

D.LAW, INC.

Roman Shkodnik (SBN 285152)

Jean Hopkins Power (SBN 326509)

Enoch J. Kim (SBN 261146)

Arianna N. Razi (SBN 356930)

250 N. Madison Avenue, 2nd Floor

Pasadena, CA 91101-1639

Telephone: (818) 962-6465

Facsimile: (818) 962-6469

Emails: r.shkodnik@d.law, j.power@d.law, e.kim@d.law, a.razi@d.law

Attorneys for Plaintiff CONNOR JEROME O'BRIEN,
on behalf of himself and others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

CONNOR JEROME O'BRIEN, an
individual on behalf of himself and all
others similarly situated,

Plaintiff,

vs.

BLUESTAR RESORT & GOLF LLC, a
Delaware limited liability company, BLUE
STAR RESORT & GOLF, a business entity
of
unknown form; and DOES 1 through 50,
inclusive,

Defendants.

Case No.: 25STCV14623

Assigned For All Purposes To:

Honorable Bruce G. Iwasaki

Department: 11

**NOTICE OF MOTION AND PLAINTIFF'S
MOTION FOR APPROVAL OF PAGA
SETTLEMENT AGREEMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES**

*[filed concurrently with Declarations of Enoch J.
Kim, Henry Marin, Kimberly Sutherland, and Jarrett
Gorlick; and [Proposed] Order]*

Date: November 4, 2026

Time: 11:00 a.m.

Department: 11

Original Complaint Filed: May 16, 2025

First Amended Complaint Filed: July 21, 2025

Trial Date: None Set

1 **TO THE COURT AND DEFENDANT AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on November 4, 2026, at 11:00 a.m., or as soon thereafter as
3 the matter may be heard in Department 11 at the Superior Court for the County of Los Angeles located
4 at 312 North Spring Street, Los Angeles, CA 90012, Plaintiff Connor Jerome O'Brien ("Plaintiff"),
5 on behalf of himself and other similarly situated employees of BlueStar Resort & Golf, LLC
6 ("Defendant") ("Plaintiff and Defendant collectively referred to herein as "the Parties") will and
7 hereby does move this Court for entry of an order: (1) approving the representative action settlement
8 embodied in the Parties' PAGA Settlement Agreement ("Settlement Agreement" or "Settlement");
9 (2) approving Plaintiff's Counsel's application for attorney's fees and litigation costs and costs for
10 the Administrator; and (3) entering judgment approving the Settlement Agreement (the "Motion").

11 The grounds for this Motion, as set forth in the attached Memorandum of Points and
12 Authorities and supporting Declarations, are that this is a fair and reasonable settlement that benefits
13 the Aggrieved Employees and was the product of informed, non-collusive negotiations by the parties
14 who were represented by experienced and able counsel. *See Wershba v. Apple Computer, Inc.*, 91
15 Cal. App 4th 224, 244-45 (1996); *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1802 (1996);
16 Manual for Complex Litigation, (Second), § 30.44 (1985).

17 Defendant does not oppose this Motion. Plaintiff bases this Motion on this Notice and the
18 accompanying Memorandum of Points and Authorities, the Declarations of Enoch J. Kim, Kimberly
19 Sutherland, and Jarrett Gorlick, the complete pleadings, records, and files in the case, and such other
20 further oral and documentary evidence which may be submitted at or before the hearing on this
21 Motion.

22 DATED: September 28, 2026

D.LAW, INC.

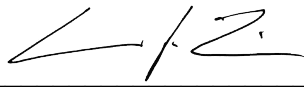
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24 By: 
25 Enoch J. Kim
26 Arianna N. Razi
27 Attorneys for Plaintiff Connor Jerome O'Brien
28 on behalf of himself and Aggrieved Employees

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	RELEVANT BACKGROUND AND PROCEDURAL HISTORY.....	2
A.	Litigation Overview and Procedural History	2
B.	Mediation and Settlement	3
III.	PAGA ACTIONS AND THE REQUIREMENTS.....	3
A.	The PAGA Statutory Scheme	3
B.	The Court Has Discretion When Awarding the Amount of Penalties.	4
C.	PAGA Authorizes the Payment of Plaintiff’s Counsel’s Fees and Costs	5
IV.	THE SETTLEMENT	5
V.	ARGUMENT.....	6
A.	The Court Should Approve the Settlement Agreement.	6
B.	The Risks of Moving Forward with Plaintiff’s PAGA Claim	7
C.	Trial of Plaintiff’s PAGA Claims Would Have Presented Many Hurdles.	7
D.	The Court May Have Exercised Its Discretion to Reduce Civil Penalties.	8
VI.	THE REQUEST FOR ATTORNEYS’ FEES AND COSTS	9
A.	The Court Should Approve the Requested Attorneys’ Fees and Costs	9
1)	Plaintiff’s Counsel Are Entitled to Fees from the Civil Penalties Recovered ..	9
2)	The Attorneys’ Fees Request Is Within the Range of Reasonable Fees.....	10
3)	Plaintiff’s Counsel’s Fee Request Is Reasonable Under the Lodestar	
Crosscheck.		11
4)	The Court Should Approve the Reimbursement of Plaintiff’s Counsel’s	
Costs.....		13
VII.	THE COURT SHOULD APPROVE THE COSTS OF ADMINISTRATION AND	
NOTICE.....		14
VIII.	CONCLUSION	14

