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Attorneys for Plaintiff MICHAEL CHESTANG,
on behalf of himself and others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO – HALL OF JUSTICE**

MICHAEL CHESTANG, an individual on
behalf of himself and all others similarly
situated,

Plaintiff,

vs.

RNLAWAD, LLC a Texas limited liability
company; CAMPOS FOODS, LLC, a
California limited liability company;
MARANATHA FOODS, LLC, a California
limited liability company; BLUE SKIES
FOODS, LLC, a California limited liability
company; FAM GSM, LLC, a Texas
limited liability company; RAMZI AWAD,
an individual; and DOES 1 through 50,
inclusive,

Defendants.

Case No. 37-2024-00018557-CU-OE-CTL

Assigned for All Purposes To:

Hon. Carolyn M. Caietti

Dept: C-70

**NOTICE OF MOTION AND MOTION TO
APPROVE PAGA SETTLEMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES**

*[filed concurrently with Plaintiff's Notice of Motion
and Motion; Declaration of Enoch J. Kim'
Declaration of Jodey Lawrence; and [Proposed]
Order]*

Date: October 16, 2026

Time: 10:30 a.m.

Dept.: C-70

Complaint Filed: April 19, 2024

First Amended Complaint Filed: June 21, 2024

Trial date: None Set

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

2 **PLEASE TAKE NOTICE** that on October 16, 2026, at 10:30 a.m. in Department C-70
3 of the above-entitled Court, located at 330 West Broadway, San Diego, CA 92101, Plaintiff
4 Michael Chestang (“Plaintiff”), on behalf of himself, the State of California and all Aggrieved
5 Employees, will and hereby does move this Court pursuant to California Labor Code § 2698 *et*
6 *seq.* for an order approving the settlement agreement between Plaintiff and Defendant
7 RNLAOWAD, LLC (“Defendant”) which will accomplish the following: approve the representative
8 action settlement embodied in the Private Attorney General Act (“PAGA”) Settlement Agreement;
9 approve PAGA Counsel’s application for attorney’s fees and litigation costs and costs for the
10 Administrator; and enter judgment approving the PAGA 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
13 benefits the Aggrieved Employees and the State and was the product of informed, non-collusive
14 negotiations by the parties who were represented by experienced and able counsel. *See Wershba*
15 *v. Apple Computer, Inc.*, 91 Cal. App 4th 224, 244-45 (1996); *Dunk v. Ford Motor Co.*, 48 Cal.
16 App. 4th 1794, 1802 (1996); 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 Declaration of Enoch J. Kim,
19 Declaration of Jodey Lawrence of Phoenix Class Action Administration, the complete pleadings,
20 records and files in the case, and such other further oral and documentary evidence which may be
21 submitted at or before the hearing on this Motion.

22
23 DATED: September 15, 2026

D.LAW, INC.

24
25 By: /s/ Enoch J. Kim
26 Enoch J. Kim
27 Bradford Smith
28 Attorneys for Michael Chestang on behalf of
himself and Aggrieved Employees

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MEMORANDUM OF POINTS AND AUTHORITIES

1 **I. INTRODUCTION**

2 Through this Motion, Plaintiff Michael Chestang (“Plaintiff”) requests that the Court grant
3 approval of the PAGA Settlement Agreement (“Settlement” or “Settlement Agreement”) reached
4 between the parties to resolve claims brought exclusively under the Private Attorneys General Act of
5 2004, Labor Code § 2698, *et seq.* (“PAGA”) seeking civil penalties for various violations of the
6 California Labor Code and Industrial Wage Commission’s Wage Orders.

7 Pursuant to the Settlement, Defendant RNLAAD, LLC will pay the Gross Settlement
8 Amount of \$135,000.00. (Declaration of Enoch J. Kim (“Kim Decl.”), Exhibit 1, ¶ 3.1.) For purposes
9 of the Settlement, the group of aggrieved employees included in the Settlement is defined as follows:
10 All employees who worked for Defendant in California as non-exempt employees at any time during
11 the PAGA Period. (Exhibit 1, ¶ 1.4.) The PAGA Period is defined as the period from April 19, 2023,
12 through December 12, 2025. (Exhibit 1, ¶ 1.20.)

