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**FIDELIO ROBLES, SERGIO
MOLINA, and CRELLYN
COLLISTER, individually and in a
representative capacity on behalf of
other members of the general public
similarly situated,**

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

JOHN NOLAN, FIDELIO ROBLES,
SERGIO MOLINA, CRELLYN
COLLISTER, individually and in a
representative capacity on behalf of other
members of the general public similarly
situated

Plaintiff(s),

vs.

SWAMI'S 101 LLC, a California limited
liability company, JAIME OSUNA, an
individual; and DOES 1 through 10,
inclusive,

Defendants.

Case No. 37-2023-00045842-CU-OE-CTL

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFFS' UNOPPOSED MOTION
FOR PAGA SETTLEMENT APPROVAL**

Hearing Date: March 21, 2025

Hearing Time: 9:00 a.m.

Dept.: C-60

Judge: Hon. Matthew C. Braner

1 **I. SUMMARY OF MOTION**

2 Plaintiffs SERGIO MOLINA, FIDELIO ROBLES, and CRELLYN COLLISTER
3 (“Plaintiffs”), respectfully submit the following Memorandum of Points and Authorities in support
4 of their motion for an order granting approval of a PAGA Settlement. This motion is **unopposed**.
5 The LWDA was timely notified of this proposal and does **not** object.

6 This case involves PAGA and individual claims. The PAGA Period begins on August 16,
7 2022. There are approximately **1,184** pay periods and **17** aggrieved employees. Declaration of
8 Daniella Doern (“Doern Decl.” herein) ¶ 3. After several months of pre-filing investigation and
9 following lengthy settlement discussions, the parties agreed to the terms of the proposed PAGA
10 settlement. The parties have drafted and executed a formal PAGA Settlement Agreement. (Doern
11 Decl. ¶ 4; the “Agreement,” please see **Exhibit A**.) The proposed terms of the settlement are as
12 follows:

13	PAGA Members:	17
14	Settlement Fund (“GSA”):	\$81,000.00
15	Claims Period:	August 16, 2022 until the date of approval
16	LWDA Payment:	\$36,000.00
17	Attorney’s Fees:	\$27,000.00
18	Litigations Costs:	\$4,000.00
19	Third Party Administrator:	\$2,000.00
20	Resultant Net Settlement Fund:	\$12,000.00

21 An “average” PAGA employee will receive a payment of approximately **\$705.88**. Doern
22 Decl. ¶ 8.

23 Further, there are no restrictions for any of the 17 PAGA employees to file individual
24 actions, as the settlement agreement only covers PAGA claims. Doern Decl. ¶¶ 4, 8; Exhibit A
25 III.36.

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

27 ///

28 ///

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* (9th 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

1 proposed “PAGA settlement is fair and adequate in view of the purposes and policies of the
2 statute.” *O’Conner v. Uber Techs., Inc.* 201 F. Supp. 3d 1110, 1135 (N.D. Cal. 2016).

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

4 We therefore hold **that a trial court should evaluate a PAGA settlement to**
5 **determine whether it is fair, reasonable, and adequate in view of PAGA’s**
6 **purposes to remediate present labor law violations, deter future ones, and to**
7 **maximize enforcement of state labor laws.** (See *Williams* , *supra* , 3 Cal.5th at
8 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].)

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

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

16 **III. DISCUSSION**

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

21 **A. The Substitute PAGA Plaintiffs and Release Period Are Proper**

22 This case was originally filed with John Nolan as the sole plaintiff. On December 21, 2023 the
23 complaint was amended to add Messrs. Molina and Robles as individuals. On February 6, 2024,
24 Plaintiffs’ counsel sent and submitted an amended PAGA letter adding Messrs. Molina and Robles,
25 and Ms. Collister as PAGA representatives. The amended letter was nearly identical to the original
26 letter except the addition of the additional representatives.

27 The Parties seek to release all PAGA claims from August 16, 2022 (the filing of the initial
28 PAGA letter) to the date of approval.