TABLE OF AUTHORITIES

<i>Amalgamated Transit Union, Local 1756, AFL-CIO v. Superior Court</i> (2009) 46 Cal.4th 993	4
<i>Amaral v. Cintas Corp. No. 2</i> (2008) 163 Cal.App.4th 1157	4, 8
<i>Arias v. Super. Ct.</i> (2009) 46 Cal.4th 969.....	4, 5, 6
<i>Brown v. Ralphs Grocery Co.</i> (2011) 197 Cal. App. 4th 489.....	3
<i>Dunk v. Ford Motor Co.</i> (1996) 48 Cal. App. 4th 1794	10
<i>Folsom v. Butte County Ass’n of Gov’ts</i> (1982) 32 Cal. 3d 668.....	5
<i>Iskanian v. CLS Transp. Los Angeles, LLC</i> (2014) 59 Cal.4th 348.....	3, 9
<i>Ketchum v. Moses</i> (2001) 24 Cal.4th 1122	11
<i>Laffitte v. Robert Half Intern. Inc.</i> (2016) 205 Cal.Rptr.3d 555	9, 10
<i>Lealao v. Beneficial Calif., Inc.</i> (2000) 82 Cal. App. 4th 19	10
<i>Medina v. Vander Poel</i> (E.D. Cal. 2015) 523 B.R. 820.....	4
<i>Montano v. The Wet Seal Retail, Inc.</i> (2015) 232 Cal. App. 4th 1214	3
<i>Moreno v. Autozone, Inc.</i> (N.D. Cal. June 5, 2007) No. C05-04432 MJJ, 2007 WL 1650942	8
<i>Reyes v. Macy’s, Inc.</i> (2011) 202 Cal. App. 4th 1119	3
<i>Santisas v. Goodin</i> (1998) 17 Cal.4th 599	5
<i>Securitas Sec. Servs. USA, Inc. v. Sup. Ct. of San Diego Cnty.</i> (2015) 234 Cal. App. 4th 1109 3, 4	
<i>Serrano v. Priest</i> (1977) 20 Cal.3d 25	10, 11
<i>Thayer v. Wells Fargo Bank</i> (2001) 92 Cal. App. 4th 819	11
<i>Thurman v. Bayshore</i> (2012) 203 Cal. App. 4th 1112.....	8
<i>Wershba v. Apple Computer, Inc.</i> (2001) 91 Cal. App. 4th 224.....	10

STATUTES

Code of Civil Procedure § 1021.5.....	5
---------------------------------------	---

1	Labor Code § 2698, <i>et seq</i>	1
2	Labor Code § 2699(a)	4, 9
3	Labor Code § 2699(e)(2)	4, 8
4	Labor Code § 2699(f)(2)	4
5	Labor Code § 2699(k)(1)	5, 9
6	Labor Code § 2699(m)	5
7	Labor Code § 2699(s)(2)	1, 6
8		
9		
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Through this Motion, Plaintiff Connor Jerome O'Brien ("Plaintiff") requests that the Court
4 grant approval of the Parties' PAGA Settlement Agreement ("Settlement" or "Settlement
5 Agreement") reached between Plaintiff and Defendant BlueStar Resort & Golf, LLC ("Defendant")
6 ("Plaintiff and Defendant collectively referred to herein as "the Parties") to resolve claims brought
7 exclusively under the Private Attorneys General Act of 2004, Labor Code § 2698, *et seq.* ("PAGA")
8 seeking civil penalties for various alleged violations of the California Labor Code and Industrial Wage
9 Commission's Wage Orders. Pursuant to the Settlement, Defendant will pay a gross settlement
10 amount of **\$231,154.00**¹ (inclusive of the escalator) ("Gross Settlement Amount" or "GSA").
11 (Declaration of Enoch J. Kim ("Kim Decl."), ¶ 15, Exhibit 1, ¶¶ 1.10, 9.1.)

12 For purposes of the Settlement, the group of aggrieved employees included in the Settlement
13 is defined as: "all non-exempt employees employed by Defendant in California in the PAGA Period,
14 which is the period from May 16, 2024 to May 4, 2026" ("PAGA Members"). (Kim Decl., ¶ 14,
15 Exhibit 1, ¶¶ 1.19, 1.23.)

16 As further explained below, Plaintiff and his counsel ("Plaintiff's Counsel") believe that the
17 Settlement is fair, reasonable, and in the best interests of the State and the PAGA Members.
18 Accordingly, Plaintiff requests that the Court "review and approve" the Settlement pursuant to Labor
19 Code § 2699(s)(2). If the Court deems the Settlement fair and acceptable, Plaintiff requests that the
20 Court enter an order approving the Settlement in the form lodged herewith ordering the Parties and
21 Administrator to carry out the terms of the Settlement Agreement and enter a Final Judgment thereon.²
22
23

24
25 ¹ As discussed in the Declaration of Henry Marin filed concurrently herewith, the PAGA Member Data contained 547
26 PAGA Members who worked a total of 11,557 PAGA Pay Periods during the PAGA Period. Therefore, the escalator
27 clause has triggered pursuant to Paragraph 9.1 of the Settlement Agreement as the total PAGA Pay Periods are 0.06%
28 above the 11,550 threshold. Defendant elected to increase the Gross Settlement Amount. The Gross Settlement Amount
would increase by \$154.00, making the new Gross Settlement Amount \$231,154.00.