13 As detailed below and in the concurrently-filed Declaration of Enoch J. Kim, given the
14 amount Defendant will pay to effectuate the Settlement and the formula for distribution of the
15 Settlement funds, and coupled with the expense, complexity, risks, and likely duration of continued
16 litigation, including a potential appeal, Plaintiff and his counsel believe that the Settlement is fair,
17 reasonable and in the best interests of the State and the Aggrieved Employees (Kim Decl., ¶ 13), In
18 light of the Parties’ support for the settlement, and because it satisfies all the criteria for final
19 settlement approval under California law and will provide monetary recovery to the aggrieved
20 employees, approval of the settlement is appropriate and should be granted. Accordingly, Plaintiff
21 requests that the Court “review and approve” the Settlement pursuant to *Labor Code* § 2699(1)(2). If
22 the Court deems the Settlement fair and acceptable, Plaintiff requests that the Court enter an order
23 approving the Settlement in the form lodged herewith and ordering the parties and Administrator to
24 carry out the terms of the Settlement Agreement and enter a Final Judgment thereon.¹

25
26
27 ¹ Plaintiff has submitted this Motion to the LWDA by uploading it on the LWDA’s website
28 concurrently with the filing of this Motion as required by Labor Code § 2699(1)(2).
(Declaration of Enoch J. Kim (“Kim Decl.”) ¶ 59, Exhibit 7.)

II. RELEVANT BACKGROUND AND PROCEDURAL HISTORY

A. Litigation Overview and Procedural History

On April 19, 2024, Plaintiff commenced this Action by filing a Complaint alleging causes of action against Defendant for (1) Failure to Pay Minimum Wages; (2) Failure to Pay Wages and Overtime Under Labor Code § 510; (3) Meal Period Liability Under Labor Code § 226.7; (4) Rest-Break Liability Under Labor Code § 226.7 ; (5) Violation of Labor Code § 226(a); (6) Violation of Labor Code § 203; (7) Violation of Labor Code § 204; (8) Failure to Keep Required Payroll Records under Labor Code §§ 1174 and 1174.5; (9) Violation of Labor Code § 246; (10) Failure to Reimburse Necessary Business Expenses § 2802; and (11) Violation of Business & Professions Code § 17200 et seq; (“the Action”). (Kim Decl., ¶ 4.)

On April 19, 2024, Plaintiff filed a claim online with the California Labor & Workforce Development Agency (the “LWDA”) pursuant to Labor Code § 2699.3(a)(1) and gave notice to Defendant (“PAGA Notice”). The PAGA Notice sought civil penalties and alleged claims against Defendant for violations of the Labor Code alleged in the Action. The LWDA did not respond to the PAGA Notice and did not notify Plaintiff that it intended to investigate Plaintiff’s allegations. (Kim Decl., ¶ 5.)

On June 21, 2024, Plaintiff filed a First Amended Complaint alleging a twelfth cause of action for civil penalties under the PAGA (the “Operative Complaint”). On October 24, 2024, the Court ordered the class claims dismissed and Plaintiff’s individual Labor Code and PAGA claims to arbitration while Plaintiff’s non-individual PAGA representative claims remained stayed in Court. Therefore, the only remaining cause of action in the Operative Complaint is for civil penalties under the PAGA. (Kim Decl., ¶ 6.)