1 The Parties stipulated to add Robles, Molina and Collister in a Second Amended Complaint as
2 authorized PAGA representatives. This amendment, and the amended PAGA letter, permit Robles,
3 Molina and Collister to release PAGA claims from August 16, 2022, to present. This issue was
4 taken up by the Fourth District Court of Appeal in *Amaro v. Anaheim Arena Management LLC*
5 (2021) 69 Cal.App.5th 521, 541-2. In that case, the employee sought to release PAGA claims
6 beyond the one-year limitations period of her own claim (her claim arose on or after 2/21/2016 and
7 she sought to release claims dating back to 12/5/2010). The court reasoned:

8 In civil cases, the statute of limitations is not jurisdictional but merely serves a procedural
9 function and constitutes an affirmative defense that is waived unless pleaded and proved.”
10 (People v. Williams (1999) 77 Cal.App.4th 436, 457–458; see Brown, supra, 28 Cal.App.5th at
11 pp. 842–843 [“A defendant waives a statute of limitations defense by failing to plead it in an
12 answer or raise it as a ground of a general demurrer”].) **If the Legislature had intended to
13 make the limitations period for PAGA jurisdictional rather than an affirmative defense,
14 it would have said so.** (See Kim v. Reins International California, Inc. (2020) 9 Cal.5th 73,
15 85.) **Since it did not, we must presume the general rule applies. As such, it was within
16 [Defendant]'s discretion to waive its statute of limitations defense so [Plaintiff] could
17 release class members' PAGA claims dating back to December 2010.** And even if PAGA's
18 statute of limitations were jurisdictional, that would not bar the court from approving a release
19 of claims outside the limitations period. (Villacres, supra, 189 Cal.App.4th at p. 586.)

20 ...

21 Further, nothing in the purpose of the statute convinces us that plaintiffs should be barred from
22 agreeing to such a release of PAGA claims. **PAGA ““is fundamentally a law enforcement
23 action,” not one for the benefit of private parties...** The “civil penalties recovered on the
24 state's behalf are intended to ‘remediate present violations and deter future ones,’ not to redress
25 employees' injuries.” (Ibid.)

26 Moreover, in *Hutchenson v. Superior Court* (2022) 74 Cal.App.5th 932 the relation back
27 doctrine was applied where a substitute plaintiff's PAGA letter was substantially the same as the
28 original plaintiff's PAGA letter. In that case, the second plaintiff was able to look back to the claims
of the first plaintiff and release those claims as well. Similarly here, the PAGA letter filed by
Molina, Robles, and Collister is nearly identical to the letter filed on behalf of Nolan. As such, they
would be able to look back to Nolan's claims.

In *Turrieta v. Lyft* (2024) 16 Cal.5th 664 the California Supreme Court discussed the purpose of
PAGA (echoing much of the reasoning from *Amaro* and *Kim*) in holding that PAGA did not

1 authorize another plaintiff to intervene given that plaintiffs in a PAGA action are only
2 representatives of the state and an employee "deputized" by the state may settle claims on its behalf.

3 The PAGA statute was recently amended, however the filing of the PAGA letters in this case
4 were before the changes were enacted, thus the PAGA changes would not have any bearing on this
5 analysis. Even if it did, given the representative nature of PAGA and case law on relation back
6 doctrine in the PAGA context, we do not believe the amendments would affect the ability to settle
7 claims beyond the limitation period.

8 Since Messrs. Molina, Robles, and Ms. Collister are settling the PAGA claims on behalf of the
9 State, and the settlement is fair, reasonable, and made at arm's length, the Court is within its
10 discretion to approve a PAGA settlement of PAGA claims from August 2022 to present.

11 For these reasons, a settlement of \$81,000 is fair and reasonable. Approval of this settlement
12 would dispose of all claims in this litigation, except Mr. Nolan's individual (non-PAGA) wage
13 claims.

