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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

SUN AE CHUNG, individually and in a representative capacity on behalf of other members of the general public similarly situated, Plaintiff, v. SUSHI KAMI, INC., a California Corporation; CHUNG SOOK, an individual; and DOES 1 through 25, inclusive, Defendant(s).	Case No. 37-2023-00047861-CU-OE-CTL **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S *UNOPPOSED* MOTION FOR PAGA SETTLEMENT APPROVAL** Hearing Date: April 25, 2025 Hearing Time: 8:30 a.m. Dept.: C-74 Judge: Hon. Blaine K. Bowman

I. <u>SUMMARY OF MOTION</u>

Plaintiff Sun Ae Chung ("Plaintiff"), respectfully submits the following Memorandum of Points and Authorities in support of her motion for an order granting approval of a PAGA Settlement. This motion is **<u>unopposed</u>**. The LWDA was timely notified of this proposal and does **not** object.

This case involves PAGA and individual claims. The PAGA Period begins on October 8, 2022. There are currently approximately **1056** pay periods and **30** aggrieved employees. Declaration of Katherine Krebs ("Krebs Decl." herein) ¶ 3. After several months of pre-filing investigation and following lengthy settlement discussions, the parties agreed to the terms of the proposed PAGA settlement. The parties have drafted and executed a formal PAGA Settlement Agreement. (Krebs Decl. ¶ 4; the "Agreement," please see **Exhibit A**.) The proposed terms of the settlement are as follows:

PAGA Members:	30
Settlement Fund ("GSA"):	$20,000.00
Claims Period:	October 8, 2022 until the date of approval
LWDA Payment:	$3,643.75
Attorney's Fees:	$6,666.67
Litigations Costs:	$6,000.00
Third Party Administrator:	$2,475.00
Resultant Net Settlement Fund:	$1,214.58

An "average" PAGA employee will receive a payment of approximately **$40.49.** Krebs Decl. ¶ 8.

Further, there are no restrictions for any of the 30 PAGA employees to file individual actions, as the settlement agreement only covers PAGA claims. Krebs Decl. ¶¶ 4, 8; Exhibit A III.6.

The Parties now move the court for approval of the PAGA Settlement Agreement.

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II. CONTROLLING LAW

PAGA "authorizes an employee to bring an action for civil penalties on behalf of the state against his or her employer for Labor Code violations committed against the employee and fellow employees." *Iskanian v. CLS Trans. Los Angeles* (2014) 59 Cal. 4th 348, 360. "To compensate for the lack of [a]dequate financing of essential labor law enforcement functions" the California legislature enacted PAGA to permit aggrieved employees to act as a private attorneys general to collect civil penalties for violations of the Labor Code." *Sakkab v. Luxottica* (9^{th} Cir. 2015) 803 F.3d 425.

Statutory penalties would be calculated according to Labor Code 2699(f)(2): If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars ($100) for each aggrieved employee per pay period for the initial violation and two hundred dollars ($200) for each aggrieved employee per pay period for each subsequent violation. However, some courts have interpreted Labor Code section 2699(f)(2) to impose the enhanced "subsequent violation penalty" or "heightened penalty" only after an employer has been notified that its conduct violates the Labor Code. *See Trang v. Turbine Engine Components Technologies Corp*., No. CV 12-07658 DDP (RZx), 2012 WL 6618854 (C.D. Cal. Dec. 19, 2012) ("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"); *Amalgamated Transit Union Local 1309, AFL-CIO v. Laidlaw Transit Services, Inc.*, No. 05cv1199-IEG-CAB, 2009 WL 2448430 (S.D. Cal. 2009) (finding that California law imposes the "subsequent violation penalty" only after an employer has been notified its conduct violates the Labor Code).

Further, a court may award a lesser amount than the maximum civil penalty amount 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. Lab. Code, § 2699(e)(2); *Amaral vs. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1213-1214; *See e.g., Fleming v. Covidien Inc*., 2011 WL 7563047, at *4 (C.D. Cal. Aug. 12, 2011)

"The superior court shall review and approve any settlement of any civil action filed pursuant to [PAGA]." Cal. Lab. Code § 2699(l). In doing so, the Court must consider whether the proposed "PAGA settlement is fair and adequate in view of the purposes and policies of the statute." *O'Conner v. Uber Techs., Inc.* 201 F. Supp. 3d 1110, 1135 (N.D. Cal. 2016).