B. Mediation and Settlement

Prior to mediation, Plaintiff conducted comprehensive informal discovery and Defendant provided data and numbers and documents, including electronic payroll and timekeeping data for all alleged Aggrieved Employees, Employee Handbooks and other policies, information and documentation regarding Defendant’s wage and hour policies, expense report data and information, and meal period information. (Kim Decl., ¶ 7.) The information and data exchanged

1 by Plaintiff and Defendant prior to and during mediation and settlement negotiations were
2 sufficient to reliably assess the merits of the parties' respective positions, to compromise the issues
3 on a fair and equitable basis, and to devise a formula for distribution of civil penalties among the
4 Aggrieved Employees that took into consideration the strength of the PAGA claims. (*Id.*)

5 On December 12, 2025, the parties attended an all-day mediation with the Jason Marsili,
6 Esq. (Kim Decl., ¶ 8.) With the assistance of a highly respected wage and hour mediator, the parties
7 agreed to a settlement of the Action. (*Id.*) The general terms for settling the Action were first
8 memorialized in a Memorandum of Understanding and thereafter in the long-form Settlement
9 Agreement now before the Court for approval. (*Id.*)

10 The parties believe and agree that the Settlement provides for a fair, adequate, and reasonable
11 resolution of the Action and have arrived at the Settlement in extensive, arm's length negotiations,
12 considering all relevant factors, present and potential. (Kim Decl., ¶ 9.) PAGA Counsel believes that
13 the Settlement confers real benefits upon the State and the Aggrieved Employees and that an
14 independent review of the Settlement by the Court in the approval process will confirm this
15 conclusion. (*Id.*)

16 C. Defendant's Contentions

17 Defendant contends that it has numerous factual and legal defenses to Plaintiff's claims
18 and that Plaintiff faces substantial risk that the PAGA claims will be dismissed as unmanageable.
19 (Kim Decl., ¶ 16.) Defendant contends that this is so because presentation of liability as well as
20 the affirmative defenses will require numerous time-consuming individual inquiries for potential
21 aggrieved employees for meal and rest periods, all alleged off-the-clock time and alleged business
22 expense reimbursement. Defendant further contends that even if Plaintiff could point to a uniform
23 policy, which he cannot, whether and how that policy was applied to each employee vastly differs.
24 Defendant contends that Plaintiff articulates no practical means for addressing these individualized
25 issues for the represented employees in a manner consistent with Defendants' due process rights.
26 (*Id.*)

27 Furthermore, Defendant contends that Plaintiff's claims are unsupported because
28 Defendant maintains Brinker-compliant meal and rest break policies, pays employees for all hours

1 recorded, prohibits off-the-clock work, and reimburses reasonable and necessary business
2 expenses. (*Id.* at ¶ 17.) Defendant contends that the mediation sample time and pay records
3 establish an **extraordinarily high meal break compliance rate of 92.6%**, that Aggrieved
4 Employees signed a **valid meal break waiver**, that Defendant has a policy and **pays premium**
5 pay to the extent that an employee is unable to take a compliant meal break, and that it has already
6 paid out any potential premium pay owed. (*Id.*) Moreover, Defendant contends that **missed, short**
7 **or late meal breaks are automatically logged and paid** via Defendant’s electronic enhanced
8 timekeeping system. (*Id.*) Notably, beginning in June 2024 through the present, Defendant
9 contends that employees completed **daily electronic attestations** certifying that they have been
10 provided the opportunity to take all meal and rest periods to which they are entitled to. (*Id.*) As
11 such, under *Donohue v. AMN Services, LLC*, Defendant contends that any presumptive meal break
12 violation for which a premium has not been paid will be rebutted by the daily electronic
13 attestations. (*Id.*) In addition, Defendant contends that **all employees are provided with**
14 **Defendant’s policies** and the employee handbook, and also **go through an orientation process**
15 **and are trained** to comply with Defendant’s policies. Defendant contends that **supervisors are**
16 **separately and regularly trained** on wage and hour compliance. Defendant contends that it also
17 has **rigorous practices of daily and weekly review and monitoring of time punches for**
18 **compliance, and correcting time records to ensure all hours worked are paid.** (*Id.*)

19 Lastly, even assuming this action proceeds to trial and Plaintiff proves Labor Code
20 violations, Defendant contends that PAGA penalties would be substantially reduced, particularly
21 here as Defendant can—and will— establish consistent good faith efforts to comply with the Labor
22 Code. (*Id.* at ¶ 18.)