² Plaintiff has submitted the Settlement Agreement and this Motion to the LWDA by uploading it on the LWDA's website
concurrently with the filing of this Motion as required by Labor Code § 2699(s)(2). (Kim Decl., ¶ 55, Exhibit 6.)

II. RELEVANT BACKGROUND AND PROCEDURAL HISTORY

A. Litigation Overview and Procedural History

Pursuant to Labor Code section 2699.3, subd. (a), Plaintiff gave timely written notice to Defendant and the Labor and Workforce Development Agency (“LWDA”) by sending his PAGA Notice on May 16, 2025 (LWDA-CM-1099331-25). (Kim Decl., ¶ 4.) The LWDA did not respond to the PAGA Notice and did not notify Plaintiff that it intended to investigate Plaintiff’s allegations. (*Id.*)

On May 16, 2025, Plaintiff filed a class action complaint in the Los Angeles County Superior Court against Defendant alleging claims under the California Labor Code for (1) Failure to Pay Minimum Wages and for All Hours Worked; (2) Failure to Pay Wages and Overtime Under Labor Code § 510; (3) Meal Period Liability, Labor Code § 226.7; (4) Rest-Break Liability, Labor Code § 226.7; (5) Violation of Labor Code § 226(a); (6) Violation of Labor Code § 221; (7) Violation of Labor Code § 204; (8) Violation of Labor Code § 203; (9) Failure to Pay Split-Shift Premiums; (10) Failure to Maintain Records Required Under Labor Code §§ 1174, 1174.5; (11) Failure to Reimburse Necessary Business Expenses Under Labor Code § 2802; and (12) Violation of Business & Professions Code § 17200 *et seq.* (the “Action”). (*Id.* at ¶ 5.)

On July 21, 2025, 65 days after Plaintiff’s submission of the PAGA Notice, Plaintiff filed a First Amended Class Action Complaint, alleging a thirteenth cause of action for Penalties Under PAGA Labor Code § 2698 (“Operative Complaint”). (*Id.* at ¶ 6.)

On July 28, 2025, the Parties filed a Joint Stipulation to Dismiss Class Claims Without Prejudice, Submit Individual Labor Code and PAGA Claims to Arbitration, and Stay Action Pending Arbitration pursuant to an arbitration agreement Plaintiff signed while employed with Defendant which contained a class action waiver, which the Court granted on August 1, 2025. (*Id.* at ¶ 7.)

After initiating the Action, the Parties met and conferred about the claims and issues in this case, including the existence of an arbitration agreement with a class action waiver between the Parties, and agreed to explore resolution of this case through mediation with a highly respected mediator. (*Id.* at ¶ 9.)

1 **B. Mediation and Settlement**

2 Prior to mediation, Defendant provided data, numbers, and documents, including a company
3 handbook entitled “The Blue Book A Guide for Team Members,” a sampling of Aggrieved
4 Employees’ timekeeping and payroll data, information and documentation regarding Defendant’s
5 wage and hour policies, Plaintiff’s wage statements and personnel file, meal period and rest period
6 information, and a binding arbitration agreement signed by Plaintiff. (Kim Decl., ¶ 9.) Defendant also
7 provided information relating to the number of PAGA Members and PAGA Pay Periods. (*Id.*) The
8 information and data exchanged by Plaintiff and Defendant prior to and during mediation and
9 settlement negotiations were sufficient to reliably assess the merits of the Parties’ respective positions,
10 to compromise the issues on a fair and equitable basis, and to devise a formula for distribution of civil
11 penalties among the PAGA Members that took into consideration the strength of the PAGA claims.
12 (*Id.* at ¶ 10.)

13 With the assistance of a highly respected wage and hour mediator, the Parties agreed to the
14 general terms for settling this Action and worked together to finalize and execute the long-form
15 PAGA Settlement Agreement. (Kim Decl., ¶ 12.) The Parties believe and agree that the PAGA
16 Settlement provides for a fair, adequate, and reasonable resolution of the Action and have arrived at
17 the Settlement after extensive, arm’s length negotiations, considering all relevant factors, present and
18 potential. (Kim Decl., ¶ 13.) Plaintiff’s Counsel believes that the Settlement confers real benefits upon
19 the State and PAGA Members and that an independent review of the Settlement by the Court in the
20 approval process will confirm this conclusion. (*Id.*)

21 **III. PAGA ACTIONS AND THE REQUIREMENTS**

22 **A. The PAGA Statutory Scheme**

23 PAGA creates a means of “deputizing” citizens as private attorney generals to enforce the
24 Labor Code on behalf of the LWDA. *Brown v. Ralphs Grocery Co.* (2011) 197 Cal. App. 4th 489,
25 501, *review den.* (Oct. 19, 2011, No. S19”850), *cert. denied* 132 S.Ct. 1910 (Apr. 16, 2012). A
26 plaintiff may not — and Plaintiff here does not — bring a PAGA claim simply on his or her own
27 behalf as an individual claim, but “as the proxy or agent of the state’s labor law enforcement
28