14 **B. Settlement Terms**

15 The group of allegedly aggrieved employees is defined as all individuals employed by
16 Defendant Swami's 101 LLC in California and classified as "non-exempt" from August 16, 2022,
17 through the date of the Court's Order granting approval of the PAGA Settlement (the "Aggrieved
18 Employees"). Doern Decl.¶ 4; Exhibit A: I.2.

19 Upon the Effective Date (Doern Decl.¶ 4; Exhibit A: I.4.), Defendant agrees to pay the non-
20 reversionary settlement amount of \$81,000.00 in connection with the PAGA Settlement ("Gross
21 Settlement Amount"). Apart from the employer's share of payroll taxes, Defendant shall not be
22 required to pay more than the Gross Settlement Amount in connection with the PAGA Settlement.
23 The Gross Settlement Amount is broken down as follows:

- 24 • \$2,000.00 Settlement Administrator Fees;
- 25 • \$27,000.00 Attorneys' Fees (1/3 of Gross Settlement Amount)
- 26 • \$4,000 Costs of Litigation

27 After deducting the proposed amounts for Plaintiffs' counsel's Attorneys' Fees and Costs, and
28 the Settlement Administration Costs, from the Gross Settlement Amount, the amount remaining is

1 defined as the “PAGA Payment.” One hundred percent (100%) of the PAGA Payment shall be
2 allocated to the payment of civil penalties under the PAGA (the “PAGA Payment”). Pursuant to the
3 PAGA, seventy-five percent (75%) of the PAGA Payment, or \$36,000 shall be allocated to the State
4 of California Labor and Workforce Development Agency (the “LWDA PAGA Payment”), with the
5 remaining twenty-five percent (25%) or \$12,000, allocated to the PAGA Employees (“Aggrieved
6 Employees PAGA Payments”). Doern Decl. ¶ 11.

7 Given the above, the average payment to each individual PAGA Employee will be
8 approximately **\$705.88**. Doern Decl. ¶ 8. Pursuant to the PAGA Settlement Agreement, any
9 unclaimed funds will be tendered to the State of California Unclaimed Property Fund. Doern Decl. ¶
10 4; Exhibit A § IV.49.

11 Each PAGA Employee’s pro rata share shall be determined based on the number of Eligible
12 Pay Periods that he or she worked for Defendant during the PAGA Period, and shall be calculated
13 as follows: (1) for PAGA Employees, the Aggrieved Employees PAGA Payments will be divided
14 by the total number of eligible pay periods worked by all PAGA Employees during the PAGA
15 Period, and the resulting figure will be referred to as the “Multiplier,” and (2) each PAGA
16 Employee’s pro rata share of the Aggrieved Employees PAGA Payments will be determined by
17 multiplying the Eligible Pay Periods that the PAGA Employee worked during the PAGA Period by
18 the multiplier. Doern Decl. ¶ 4; Exhibit A § III. 34(e). That amount shall be referred to as the PAGA
19 Employee’s “Individual PAGA Payments.” Doern Decl. ¶ 4; Exhibit A: Section I. 6.

20 Each PAGA Employee’s Individual PAGA Payment share will be treated as non-wage income
21 and reported by the Settlement Administrator on IRS Form 1099 to the respective PAGA Employee
22 and applicable governmental authority. Doern Decl. ¶ 4; Exhibit A § IV.49.

23 Further, the Settlement only covers PAGA claims. Doern Decl. ¶ 4, 9; Exhibit A: “Released
24 Claims” § I.17. It does not cover PAGA Employee's individual wage and hour claims. *Id.*

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

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

9 The Court will retain jurisdiction of this matter to enforce the settlement pursuant to C.C.P.
10 section 664.6. Doern Decl. ¶ 4; Exhibit A §§ III.45.