The Court of Appeal has given guidance to trial courts in reviewing a PAGA settlement:

> We therefore hold **that a trial court should evaluate a PAGA settlement to determine whether it is fair, reasonable, and adequate in view of PAGA's purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws**. (See *Williams , supra* , 3 Cal.5th at p. 546, 220 Cal.Rptr.3d 472, 398 P.3d 69 [PAGA "sought to remediate present violations and deter future ones"]; *Arias , supra* , 46 Cal.4th at p. 980, 95 Cal.Rptr.3d 588, 209 P.3d 923 [the declared purpose of PAGA was to augment state enforcement efforts to achieve maximum compliance with labor laws].)

Moniz v. Adecco USA, Inc., (2021) 72 Cal. App. 4th 56, 77; *Accord Syed v. M-I LLC*, 2017 WL 714367 at *13 (E.D. Cal. Feb. 22, 2017)(concluding the "settlement related to plaintiffs' PAGA claims is fair, reasonable, and adequate in light of the public policy goals of PAGA.")

In deciding whether the settlement was "fair and adequate," the *Flores* court looked sought how the parties divvied up the civil penalties under Section 2699(i) of the California Labor Code. *Flores* at 1076-77. As the court felt the parties' division of penalties was fair and adequate pursuant to the statute, the court approved the settlement. *Id*.

III. <u>DISCUSSION</u>

The Parties reached the terms of their proposed PAGA Settlement Agreement, following the exchange of extensive information and employment records. Krebs Decl. ¶ 10. The Parties submit the proposed settlement of PAGA penalties is fair, adequate, and reasonable. *Id.* The Parties are unaware of any other cases that may be impacted by the PAGA Settlement. *Id.*

A. Settlement Terms

The group of allegedly aggrieved employees is defined as all individuals employed by Defendant Sushi Kami, Inc. in California and classified as "non-exempt" from October 8, 2022, through the date of the Court's Order granting approval of the PAGA Settlement (the "Aggrieved Employees"). Krebs Decl.¶ 4; Exhibit A: I.4.

Defendant agrees to pay the non-reversionary settlement amount of $20,000.0 in connection with the PAGA Settlement ("Gross Settlement Amount"). Apart from the employer's share of payroll taxes, Defendant shall not be required to pay more than the Gross Settlement Amount in connection with the PAGA Settlement. The Gross Settlement Amount is broken down as follows:

- $2,475.00 Settlement Administrator Fees;
- $6,666.67 Attorneys' Fees (1/3 of Gross Settlement Amount)
- $6,000.00 Costs of Litigation

After deducting the proposed amounts for Plaintiff's counsel's Attorneys' Fees and Costs, and the Settlement Administration Costs, from the Gross Settlement Amount, the amount remaining is defined as the "PAGA Payment." One hundred percent (100%) of the PAGA Payment shall be allocated to the payment of civil penalties under the PAGA (the "PAGA Payment"). Pursuant to the PAGA, seventy-five percent (75%) of the PAGA Payment, or $3,643.75 shall be allocated to the State of California Labor and Workforce Development Agency (the "LWDA PAGA Payment"), with the remaining twenty-five percent (25%) or $1,214.58, allocated to the PAGA Employees ("Aggrieved Employees PAGA Payments"). Krebs Decl. ¶ 11.

Given the above, the average payment to each individual PAGA Employee will be approximately **$40.49.** Krebs Decl. ¶ 8. Pursuant to the PAGA Settlement Agreement, any unclaimed funds will be tendered to the State of California Unclaimed Property Fund. Krebs Decl. ¶ 4; Exhibit A § IV.4.