1 agencies.” *Id.*, at 986; *see also Reyes v. Macy’s, Inc.* (2011) 202 Cal. App. 4th 1119, 1123-1124;
2 *Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal.4th 348, 380. When an aggrieved employee
3 brings a PAGA claim, “the government is always the real party in interest.” *Securitas Sec. Servs.*
4 *USA, Inc. v. Sup. Ct. of San Diego Cnty.* (2015) 234 Cal. App. 4th 1109, 1119; *Montano v. The Wet*
5 *Seal Retail, Inc.* (2015) 232 Cal. App. 4th 1214, 1222 (“[A] PAGA action is a dispute between an
6 employer and the State agency.”). Accordingly, a plaintiff that brings a PAGA claim represents “the
7 same legal right and interest as state labor law enforcement agencies,” in that the plaintiff seeks to
8 recover those civil penalties that the LWDA otherwise would assess and collect. *Arias v. Super. Ct.*
9 (2009) 46 Cal.4th 969, 986; Labor Code § 2699(a) & (f); *Securitas, supra*, 234 Cal. App. 4th at 1119;
10 *see also Medina v. Vander Poel* (E.D. Cal. 2015) 523 B.R. 820, 825 (holding “PAGA plaintiffs do
11 not have property rights in their cases.”), and *Amalgamated Transit Union, Local 1756, AFL-CIO v.*
12 *Superior Court* (2009) 46 Cal.4th 993, 1003.

13 Therefore, when a plaintiff brings a PAGA claim, he or she is properly viewed as a private
14 attorney general prosecuting violations of California’s labor laws on behalf of the state. An employee
15 may commence a PAGA action by fulfilling the requirements of California Labor Code §
16 2699.3(a)(1), which simply states: “The aggrieved employee or representative shall give written
17 notice by online filing with the Labor and Workforce Development Agency and by certified mail to
18 the employer of the specific provisions of this code alleged to have been violated, including the facts
19 and theories to support the alleged violation.” Labor Code § 2699.3(a)(1). As explained above,
20 Plaintiff complied with the notice requirements and properly pled a PAGA claim. (Kim Decl. ¶ 4.)

21 **B. The Court Has Discretion When Awarding the Amount of Penalties.**

22 PAGA provides for default penalties in the amount of \$100 for each violation per aggrieved
23 employee per pay period for the initial violation and \$200 for each violation per aggrieved employee
24 per pay period for each subsequent violation, and penalties in the amount of \$50 for each pay period
25 for the initial violation and \$100 for each pay period for each subsequent violation for claims brought
26 under Labor Code § 558 and the Wage Orders. Labor Code § 2699(f)(2). “PAGA penalties...are
27 mandatory, not discretionary” and must be awarded upon a showing that defendants violated the
28

1 Labor Code. *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1213. However, PAGA
2 provides the Court with discretion when it finds liability and awards these penalties as part of a
3 judgment. Labor Code § 2699(e)(2) states that “a court may award a lesser amount than the maximum
4 civil penalty amount specified by this part if, based on the facts and circumstances of the particular
5 case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or
6 confiscatory.”

7 **C. PAGA Authorizes the Payment of Plaintiff’s Counsel’s Fees and Costs**

8 The Private Attorneys General Act provides for the recovery of reasonable attorneys’ fees and
9 costs. Labor Code § 2699(k)(1) (“Any employee who prevails in any action shall be entitled to an
10 award of reasonable attorney’s fees and costs, including any filing fee paid...”). The monetary
11 settlement and programmatic relief make Plaintiff a “prevailing party.” *Folsom v. Butte County Ass’n*
12 *of Gov’ts* (1982) 32 Cal. 3d 668,671; *Santisas v. Goodin* (1998) 17 Cal.4th 599, 621. Even if Labor
13 Code § 2699(k)(1) did not authorize fees, Plaintiff would be entitled to fees as a Private Attorney
14 General under Code of Civil Procedure § 1021.5 because Plaintiff brought this action to, and the
15 action does, benefit the public. *Arias*, 46 Cal.4th at 985–986.

16 **IV. THE SETTLEMENT**

17 Pursuant to the Settlement Agreement, Defendant will pay the Gross Settlement Amount of
18 \$231,154.00 (inclusive of the escalator) on a non-reversionary basis. (Kim Decl., ¶ 15, Exhibit 1, ¶¶
19 1.10, 9.1.) Defendant shall fully fund the Gross Settlement Amount by transmitting the funds to the
20 Administrator no later than 30 days after the Effective Date, which is the date the Court grants
21 approval of the Parties’ PAGA Settlement. (Kim Decl., ¶ 15, Exhibit 1, ¶¶ 1.9, 4.3.)

22 Pending Court approval, the Gross Settlement Amount will be allocated as follows: (1)
23 attorneys’ fees in the amount of one-third of the Gross Settlement Amount, which is **\$77,051.33³**
24 (“Plaintiff’s Counsel Fees Payment”); (2) actual litigation costs incurred in this matter in the amount

25
26
27 ³ The Gross Settlement Amount increased due to the escalator clause being triggered. Therefore, pursuant to Paragraph
28 9.1 of the Settlement Agreement, the Plaintiff’s Counsel Fees Payment shall be one-third of the increased Gross Settlement
Amount.

of **\$17,458.10** (“Plaintiff’s Counsel Litigation Expenses Payment”); and (3) settlement administration costs of up to **\$6,990.00** to be paid to the Administrator, Apex Class Action Administration (“Apex”), for calculating settlement shares and preparing all checks and mailings (“Administration Expenses Payment”). (Kim Decl., ¶ 15, Exhibit 1, ¶¶ 3.2.1-3.2.2.) The remaining settlement amount of **\$129,654.57** (“Net Settlement Amount”) shall be allocated between the LWDA and the PAGA Members pursuant to Labor Code section 2699(m), with 65% (\$84,275.47) allocated to the LWDA (“LWDA PAGA Payment”) and 35% (\$45,379.10) allocated to the PAGA Members on a pro-rata basis (“Individual PAGA Payments”). (Kim Decl., ¶ 15, Exhibit 1, ¶ 3.2.3.)