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

24 **A. The PAGA Statutory Scheme**

25 PAGA creates a means of “deputizing” citizens as private attorneys general to enforce the
26 Labor Code on behalf of the LWDA. *Brown v. Ralphs Grocery Co.* (2011) 197 Cal. App. 4th 489,
27 501, *review den.* (Oct. 19, 2011, No. S195850), *cert. denied* 132 S.Ct. 1910 (Apr. 16, 2012). A
28 plaintiff may not — and Plaintiff here does not — bring a PAGA claim simply on his or her own

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

14 Therefore, when a plaintiff brings a PAGA claim, he or she is properly viewed as a private
15 attorney general prosecuting violations of California’s labor laws on behalf of the state. An employee
16 may commence a PAGA action by fulfilling the requirements of California Labor Code §
17 2699.3(a)(1), which simply states: “The aggrieved employee or representative shall give written
18 notice by certified mail to the Labor and Workforce Development Agency and the employer of the
19 specific provisions of this code alleged to have been violated, including the facts and theories to
20 support the alleged violation.” Labor Code § 2699.3(a)(1). As explained above, Plaintiff complied
21 with the notice requirements and properly pled a PAGA claim. (Kim Decl. ¶¶ 4-6, Exhibit 2, PAGA
22 Letter).

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

24 The PAGA provides for penalties in the amount of \$100 for each violation per aggrieved
25 employee per pay period for the initial violation and \$200 for each violation per aggrieved employee
26 per pay period for each subsequent violation, and penalties in the amount of \$50 for each pay period
27 for the initial violation and \$100 for each pay period for each subsequent violation for claims brought
28 under Labor Code § 558 and the Wage Orders. Labor Code § 2699(f)(2). “PAGA penalties...are

mandatory, not discretionary” and must be awarded upon a showing that Defendants violated the Labor Code. *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1213. However, the PAGA provides the Court with discretion when it finds liability and awards these penalties as part of a judgment. Labor Code § 2699(e)(2) states that “a court may award a lesser amount than the maximum civil penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.”

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

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

IV. THE SETTLEMENT

Pursuant to the Settlement Agreement, Defendant will pay the Gross Settlement Amount of \$135,000.00 in full and final settlement of the PAGA claims alleged in the Action. (Kim Decl., Exhibit 1, ¶ 3.1).

Pending Court approval, the Gross Settlement Amount will be allocated as follows: (1) attorneys’ fees of one-third (1/3) of the Gross Settlement Amount which is **\$47,250.00** (“PAGA Counsel Fees Payment”); (2) actual litigation costs incurred in this matter in the amount not to exceed \$22,000, which total **\$18,731.72** (“PAGA Counsel Litigation Expenses Payment”); (3) administration costs of up to **\$4,250.00** to be paid to the Administrator, Phoenix Class Action Administration, for sending notices and for calculating settlement shares and preparing all checks and mailings (“Administration Expenses Payment”); and (4) PAGA Penalties in the amount of **\$64,768.28**, with 75% (\$48,576.21) allocated to the LWDA (“LWDA PAGA Payment”) and 25% (\$16,192.07)

1 allocated to the Aggrieved Employees (“Individual PAGA Payments”). (Kim Decl., ¶ 12.) The
2 Individual PAGA Payments will be calculated by (a) dividing the amount of the Aggrieved
3 Employees’ 25% share of PAGA Penalties by the total number of PAGA Pay Periods worked by all
4 Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved
5 Employee’s PAGA Pay Periods. (Kim Decl., Exhibit 1, ¶¶ 3.1 – 3.2.3.)

