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DEC 05 2022

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN BERNARDINO  
SAN BERNARDINO DISTRICT

FILED

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN BERNARDINO  
SAN BERNARDINO DISTRICT

FEB 09 2023

BY   
JESSICA MORALES, DEPUTY

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**COUNTY OF SAN BERNARDINO**

SALVADOR GONZALEZ, individually, and  
on behalf of all other aggrieved employees,

PLAINTIFFS,

v.

SUNNYSLOPE TREE FARM, INC., a  
California corporation; and DOES 1 through  
50, inclusive,

DEFENDANT.

Case No.: CIVSB2126147

[Assigned for all purposes to Hon. David  
Cohn, Dept. S-26]

**[PROPOSED] ORDER AND JUDGMENT  
APPROVING PAGA SETTLEMENT**

Action Filed: September 3, 2021

Trial Date: None Set

1 **[PROPOSED] ORDER AND JUDGMENT**

2 The Court has before it the Stipulation for Approval of PAGA Settlement,<sup>1</sup> submitted by  
3 Plaintiff Salvador Gonzalez (“Plaintiff”) and Defendant Sunnyslope Tree Farm, Inc. (“Defendant”)  
4 (collectively, the “Parties”), indicating that they have reached a settlement that will resolve this  
5 matter in its entirety. The Stipulation, and therefore this Order and Judgment incorporates the  
6 following defined terms.

7 **DEFINED TERMS**

8 1. “LWDA Notices” means June 30, 2021, July 27, 2021 and April 5, 2022, submitted  
9 by Plaintiff to the Labor and Workforce Development Agency (LWDA) notifying the LWDA of  
10 alleged violations by Defendants.

11 2. “PAGA Employees” means all non-exempt employees of Defendant who worked  
12 for Defendant in California from June 30, 2020, through August 30, 2022.

13 3. “PAGA Representative Claims” means Plaintiff’s PAGA claims under California  
14 Labor Code § 2698 *et. seq.* based on alleged predicate violations of the California Labor Code §§  
15 201, 202, 203, 204, 210, 221, 226, 226.2, 226.7, 248.1, 248.2, 248.3, 248.5, 300, 510, 512, 558,  
16 1174, 1174.5, 1194, 1197, 1198, 1199, 2802, 2810.5 and all alleged violations of the  
17 accompanying and relevant IWC Wage Order provisions of Wage Order 8-2001 cited in Plaintiff’s  
18 LWDA Notice, amended LWDA Notice and/or alleged in the Operative Complaint.

19 4. “PAGA Settlement” or “Settlement” means the settlement of the Action as  
20 memorialized in this Settlement Agreement.

21 5. “PAGA Release Period” means June 30, 2020 through August 30, 2022.

22 **TERMS OF THE ORDER AND JUDGMENT**

23 The Court has determined that the Settlement provides genuine and meaningful relief that  
24 benefits the public, is fair, adequate, reasonable, and otherwise being fully informed and good cause  
25 appearing therefor, it is hereby ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

26  
27  
28 <sup>1</sup> The Court has also reviewed and considered the records and files of this case, as well as all documents submitted in connection with the Parties’ Stipulation for Approval of PAGA Settlement, including the Declaration of Scott E. Wheeler.

1           1.       Unless otherwise provided herein, all capitalized terms used herein shall have the  
2 same meaning as defined in the Settlement Agreement and Release (“Settlement Agreement”). The  
3 Court has jurisdiction over the subject matter of this lawsuit and all matters relating thereto, and  
4 over all parties to the action.

5           2.       The Court finds that the Settlement has been reached as a result of serious and non-  
6 collusive, arm’s-length negotiations. The Court has considered the nature of the claims, the  
7 procedural history of this case, the amounts to be paid under the Settlement, the involvement of an  
8 experienced private mediator to facilitate the Settlement, the risks of continued litigation that  
9 Plaintiff would face, the civil penalties recoverable if Plaintiff was to prevail at trial on his theories  
10 of liability under his PAGA claim, the allocation of settlement proceeds among the PAGA  
11 Employees, and the fact that a settlement represents a compromise of the Parties’ respective  
12 positions rather than the result of a finding of liability at trial.

13           3.       The Court hereby finds the Settlement involves the resolution of a bona fide dispute,  
14 was entered into in good faith, and is fair, reasonable, and adequate. The Court also finds that the  
15 Settlement provides genuine and meaningful relief that benefits the public consistent with the  
16 purpose of the Private Attorneys General Act of 2004, California Labor Code § 2699 *et seq.*

17           4.       The Court therefore approves the Settlement as set forth in the Settlement  
18 Agreement and directs the Parties to effectuate the Settlement according to the terms set forth in the  
19 Settlement Agreement.

20           5.       Neither the Settlement nor any of the terms set forth in the Settlement Agreement are  
21 admissions by Defendant, or any of the other Released Parties, of liability on any of the allegations  
22 alleged in the Action, nor is this Order a finding of the validity of any claims in the Action, or of  
23 any wrong doing by Defendant, or any of the other Released Parties.