Each PAGA Employee's pro rata share shall be determined based on the number of Eligible Pay Periods that he or she worked for Defendant during the PAGA Period, and shall be calculated as follows: (1) for PAGA Employees, the Aggrieved Employees PAGA Payments will be divided by the total number of eligible pay periods worked by all PAGA Employees during the PAGA Period, and the resulting figure will be referred to as the "Multiplier," and (2) each PAGA Employee's pro rata share of the Aggrieved Employees PAGA Payments will be determined by multiplying the Eligible Pay Periods that the PAGA Employee worked during the PAGA Period by the multiplier. Krebs Decl. ¶ 4; Exhibit A § III. 2(c). That amount shall be referred to as the PAGA Employee's "Individual PAGA Payments." Krebs Decl. ¶ 4; Exhibit A: Section I.11.

Each PAGA Employee's Individual PAGA Payment share will be treated as non-wage income and reported by the Settlement Administrator on IRS Form 1099 to the respective PAGA Employee and applicable governmental authority. Krebs Decl. ¶ 4; Exhibit A§ III.2.

Further, the Settlement only covers PAGA claims. Krebs Decl. ¶ 4, 9; Exhibit A: "Released Claims" § I.22. It does not cover PAGA Employee's individual wage and hour claims. *Id*.

The proposed notice of the PAGA Settlement to be sent to the allegedly aggrieved employees (the "Notice") along with his or her Individual PAGA Payment is attached to the Declaration of Daniella Doern as Exhibit D, paragraph 12.

The Settlement Administrator shall be responsible for: (a) processing the data provided by Defendant to be used in calculating PAGA Employees' Individual PAGA Payments; (b) preparing, printing and mailing the Notice to PAGA Employees, as well as following up with reasonable skip tracing; (c) calculating and mailing Individual PAGA Payments to PAGA Employees; (d) calculating and paying the employer's share of the applicable federal and state withholding tax; (e) filing any required federal and state tax forms and related agency reporting; (f) filing any required reports with the Court; and (g) any and all such tasks to which the Parties mutually agree, or which the Court orders the Settlement Administrator to perform. Krebs Decl. ¶ 13.

The Court will retain jurisdiction of this matter to enforce the settlement pursuant to C.C.P. section 664.6. Krebs Decl. ¶ 4; Exhibit A §III.10.

B. Basis for Request

The instant request is based on the fact that (1) the PAGA Period "cutoff date" is contingent on Court approval, any delay diminishes the amounts received by the impacted employees; (2) Notice to certain ex-employees may be adversely impacted by further delay (i.e. ex-employees may change their mailing address without filing a proper "forwarding address"). Krebs Decl. ¶ 14.

An expedient approval of this settlement will provide a direct benefit to the impacted employees at issue. The "fixes" provide a guarantee of future Labor Code compliance, and an immediate monetary benefit. It also allows Defendants (who admirably "stepped up" to address these issues) the opportunity to move on, and focus on future business. Krebs Decl. ¶ 15.

C. The Nature and Scope of the Alleged Violations

The Complaint alleges Labor Code violations which triggered penalties under the PAGA statute (Labor Code §2698 et seq.) (See ROA #1.) Plaintiff also alleged all employees were denied compliant meal and rest periods, minimum wages, overtime, accurate wage statements, reimbursements, and suffered waiting time violations. *Id.*

D. Analysis of Potential Liability, on a Representative Basis

One of the main issues of this litigation concerned allegations that Plaintiff was denied legally compliant meal and rest periods and was not paid for all overtime hours worked, including off the clock time. Krebs Decl. ¶ 16. Investigations completed by Plaintiff's counsel revealed that Defendant's timekeeping policies and employee records were not in compliance with California law. Krebs Decl. ¶ 17. However, these investigations also revealed that the "rate of violation" by Defendant was significantly less than 100%. *Id.* On many of those occasions, it appears that Defendant did, in fact, comply with the law. *Id.*

Based on the above, the maximum liability in a case of this type would be in the range of $40,000.00 to $100,000.00. Krebs Decl. ¶ 18.

Moreover, Plaintiff's counsel is aware of the Court's discretion to mitigate penalties pursuant to California Labor Code section 2699(e)(2). Krebs Decl. ¶ 19. Plaintiff's counsel agrees with the provision of the Labor Code, that penalties should be mitigated where violations are minimal (or rare), or where the employer makes significant efforts to comply with the Labor Code. Krebs Decl. ¶ 20.

The Parties agree that, given the number of violations at issue here and the employer's significant efforts to comply with the Labor Code, that this settlement represents a fair and adequate payment. Krebs Decl. ¶ 21.