6 Defendant estimates that there were approximately 159 Aggrieved Employees who worked
7 2,500 Pay Periods during the PAGA Period. (*Id.* at ¶ 8.) If, on final calculation, the total number of
8 Pay Periods is greater than 10% of the 2,500 Pay Periods (i.e., an increase of more than 250 Pay
9 Periods), then Defendant shall have the option to either: (1) increase the GSA proportionally by the
10 Pay Periods worked in excess of 2,750 by multiplying the excess Pay Periods by the per Pay Period
11 value (for example, if the total number of Pay Periods increases by 15% over 2,500 Pay Periods, the
12 GSA will increase by 5%); or (2) end the PAGA Period to an earlier date such that the total Pay
13 Periods does not exceed 2,750. (*Id.*)

14 **V. ARGUMENT**

15 **A. The Court Should Approve the Settlement Agreement.**

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

22 **B. The Risks of Moving Forward with Plaintiff’s PAGA Claim**

23 To help the Court evaluate the fairness of the Settlement, below is a discussion of the risk
24 evaluation made by Plaintiff and PAGA Counsel. They considered the arguments and defenses
25 asserted by Defendant at mediation, assessed the risks of moving forward to trial and what this Court
26 could do in awarding penalties even if Plaintiff prevailed at trial.

27 Plaintiff estimated that the maximum realistic potential exposure on the PAGA claim is
28 \$250,000.00, calculated by multiplying the total number of pay periods (2,500 pay periods) by \$100

per violation. (Kim Decl., ¶ 20.) Plaintiff’s calculation of the total potential exposure on the PAGA claim was based on one PAGA penalty per pay period (i.e., Plaintiff did not stack the PAGA penalties in their damages calculation). (*Id.*) Case law supports the notion that it is inappropriate to “stack” penalties for multiple violations, particularly when those violations all stem from the same alleged “injury.” (*Id.* at ¶ 21.)

Moreover, Defendant would argue that Plaintiff is not entitled to recover PAGA penalties at the subsequent violation rate of \$200 per pay period. California’s appellate courts have held that “[u]ntil the employer has been notified that it is violating a Labor Code provision (whether or not the commissioner or court chooses to impose penalties), the employer cannot be presumed to be aware [of the violation]” and therefore, until a Court or the Commissioner issues a finding of a violation, the initial \$100 violation rate applies for each pay period in which the alleged violation occurred. *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1209; accord *Amalgamated Transit Union Local 1309 v. Laidlaw Transit Service, Inc.* (S.D. Cal. Aug. 10, 2009) 2009 WL 2448430, at *9 (“[u]nder California law, courts have held that employers are not subject to heightened penalties for subsequent violations unless and until a court or commissioner notifies the employer that it is in violation of the Labor Code”). Thus, Defendant would argue that even if Plaintiff were able to establish any violation of the Labor Code, the PAGA penalties assessed for these violations will be computed at the \$100 per pay period rate, as opposed to the \$200 per pay period rate at maximum.

C. Trial of Plaintiff’s PAGA Claims Would Have Presented Many Hurdles.

Defendant denied and continues to deny all of the claims made by Plaintiff in this Action and contends that it acted at all relevant times in conformance with the law. (*Id.* at ¶ 15.) Defendant contends that Plaintiff and the Aggrieved Employees were required to accurately report all hours worked; that Defendant paid for all hours worked; that Defendant prohibited Plaintiff and the Aggrieved Employees from working beyond their scheduled shifts; that any alleged off-the-clock work was performed without Defendant’s knowledge; that Defendant paid wages at the proper rates; that Defendant provided lawfully compliant meal and rest periods and that any deviations were at the voluntary election of Plaintiff and/or the Aggrieved Employees and not at the request of Defendant

1 or due to work requirements; that Defendant paid all wages due on a timely basis and using Labor
2 Code compliant instruments; that Defendant's wage statements complied with the law; and that
3 neither Plaintiff nor any Aggrieved Employees incurred reasonable business related expenses for
4 which they were not reimbursed. (*Id.*) As a result, Plaintiff had to appropriately discount the amount
5 recoverable from Defendant in a settlement. (*Id.*)

