiving this Notice because you were identified as being a possible subject of these PAGA claims and were employed by Defendants during the PAGA Claim Period. This settlement releases the Defendants from liability for PAGA penalties as it pertains to you and other selected alleged "aggrieved employees". This means that you are not able to pursue PAGA penalties in any lawsuit or proceeding against Defendants for the PAGA Claim Period. The enclosed check is your share of the settlement. Because this calculation was approved by the Court, the amount of your payment is final and cannot be changed. Enclosed with your check is an IRS Form 1099. Please note that no taxes were withheld from your payment, so it will be your responsibility to pay any taxes that may be due. You should consult with your own tax advisor for any questions you may have concerning any tax obligations that result from this payment. You are bound by the settlement and release of claims based on the Court's order of approval whether or not you cash or deposit the enclosed check.

PLEASE DO NOT CALL THE COURT ABOUT THIS NOTICE.

Do not call the Court should you have any questions about this notice. Settlement checks will be void 180 days after issuance if not deposited or cashed. In such event, Defendants shall direct all unclaimed funds to the California Labor Workforce Development Agency ("LWDA") under the unclaimed property laws in the name of the employee to whom the check was issued. If your check is lost or misplaced, you should contact Kevin Lewis immediately to request a replacement.

STANFORD - PAGA Settlement and Release

Final Audit Report

2022-09-05

Created:	2022-09-03
By:	Natalie Nguyen (natalie@nguyenlawcorp.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAAeir8-W2_1u1-eq7HKFMtRdMnxr8B7gfp

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-  Document created by Natalie Nguyen (natalie@nguyenlawcorp.com)
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-  Signer kevin@pointbreakcafe.com entered name at signing as Kevin J. Lewis
2022-09-05 - 7:57:39 PM GMT- IP address: 66.27.118.115
-  Document e-signed by Kevin J. Lewis (kevin@pointbreakcafe.com)
Signature Date: 2022-09-05 - 7:57:40 PM GMT - Time Source: server- IP address: 66.27.118.115
-  Agreement completed.
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