24           6.       The Court finds that Plaintiff’s Counsel has adequately represented the Plaintiff, the  
25 PAGA Employees, and the LWDA for purposes of entering into and implementing the Settlement.

26           7.       The Court finds that the Settlement, and in particular the Gross Settlement Amount  
27 (“GSA”) of \$115,000.00 total to be distributed as set forth herein and in the Settlement Agreement,  
28

1 is in all respects fair, reasonable, and adequate and is hereby approved. *See* California Labor Code  
2 § 2699(1)(2).

3 8. Pursuant to the terms of the Settlement, Administration Costs in the amount of  
4 \$2,995.00, which are necessary to administer the Settlement, are hereby granted and shall be paid  
5 to Phoenix Settlement Administrators, the designated third-party Settlement Administrator.

6 9. Pursuant to the terms of the Settlement, the requested attorneys' fees in the amount  
7 of \$38,295.00 are reasonable under the common fund method and the lodestar method. The GSA of  
8 a total of \$115,000 represents a true and common fund, as Defendant must pay the full GSA and no  
9 amount of the GSA will return to Defendant under any circumstances. It is recognized that attorneys  
10 who recover a common fund are entitled to a reasonable fee award from the fund. *See, e.g., Boeing*  
11 *Co. v. Van Gemert* (1980) 444 U.S. 472, 478 ("a litigant or a lawyer who recovers a common fund  
12 for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee  
13 from the fund as a whole."); *In re Washington Public Power Supply Sys. Sec. Litig.* (9th Cir. 1994)  
14 19 F.3d 1291, 1300 ("[T]hose who benefit from the creation of the fund should share the wealth  
15 with the lawyers whose skill and effort helped create it."); *Serrano v. Priest* (1977) 20 Cal.3d 25,  
16 34 ("[W]hen a number of persons are entitled in common to a specific fund, and an action brought  
17 by a plaintiff or plaintiffs for the benefit of all results in the creation or preservation of that fund,  
18 such plaintiff or plaintiffs may be awarded attorney's fees out of the fund. [Citations.]"). Moreover,  
19 one-third of the common fund is standard in settlements similar to this one. *See, e.g., Laffitte v.*  
20 *Robert Half International Inc.* (2016) 1 Cal.5th 480, 506 (approving fees of one-third of the common  
21 fund); *In re Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 558 n.13 ("Empirical studies  
22 show that, regardless whether the percentage method or the lodestar method is used, fee awards in  
23 class actions average around one-third of the recovery."); *Chavez v. Netflix, Inc.* (2008) 162  
24 Cal.App.4th 43, 66 n.11 (recognizing that fee awards in class actions average around one-third of  
25 the recovery"). Courts also regularly approve fee awards in excess of one-third of the fund. *See, e.g.,*  
26 *Cubillas v. Dav-El Los Angeles*, 2018 WL 3760657, at \*3-4 (Cal. Super.) (awarding \$1.12 million  
27 in attorneys' fees, equivalent to 40% of the common fund, where lodestar-multiplier exceeded the  
28 fee request).

1           10.     The Court also finds that the requested attorneys' fees are reasonable under the  
2 lodestar method, or as a crosscheck on the percentage fee. *See Laffitte*, 1 Cal.5th at 506. Plaintiff's  
3 counsel's lodestar of \$97,050.00 exceeds the attorneys' fees amount of \$38,295.00. In fact, the fee  
4 award amounts to a negative multiplier on Plaintiff's counsel's lodestar.

5           11.     The Court further finds that Plaintiff's counsel's requested litigation costs of  
6 \$11,118.23 are reasonable and were necessary to prosecute the action.

7           12.     Accordingly, and consistent with California Labor Code § 2699(g)(1), which  
8 authorizes an award of attorneys' fees and costs, the requested attorneys' fees in the amount of  
9 \$38,295 (65% or \$24,891.75 to the Law Office of Scott E. Wheeler and 35% or \$13,403.25 to  
10 Marcia Guzman of Attorneys for Workers' Rights), and the requested litigation costs in the amount  
11 of \$11,118.23 incurred by the Law Office of Scott E. Wheeler, are hereby granted and shall be paid  
12 to the Law Office of Scott E. Wheeler and Attorneys for Workers' Rights pursuant to the terms of  
13 the Settlement. Consistent with Rule 1.5.1 of the Cal. Rules of Prof. Conduct, Plaintiff approved the  
14 division of attorney's fees in writing at the commencement of this litigation.