E. Allocation of Penalties and *Limited Release* of Claims

While Labor Code section 2699(l) requires a court to "review and approve any penalty sought as part of the proposed settlement agreement," it does not provide any guidance as to what is considered an 'adequate' allocation of these penalties. However, the California Court of Appeal has upheld than an allocation of **zero dollars** to resolve PAGA claims may be appropriate:

> The Nordstrom Commission Cases settlement agreement identifies liability for PAGA penalties as a claim against Nordstrom and includes the following language: "The Parties allocate $0 to any Private Attorney General Act penalty claim under Labor Code § 2699 et seq., for penalty claims based on the Released Claims. During the Class Period, Nordstrom paid Putative Class Members' commissions pursuant to a commission plan that it contends was approved by the United States District Court in *Rios*, and consequently Nordstrom contends no claim for penalties of any nature is valid." Thus, the PAGA penalty claims were at issue, and were resolved as part of the overall settlement of the case. We find no abuse of discretion in the trial court's approval of the settlement agreement containing these terms.

Nordstrom Com'n Cases (2010) 186 Cal.App.4th 576, 589.

Moreover, District Courts in California have routinely approved settlement agreements, which allocate **less than 1%** of the overall settlement amount to PAGA penalties. *See, e.g.,Chu v. Wells Fargo Investments, LLC* (N. D. Cal., Feb. 16 2011, No. C 054526MHP) 2011 WL 672645 at *1 (approving allocation of $10,000 to park at penalties out of us $6,900,000 settlement); *see also Schiller v. David's Bridal, Inc.* (E.D. Cal June 11, 2012, No, 1:10 CV 00616 AWI) 2012 WL 2117001 at *14. (approving allocation of $7,500 to PAGA penalties out of $518,245 settlement).

Defendant, and its counsel, deserve credit for their willingness to consider – and address – the allegations. Specifically, Defense Counsel, (who have extensive experience and knowledge and "Wage and Hour" litigation) produced a substantial amount of documents and information necessary to evaluate the parameters of settlement. Following month-long informal negotiation at arms length, the parties have reached a proposed settlement. That includes a payment of penalties under PAGA. Krebs Decl. ¶ 22.

Here, the parties seek to allocate **$4,858.33** of the Gross Settlement Amount to the total value of the PAGA Penalties. Of this amount, the LWDA will receive $3,643.75. Krebs Decl. ¶ 4, 8; Exhibit A. The remaining $1,214.58 will be allocated and distributed among the PAGA Employees. *Id.* Each PAGA member would receive an average payment of approximately **$36.81.** *Id*.

The Parties contend the PAGA Settlement agreement amount is very, adequate, and reasonable. Krebs Decl. ¶ 21. Moreover, the PAGA Settlement does not bar any employee from pursuing their own individual Labor Code claims. Krebs Decl. ¶ 9. The release only applies to the PAGA claims for penalties, based upon the allegations in Plaintiff's operative complaint. *Id*.

F. The LWDA Was Notified Multiple Times, And Does ***Not*** Object.

On March 21, 2025, Plaintiff's counsel uploaded via the LWDA's electronic filing portal, the PAGA Settlement Agreement. Krebs Decl. ¶ 5. To date, Plaintiff's counsel has not received a notice that the LWDA would intervene. *Id*.

On March 21, 2025, Plaintiff's counsel uploaded via the LWDA's electronic filing portal, copies of this entire Motion, including the Notice, this supporting Memorandum, Declaration, Proposed Order & Judgment, and PAGA Settlement Agreement. Krebs Decl. ¶ 6. To date, Plaintiff's counsel has not received any opposition from the LWDA. *Id*. If the LWDA contacts Plaintiff's counsel at any time prior to the hearing, Plaintiff's counsel will provide an updated declaration to the Court. Krebs Decl. ¶ 7.

IV. CONCLUSION

The Parties have negotiated a fair, adequate and reasonable settlement of the PAGA claims. For the foregoing reasons, Plaintiff respectfully requests that this Court issue an Order Granting their Motion for Approval of the PAGA Settlement.

GRUENBERG LAW

Dated: March 21, 2025

By: ______________________________
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