11 **C. Basis for Request**

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

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

20 **D. The Nature and Scope of the Alleged Violations**

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

25 **E. Analysis of Potential Liability, on a Representative Basis**

26 One of the main issues of this litigation concerned allegations that Plaintiffs were denied legally
27 compliant meal and rest periods and was not paid for all overtime hours worked. Doern Decl. ¶ 16.
28 Investigations completed by Plaintiffs' counsel revealed that Defendant's timekeeping policies and

1 employee records were not in compliance with California law. Doern Decl. ¶ 17. However, these
2 investigations also revealed that the “rate of violation” by Defendant was significantly less than
3 100%. *Id.* On many of those occasions, it appears that Defendant did, in fact, comply with the law.
4 *Id.*

5 Based on the above, the maximum liability in a case of this type would be in the range of
6 \$50,000.00 to \$100,000.00. Doern Decl. ¶ 18.

7 Moreover, Plaintiffs’ counsel is aware of the Court’s discretion to mitigate penalties pursuant to
8 California Labor Code section 2699(e)(2). Doern Decl. ¶ 19. Plaintiffs’ counsel agrees with the
9 provision of the Labor Code, that penalties should be mitigated where violations are minimal (or
10 rare), or where the employer makes significant efforts to comply with the Labor Code. Doern Decl.
11 ¶ 20.

12 The Parties agree that, given the number of violations at issue here, that this settlement
13 represents a fair and adequate payment. Doern Decl. ¶ 21.

14 **F. Allocation of Penalties and *Limited Release* of Claims**

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

19 The Nordstrom Commission Cases settlement agreement identifies liability for PAGA
20 penalties as a claim against Nordstrom and includes the following language: “The
21 Parties allocate \$0 to any Private Attorney General Act penalty claim under Labor Code
22 § 2699 et seq., for penalty claims based on the Released Claims. During the Class
23 Period, Nordstrom paid Putative Class Members’ commissions pursuant to a
24 commission plan that it contends was approved by the United States District Court in
25 *Rios*, and consequently Nordstrom contends no claim for penalties of any nature is
26 valid.” Thus, the PAGA penalty claims were at issue, and were resolved as part of the
27 overall settlement of the case. We find no abuse of discretion in the trial court’s
28 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*

1 *Fargo Investments, LLC* (N. D. Cal., Feb. 16 2011, No. C 054526MHP) 2011 WL 672645 at *1
2 (approving allocation of \$10,000 to park at penalties out of us \$6,900,000 settlement); *see also*
3 *Schiller v. David's Bridal, Inc.* (E.D. Cal June 11, 2012, No. 1:10 CV 00616 AWI) 2012 WL
4 2117001 at *14. (approving allocation of \$7,500 to PAGA penalties out of \$518,245 settlement).

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

11 Here, the parties seek to allocate **\$48,000.00** of the Gross Settlement Amount to the total value
12 of the PAGA Penalties. Of this amount, the LWDA will receive **\$26,000.00**. Doern Decl. ¶ 4, 8;
13 Exhibit A § III.3. The remaining **\$12,000.00** will be allocated and distributed among the PAGA
14 Employees. *Id.* Each PAGA member would receive an average payment of approximately **\$705.88**.
15 *Id.*

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

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

21 On February 25, 2025, Plaintiffs’ counsel uploaded via the LWDA’s electronic filing portal, the
22 PAGA Settlement Agreement. Doern Decl. ¶ 5. To date, Plaintiffs’ counsel has not received a
23 notice that the LWDA would intervene. *Id.*

24 On February 25, 2025, Plaintiffs’ counsel uploaded via the LWDA’s electronic filing portal,
25 copies of this entire Motion, including the Notice, this supporting Memorandum, Declaration,
26 Proposed Order & Judgment, and PAGA Settlement Agreement. Doern Decl. ¶ 6. To date,
27 Plaintiffs’ counsel has not received any opposition from the LWDA. *Id.* If the LWDA contacts
28

1 Plaintiffs' counsel at any time prior to the hearing, Plaintiffs' counsel will provide an updated
2 declaration to the Court. Doern Decl. ¶ 7.

3 **IV. CONCLUSION**

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

7
8
9 Dated: 2/25/2025

GRUENBERG LAW

10 By: _____



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Katherine Krebs

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