The Individual PAGA Payments will be calculated according to the number of PAGA Pay Periods the PAGA Member worked for Defendant in California during the PAGA Period. (Kim Decl., Exhibit 1, ¶ 3.2.3.1.) Defendant represents that the number of PAGA Pay Periods through the date of the Parties’ mediation was estimated to be approximately 10,500 pay periods. (Kim Decl., ¶ 14, Exhibit 1, ¶ 9.1.) If the total number of PAGA Pay Periods exceeds that amount by more than ten percent (10%) (i.e. exceeds 11,550 PAGA Pay Periods), Defendant may elect to: (1) increase the Gross Settlement Amount proportionally by the actual number of PAGA Pay Periods in excess of 11,550, multiplied by the per pay period amount (the “per pay period amount” shall be calculated by dividing the Gross Settlement Amount by 10,500), or (2) cut the PAGA Period off at a date when the number of PAGA Pay Periods does not exceed 11,550. (*Id.*) Based on the information provided by Defendant, there are approximately 547 PAGA Members.⁴ (*Id.*)

Based on this information, and using a straight average, Plaintiff estimates that each PAGA Member will receive a payment of approximately \$82.96 (\$45,379.10 divided by 547 PAGA Members). (*Id.* at ¶ 15.)

V. ARGUMENT

A. The Court Should Approve the Settlement Agreement.

Pursuant to Labor Code § 2699(s)(2), the parties must obtain Court approval of a settlement

⁴ Based on the PAGA Member Data, Apex confirmed there are 547 PAGA Members.

1 of a PAGA action on a representative basis. However, as explained in *Arias v. Superior Ct.* (2009) 46
2 Cal.4th 969, the parties need not follow the class action procedural rules in PAGA cases and therefore
3 need not obtain approval of the PAGA settlement through a motion for preliminary or final approval.
4 Nonetheless, to comply with the requirements of Labor Code section 2699, Plaintiff submits this
5 Motion and the Settlement Agreement for Court approval.

6 **B. The Risks of Moving Forward with Plaintiff's PAGA Claim**

7 To help the Court evaluate the fairness of the Settlement, below is a discussion of the risk
8 evaluation made by Plaintiff and Plaintiff's Counsel. Plaintiff and Plaintiff's Counsel considered the
9 arguments and defenses asserted by Defendant at mediation and assessed the risks of moving forward
10 to trial and what this Court could do in awarding penalties even if Plaintiff prevailed at trial.

11 Plaintiff estimated that the maximum potential exposure on the PAGA claim is \$1,155,700.00,
12 calculated by multiplying the total number of PAGA Pay Periods (11,557) by \$100 per violation.
13 (Kim Decl., ¶ 20.) Plaintiff's calculation of the total potential exposure on the PAGA claim was based
14 on one PAGA penalty per PAGA Pay Period (i.e., Plaintiff did not stack the PAGA penalties in their
15 damages calculation). (*Id.*) Case law supports the notion that it is inappropriate to "stack" penalties
16 for multiple violations, particularly when those violations all stem from the same alleged "injury."
17 (*Id.* at ¶ 21.)

18 **C. Trial of Plaintiff's PAGA Claims Would Have Presented Many Hurdles.**

19 Defendant denied and continues to deny all of the claims made by Plaintiff in this Action and
20 contends that it acted at all relevant times in conformance with the law. (*Id.* at ¶ 18.) Defendant
21 contends that Plaintiff and PAGA Members were required to report all hours worked and were paid
22 for all hours worked, that Defendant paid all wages at the proper rates, and that any commissions or
23 bonuses paid were discretionary in nature and not includible in the calculation of the regular rate of
24 pay; that Defendant provided Plaintiff and PAGA Members with the reasonable opportunity to take
25 compliant meal periods and rest breaks and that any deviations were at the voluntary election of
26 Plaintiff and PAGA Members; that Defendant paid meal premiums for any non-compliant meal
27 breaks; that Defendant paid all wages due on a timely basis and using Labor Code compliant
28

1 instruments; that Defendant fully reimbursed Plaintiff and PAGA Members for reasonable business
2 expenses incurred; and that Defendant's wage statements complied with the law. (*Id.*) As a result,
3 Plaintiff's Counsel had to appropriately discount the amount recoverable from Defendant in a
4 settlement. (*Id.*)