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

7 "PAGA penalties...are mandatory, not discretionary" and the Court must award penalties
8 upon a showing that Defendant violated the Labor Code. *Amaral v. Cintas Corp. No. 2* (2008) 163
9 Cal. App. 4th 1157, 1213; *Moreno v. Autozone, Inc.* (N.D. Cal. June 5, 2007) No. C05-04432 MJJ,
10 2007 WL 1650942, at *3. However, PAGA does provide the Court with discretion when it awards
11 these penalties. Labor Code § 2699(e)(2) states that "a court may award a lesser amount than the
12 maximum civil penalty amount specified by this part if, based on the facts and circumstances of the
13 particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or
14 confiscatory." See *Carrington v. Starbucks Corporation* (Cal. Ct. App. Nov. 27, 2018) No.
15 D072392 (published Dec. 19, 2018) (approving PAGA penalty reduction to \$5 per pay period);
16 accord *Atempa v. Pedrazzani* (2018) 27 Cal.App.5th 809; see also *Thurman v. Bayshore* (2012) 203
17 Cal. App. 4th 1112 (reducing PAGA penalties by 30% under this provision).

18 In arriving at the \$135,000.00 Gross Settlement Amount in this case, Plaintiff considered what
19 the realistic potential exposure could be and why the Court may reduce any eventual recovery at its
20 discretion, including Defendant's defenses to the claims and the potential manageability issues with
21 PAGA claims at trial. (Kim Decl., at ¶ 22.) Based on those considerations, Plaintiff conservatively
22 applied a discount of 50% to get a realistic potential exposure of \$125,000.00 (2,500 pay periods x
23 \$50 penalty per pay period). (*Id.*)

24 The Gross Settlement Amount of \$135,000.00 exceeds the realistic potential exposure of
25 \$125,000.00. PAGA Counsel submits that this is a fair and reasonable result for the State and
26 Aggrieved Employees in light of the strengths and weaknesses of the case and the risks and delays
27 posed by further litigation. (Kim Decl., at ¶ 23.)

28 ///

1 **VI. THE REQUEST FOR ATTORNEYS' FEES AND COSTS**

2 **A. The Court Should Approve the Requested Attorneys' Fees and Costs**

3 Pursuant to the Settlement Agreement, Plaintiff is requesting an award of attorneys' fees in
4 the amount of **\$47,250.00** and an award of litigation costs to PAGA Counsel of \$18,731.72.

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

14 1) PAGA Counsel Are Entitled to Fees from the Civil Penalties Recovered

15 As previously indicated, this is *not* a class action. However, like a class action, it is a
16 representative action where instead of a class, the Plaintiff represents the State and the public. As a
17 matter of law and substance, counsel's clients are the public at large and the State of California. The
18 Plaintiff is simply a "proxy" for the State. On August 11, 2016, the California Supreme Court decided
19 *Laffitte v. Robert Half International*, which addressed, in a class action context, the correct
20 methodology for awarding fees in a representative action settlement. *Laffitte v. Robert Half Intern.*
21 *Inc.* (2016) 205 Cal.Rptr.3d 555, 573. The *Laffitte* Court approved awarding fees as a percentage of
22 the settlement fund:

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

28 *Id.* at p. 573. Here, the \$135,000.00 common fund created for the benefit of the public is, with Plaintiff
as proxy for the State, not unlike the fund created in class action settlements, with the public the

1 equivalent of the class referenced in *Laffitte*.

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

4 The recognized advantages of the percentage method—including relative ease of
5 calculation, alignment of incentives between counsel and the class, a better
6 approximation of market conditions in a contingency case, and the encouragement
7 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.

8 *Id.* at 573.

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

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

20 PAGA Counsel at D.Law, Inc, are experienced employment attorneys with expertise in wage
21 and hour class and representative actions. (Kim Decl., ¶¶ 39-46.) Throughout this case, PAGA
22 Counsel have borne, and continue to bear, the entire risk and cost of litigation associated with this
23 Action on a purely contingency basis. (Kim Decl., ¶ 26.) As a result, PAGA Counsel have yet to
24 receive any compensation for the amount of time and money invested in the case to date. (*Id.*)
25 Moreover, courts in this county and others have approved attorneys’ fees awards in other PAGA
26 settlements on a common fund basis at higher percentages than the 35% Plaintiff is requesting here.
27 (*Id.* at ¶¶ 28-29.)