5 **D. The Court May Have Exercised Its Discretion to Reduce Civil Penalties.**

6 "PAGA penalties...are mandatory, not discretionary" and the Court must award penalties
7 upon a showing that Defendant violated the Labor Code. *Amaral v. Cintas Corp. No. 2* (2008) 163
8 Cal. App. 4th 1157, 1213; *Moreno v. Autozone, Inc.* (N.D. Cal. June 5, 2007) No. C05-04432 MJJ,
9 2007 WL 1650942, at *3. However, PAGA does provide the Court with discretion when it awards
10 these penalties. Labor Code § 2699(e)(2) states that "a court may award a lesser amount than the
11 maximum civil penalty amount specified by this part if, based on the facts and circumstances of the
12 particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or
13 confiscatory." (*See also Thurman v. Bayshore* (2012) 203 Cal. App. 4th 1112 (reducing PAGA
14 penalties by 30% under this provision); *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504, 529
15 (2018) (affirming penalty reduction of 90% for practice that resulted in meal periods occasionally
16 starting minutes after the fifth hour of work); *Sanchez v. McDonald's Corp.* (2017), LASC Case No.
17 No. BC 499888 (98% reduction from \$41 million to \$775,000); *Ghrdilyan v. RJ Financial* (2012),
18 LASC Case No. BC430633 (94% reduction from \$5.4 million to \$325,000); *Fleming v. Covidien*,
19 Inc. (2011), USDC Case No. ED CV 10-01487-RGK (OPx) (87% reduction from \$2.8 million to
20 \$375,000).).

21 In departing from the \$100/pay period calculation to arrive at the \$231,154.00 Gross
22 Settlement Amount in this case, Plaintiff considered what the realistic potential exposure could be
23 and why the Court may reduce any eventual recovery at its discretion, including Defendant's defenses
24 to the claims and the potential manageability issues with PAGA claims at trial. (Kim Decl., ¶ 22.)
25 Based on those considerations, Plaintiff applied a discount of 75% to the maximum potential exposure
26 (which equates to \$25 penalty per pay period) to get a realistic potential exposure of \$288,925.00
27 (11,557 pay periods x \$25 penalty per pay period). (*Id.*)

1 The Gross Settlement Amount of \$231,154.00 is 80% of the realistic potential exposure of
2 \$288,925.00. (*Id.* at ¶ 23.) Plaintiff’s Counsel submits that this is an excellent result for the State and
3 PAGA Members in light of the strengths and weaknesses of the case and the risks and delays posed
4 by further litigation. (*Id.*)

5 **VI. THE REQUEST FOR ATTORNEYS’ FEES AND COSTS**

6 **A. The Court Should Approve the Requested Attorneys’ Fees and Costs**

7 Plaintiff’s Counsel is requesting an award of Plaintiff’s Counsel Fees Payment in the amount
8 of **\$77,051.33** and a Plaintiff’s Counsel Litigation Expenses Payment of **\$17,458.10** for litigation
9 costs incurred, which is less than the allocated amount of \$20,000.00 in the Settlement Agreement.
10 (Kim Decl., ¶ 24.)

11 Prior to the enactment of PAGA, when the State had the resources to seek civil penalties on
12 behalf of the public, it paid its employees (including their attorneys) their salaries and benefits for
13 pursuing such penalties. The Legislature enacted PAGA because the Labor Commissioner and other
14 agencies were hampered in their enforcement of civil penalties by inadequate funding and staffing
15 constraints. *Iskanian, supra*, 59 Cal.4th at 379. To facilitate broader enforcement, the Legislature
16 enacted PAGA, authorizing “aggrieved employees” to pursue civil penalties on the state’s behalf.
17 Labor Code § 2699(a). In creating PAGA, the Legislature expressly provided that the private counsel
18 retained by the Plaintiff to represent the public’s interest can recover fees if the Plaintiff is the
19 prevailing party. Labor Code § 2699(k)(1).

20 **1) Plaintiff’s Counsel Are Entitled to Fees from the Civil Penalties Recovered**

21 As previously indicated, this is *not* a class action. However, like a class action, it is a
22 representative action where instead of a class, the Plaintiff represents the State and the public. As a
23 matter of law and substance, counsel’s client is the public at large and the State of California. The
24 Plaintiff is simply a “proxy” for the State. On August 11, 2016, the California Supreme Court decided
25 *Laffitte v. Robert Half International*, which addressed, in a class action context, the correct
26 methodology for awarding fees in a representative action settlement. *Laffitte v. Robert Half Intern.*
27 *Inc.* (2016) 205 Cal.Rptr.3d 555, 573. The *Laffitte* Court approved awarding fees as a percentage of
28

1 the settlement fund.:

2 We join the overwhelming majority of federal and state courts in holding that when
3 class action litigation establishes a monetary fund for the benefit of the class
4 members, and the trial court in its equitable powers awards Class Counsel a fee out
of that fund, the court may determine the amount of a reasonable fee by choosing
an appropriate percentage of the fund created.

5 *Id.* at p. 573. Here, the \$231,154.00 common fund created for the benefit of the public is, with Plaintiff
6 as a proxy for the State, not unlike the fund created in class action settlements, with the public the
7 equivalent of the class referenced in *Laffitte*.

8 The Court, in *Laffitte*, pointed out several reasons why the percentage-of-the-fund method is
9 preferred over the alternative lodestar-multiplier approach in California courts:

10 The recognized advantages of the percentage method—including relative ease of
11 calculation, alignment of incentives between counsel and the class, a better
12 approximation of market conditions in a contingency case, and the encouragement
13 it provides counsel to seek an early settlement and avoid unnecessarily prolonging
the litigation [citations]—convince us the percentage method is a valuable tool that
should not be denied our trial courts.

14 *Id.* at 573.

15 An award of one-third of the civil penalties realized in the Settlement is appropriate here under
16 the “substantial benefit” theory. *Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794, 1810; *Wershba*
17 *v. Apple Computer, Inc.* (2001) 91 Cal. App. 4th 224, 254. That theory permits a litigant who has sued
18 in a representative capacity to recover fees from the beneficiaries of that representation. Courts
19 exercise their inherent equitable powers to assess attorneys’ fees against the entire fund, thereby
20 spreading the cost of those fees among the public who benefits from PAGA actions. *Serrano v. Priest*
21 (1977) 20 Cal.3d 25, 35 (*Serrano III*). As this approach “better approximates the workings of the
22 marketplace than the lodestar approach,” there is “a greater judicial willingness to evaluate a fee
23 award as a percentage of the recovery.” *Lealao v. Beneficial Calif., Inc.* (2000) 82 Cal. App. 4th 19,
24 31, 48.

25 2) The Attorneys’ Fees Request Is Within the Range of Reasonable Fees

26 Plaintiff’s Counsel at D.Law, Inc. are experienced employment attorneys with expertise in
27 wage and hour class and representative actions. (Kim Decl., ¶¶ 38-51). Throughout this case,
28

1 Plaintiff's Counsel have borne, and continue to bear, the entire risk and cost of litigation associated
2 with this Action on a purely contingency basis. (Kim Decl., ¶ 26.) As a result, Plaintiff's Counsel
3 have yet to receive any compensation for the amount of time and money invested in the case to date.
4 (*Id.*) Moreover, courts in this county and others have approved attorneys' fees awards in other PAGA
5 settlements on a common fund basis at higher percentages than the one-third Plaintiff is requesting
6 here. (Kim Decl., ¶ 29.)

7 For these reasons, Plaintiff's Counsel's requested fee of one-third of the Gross Settlement
8 Amount is well within the range of reasonableness and is fair compensation for undertaking this
9 complex and risky litigation on a contingent basis.

10 3) Plaintiff's Counsel's Fee Request Is Reasonable Under the Lodestar
11 Crosscheck.

12 Plaintiff's Counsel's fee request is reasonable when calculated using the lodestar method.
13 Under the lodestar method, a base fee amount is calculated from a compilation of time reasonably
14 spent on the case and the reasonable hourly compensation of the attorney. *Serrano v. Priest* (1977)
15 20 Cal.3d 25, 48. The court then may enhance this lodestar figure by a "multiplier" to account for a
16 range of factors, such as the novelty and difficulty of the case, its contingent nature, and the degree
17 of success achieved. *Id.* at 49; *see also Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132-36; *Thayer*
18 *v. Wells Fargo Bank* (2001) 92 Cal. App. 4th 819, 834, ("[t]here is no...rule limiting the factors that
19 may justify an exercise of judicial discretion to [adjust the] lodestar").

20 Throughout this case, Plaintiff's Counsel have borne, and continue to bear, the entire risk and
21 cost of litigation associated with this Action on a purely contingency basis. (Kim Decl., ¶ 26.) As a
22 result, Plaintiff's Counsel have yet to receive any compensation for the amount of time and money
23 invested in the case to date. (*Id.*)

24 Contingent-fee cases present the very real risk of working hundreds if not thousands of hours
25 that may never be entirely compensated. (Kim Decl., ¶ 27.) Moreover, while the case is being
26 litigated, counsel must pay overhead (salaries, rent, etc.), provide for their own expenses, and in most
27 cases pay the out-of-pocket expenses incurred on the plaintiff's behalf. (*Id.*) And the prospect of a
28

1 court-awarded fee does not greatly reduce the risk posed by these cases. (*Id.*) In many cases, the
2 prospect is nothing more than a potential that never materializes. (*Id.*) First, you must win the case to
3 get a court-awarded fee; even those cases that seem strongest at the onset can be lost and sometimes
4 are lost (*Id.*). Second, there are always pitfalls and unforeseen obstacles that arise along the way, such
5 as settlement offers that the client may accept without ensuring that we receive a reasonable fee or
6 changes in the law that substantially affect the merits of the case, or other uncertainties involving the
7 client. (*Id.*) Finally, there is the great risk inherent in advancing tens if not hundreds of thousands of
8 dollars in out-of-pocket expenses. (*Id.*) If that money were to be invested in some sort of financial
9 investment, one would expect a reasonable rate of return on that investment. (*Id.*) Here, however, the
10 best we can hope to recover is our money, and then only if we are substantially successful; if we are
11 not, all or part of this “investment” can be lost. (*Id.*)

12 Plaintiff’s Counsel is well acquainted with the contingent fee market throughout California,
13 particularly as it pertains to PAGA and class action litigation. (Kim Decl., ¶ 28.) Plaintiff’s Counsel
14 has negotiated numerous contingency-fee agreements with plaintiffs, both as individuals and as
15 representatives in class-action and PAGA suits. (*Id.*) Many of those agreements required that counsel
16 receive a fee under certain scenarios that exceed one-third of the recovery. (*Id.*) Plaintiff here signed
17 a retainer agreement indicating that Plaintiff’s Counsel could receive a fee under certain scenarios
18 that exceed one-third of the recovery, as much as 40%. (*Id.*) Plaintiff’s Counsel’s recent attorneys’
19 fees awards in similar wage-and-hour class and PAGA actions have been one-third of the recovery.
20 (*Id.*)