28 For these reasons, PAGA Counsel’s requested fee of 35% of the Gross Settlement Amount is

1 well within the range of reasonableness and is fair compensation for undertaking this complex and
2 risky litigation on a contingent basis.

3 3) PAGA Counsel's Fee Request Is Reasonable Under the Lodestar Crosscheck.

4 PAGA Counsel's fee request is reasonable when calculated using the lodestar method. Under
5 the lodestar method, a base fee amount is calculated from a compilation of time reasonably spent on
6 the case and the reasonable hourly compensation of the attorney. *Serrano v. Priest* (1977) 20 Cal.3d
7 25, 48. The court then may enhance this lodestar figure by a "multiplier" to account for a range of
8 factors, such as the novelty and difficulty of the case, its contingent nature, and the degree of success
9 achieved. *Id.* at 49; *see also Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132-36; *Thayer v. Wells*
10 *Fargo Bank* (2001) 92 Cal. App. 4th 819, 834, ("[t]here is no...rule limiting the factors that may
11 justify an exercise of judicial discretion to [adjust the] lodestar").

12 Here, the lodestar cross check establishes that the fees requested are less than the amount
13 warranted by lodestar analysis; therefore, the factors warranting positive multipliers do not come into
14 play, even though they were apparent in this case.

15 PAGA Counsel worked at least 100.9 hours on this matter and calculated the base lodestar at
16 \$83,020.30 at rates reflecting those currently earned in the marketplace. (Kim Decl. ¶ 35.) Senior
17 Attorney Enoch Kim's records indicate at least 13.6 hours on this matter with an hourly rate of \$1,350.
18 (*Id.*) Senior Attorney Natalie Haritounian's records indicate at least 28.9 hours on this matter with an
19 hourly rate of \$992. (*Id.*) Attorney Jonas Agle's records indicate at least 33.9 hours on this matter
20 with an hourly rate of \$610. (*Id.*) Attorney Bradford Smith's records indicate at least 24.5 hours on
21 this matter with an hourly rate of \$625. (*Id.*)

22 Thus, consideration of the lodestar method as a cross-check to the percentage figure sought
23 strongly supports the reasonableness of the requested fee award. PAGA Counsel respectfully request
24 the Court grant its request for \$47,250.00 in fees, which results in a negative multiplier.

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

26 The litigation expenses incurred by PAGA Counsel in this Action are also to be reimbursed
27 under the Settlement Agreement. PAGA Counsel seek \$18,731.72 in reimbursement for litigation
28 costs (Kim Decl., ¶ 24, Exhibit 3.) The lion's share of these costs were incurred in connection with

1 mediation, and the others listed were all reasonably incurred and necessary to the prosecution of this
2 Action. Thus, PAGA Counsel respectfully request the Court approve their request for reimbursement
3 in the amount of \$18,731.72 which is less than the amount allocated in the Settlement.

4 **VII. THE COURT SHOULD APPROVE THE COSTS OF ADMINISTRATION**

5 The parties agreed to use Phoenix Class Action Administration (“Phoenix”) as the third-party
6 administrator in this case. (Kim Decl., ¶ 48.) Phoenix will be responsible for updating the addresses
7 for the Aggrieved Employees, mailing the Notice of Settlement and calculating and distributing the
8 settlement checks, among other duties. (*Id.*) Phoenix capped its fees at \$4,250.00 for administering
9 the Settlement, and based on PAGA Counsel’s experience in other class and PAGA settlements,
10 Phoenix’s costs for administering this Settlement are fair and reasonable. (*Id.*)

11 **VIII. CONCLUSION**

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

18 DATED: September 15, 2026

D.LAW, INC

20 By: /s/ Enoch J. Kim

21 Enoch J. Kim

22 Bradford Smith

23 Attorneys for Michael Chestang on behalf of
24 himself and Aggrieved Employees
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