21 Moreover, Plaintiff’s Counsel spent substantial time on this matter. (Kim Decl., ¶ 33.) Aside
22 from drafting the initial complaint, Plaintiff’s Counsel conducted informal discovery, reviewed and
23 analyzed time and pay records, an employment handbook, Plaintiff’s personnel file, relevant policies,
24 and other documentation, researched the applicable law and potential defenses, constructed damage
25 models based on interpretations of California law, reviewed information provided by Defendant at
26 the mediation, engaged in meet and confer efforts with Defendant, drafted and revised the Settlement
27 Agreement, and drafted this Motion. (*Id.*)

Plaintiff's Counsel worked at least **146.4** hours on this matter and calculated the base lodestar at **\$143,171.70** at rates reflecting those currently earned in the marketplace. (Kim Decl., ¶¶ 33-35.) Senior Attorney Enoch J. Kim's records indicate at least 8.5 hours on this matter with an hourly rate of \$1,350. Senior Attorney Roman Shkodnik's records indicate at least 18.5 hours on this matter with an hourly rate of \$1,345. Associate Attorney Jean Hopkins Power's records indicate at least 68.1 hours on this matter with an hourly rate of \$1,263. Associate Attorney Arianna N. Razi's records indicate at least 20.1 hours on this matter with an hourly rate of \$559. Paralegal Katheryn Perez's records indicate at least 4.6 hours on this matter with an hourly rate of \$277. Paralegal Jonathan Morataya's records indicate at least 0.5 hours on this matter with an hourly rate of \$332. Paralegal Janet Linares' records indicate at least 0.1 hours on this matter with an hourly rate of \$277. Paralegal Anne Beuttel's records indicate at least 19.7 hours on this matter with an hourly rate of \$305. Paralegal Akiko Anna Iwata's records indicate at least 6.3 hours on this matter with an hourly rate of \$332. (Kim Decl., ¶¶ 34-35.) Thus, consideration of the lodestar method as a cross-check to the percentage figure sought strongly supports the reasonableness of the requested fee award. (Kim Decl., ¶ 36.)

Multiplying the total hours billed by Plaintiff's Counsel to the litigation by their reasonable hourly rates yields a lodestar of \$143,171.70, which is more than the \$77,051.33 in attorneys' fees Plaintiff's Counsel are requesting, resulting in a negative multiplier. (Kim Decl., ¶ 37.) This disparity is important to note because when plaintiffs seek an amount in fees that is less than what they actually billed, the requested fee amount is generally considered reasonable. (*Chun-Hoon v. McKee Foods Corp.* (N.D. Cal. 2010) 716 F. Supp. 2d 848, 854 [finding that, if the court is asked to apply a negative multiplier, it "suggests the negotiated fee award is reasonable and fair valuation of the services rendered to the class by Plaintiff's Counsel."]) (*Id.*) As such, Plaintiff's Counsel respectfully request the Court grant their request for \$77,051.33 in attorneys' fees.

4) The Court Should Approve the Reimbursement of Plaintiff's Counsel's Costs.

The litigation expenses incurred by Plaintiff's Counsel in this Action are also to be reimbursed under the Settlement Agreement. (Kim Decl., Exhibit 1, ¶ 3.2.1.) Plaintiff's Counsel incurred

1 \$17,458.10 in expenses in litigating this Action which is less than the allocated amount of \$20,000.00
2 in the Settlement Agreement. (Kim Decl., ¶ 24.) The lion's share of these costs were incurred in
3 connection with mediation, and the others listed were all reasonably incurred and necessary to the
4 prosecution of this Action. (*Id.*) Thus, Plaintiff's Counsel respectfully request the Court approve their
5 request for reimbursement in the amount of \$17,458.10.

6 **VII. THE COURT SHOULD APPROVE THE COSTS OF ADMINISTRATION AND**
7 **NOTICE**

8 The Parties agreed to use Apex as the third-party settlement administrator in this case. (Kim
9 Decl., ¶ 53.) Apex will be responsible for updating PAGA Members' addresses and calculating and
10 distributing the settlement checks, among other duties. (*Id.*) Apex capped its fees at \$6,990.00 for
11 administering the Settlement and based on Plaintiff's Counsel's experience in other class and PAGA
12 settlements, Apex's costs for administering this Settlement are fair and reasonable. (*Id.*)

13 **VIII. CONCLUSION**

14 Plaintiff and Plaintiff's Counsel submit that the proposed Settlement as documented in the
15 Settlement Agreement is fair, adequate, reasonable, and in the best interest of PAGA Members and
16 the State of California. Plaintiff respectfully requests that the Court approve the Settlement and order
17 the Parties to carry out the Settlement according to the terms of the Settlement Agreement and enter
18 the concurrently filed [Proposed] Order Granting Approval and Judgment to that end.

20 DATED: September 28, 2026

D.LAW, INC

22 By



23 Enoch J. Kim
24 Arianna N. Razi
25 Attorneys for Plaintiff Connor Jerome
26 O'Brien on behalf of himself and Aggrieved
27 Employees
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