15           13.     Pursuant to the terms of the Settlement, service awards to Plaintiff Salvador  
16 Gonzalez in the amount of \$5,000.00 in recognition of his efforts in prosecuting this action for the  
17 benefit of the State of California and PAGA Employees, and Plaintiff's broad general release of all  
18 of his individual claims against Defendant, is hereby granted and shall be paid to Plaintiff Salvador  
19 Gonzalez. Comparable service awards are routinely issued to named plaintiffs in analogous wage-  
20 and-hour class action settlements, *see, e.g., In re Yahoo Mail Litig.*, No. 13-CV-4980-LHK, 2016  
21 WL 4474612, at \*11 (N.D. Cal. Aug. 25, 2016) ("Ninth Circuit has established \$5,000 as a  
22 reasonable benchmark [for service awards]."); *Alikhan v. Goodrich Corp.*, 2020 WL 4919382, at \*  
23 (C.D. Cal. Jun. 25, 2020) (approving a \$10,000 service award), as well as PAGA settlements like  
24 this one. *See, e.g., Abelar v. American Residential Services, L.L.C.*, 2019 WL 6054607, at \*6 (C.D.  
25 Cal. Nov. 14, 2019) (approving PAGA only settlement and holding "[t]he service award of \$5000  
26 is reasonable compensation for the time and acceptance of adverse employment risk by Plaintiff.").

27           14.     After deducting Settlement Administration Costs, Attorneys' Fees and Costs, and the  
28 Service Awards from the GSA, the remainder of \$57,591.77, consistent with California Labor Code

1 § 2699(i), shall be allocated seventy-five percent (75%) to the LWDA and twenty-five percent  
2 (25%) to PAGA Employees. Accordingly, \$43,193.82 shall be paid to the LWDA, and \$14,397.95  
3 shall be paid to PAGA Employees. The payments to the PAGA Employees will be paid  
4 proportionally based on the number of pay periods that each individual employee worked for  
5 Defendants during the PAGA Release Period.

6 15. As of the Effective Date, Plaintiff, as the representative for the State of California,  
7 and on behalf of all Aggrieved Employees, along with all Aggrieved Employees themselves, are  
8 deemed to forever completely release and discharge, on behalf of themselves and their respective  
9 former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns,  
10 the Released Parties with respect to any claim for the recovery of civil penalties under the California  
11 Private Attorneys General Act, California Labor Code Section 2698, *et seq.* only. It is expressly  
12 understood and agreed that the settlement includes a release of all the PAGA Representative Claims,  
13 based on all alleged violations of Labor Code §§ 201, 202, 203, 204, 210, 221, 226, 226.2, 226.7,  
14 248.1, 248.2, 248.3, 248.5, 300, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1198, 1199, 2802, 2810.5,  
15 and all alleged violations of the accompanying and relevant IWC Wage Order provisions (including  
16 but not limited to failure to provide suitable seating and failure to provide adequate resting facilities)  
17 cited in Plaintiff's LWDA Notices and/or alleged in the Operative Complaint. The release shall be  
18 effective as of the Effective Date, and it shall apply to claims within the above scope impacting  
19 Aggrieved Employees (other than Plaintiff) arising within the PAGA Period. The settlement  
20 agreement shall not impact any Aggrieved Employees' (other than Plaintiff) ability to assert Labor  
21 Code claims other than PAGA claims (i.e., a claim brought under California Labor Code § 2698, *et*  
22 *seq.*).

23 16. In accordance with California law as stated in *inter alia* *Arias v. Superior Court*  
24 (2009) 46 Cal.4th 969, 985, a judgment in "a representative action brought by an aggrieved  
25 employee under the Labor Code Private Attorneys General Act of 2004 . . . is binding not only on  
26 the named employee plaintiff but also on government agencies and any aggrieved employee not a  
27 party to the proceeding." Thus, both the named employee plaintiff and nonparty aggrieved  
28 employees (i.e. all PAGA Employees) are bound by this Order and Judgment. *Id.* at 986. However,

1 the Parties' Settlement Agreement shall not impact any PAGA Employee's ability to assert Labor  
2 Code claims other than the PAGA claims (i.e., a claim brought under California Labor Code § 2698,  
3 *et. seq.*) unless such claim is subject to res judicata, issue preclusion, or claim estoppel.

4 17. Neither this Order nor the Settlement Agreement (nor any other document referred  
5 to herein, nor any action taken to carry out this Order) is, may be construed as, or may be used as,  
6 an admission or concession by or against Defendant or the Released Parties of the validity of any  
7 claim or actual or potential fault, wrongdoing, or liability. Entering into or carrying out the  
8 Settlement Agreement, and any negotiations or proceedings related to it, shall not be considered as,  
9 or deemed evidence of, an admission or concession as to Defendant's denials or defenses and shall  
10 not be offered or received in evidence in any action or proceeding against any party hereto in any  
11 court, administrative agency or other tribunal for any purpose whatsoever, except as evidence of the  
12 Settlement or to enforce the provisions of this Order and the Settlement Agreement; provided,  
13 however, that this Order and the Settlement Agreement may be filed in any action against or by  
14 Defendant's or the Released Parties to support a defense of res judicata, collateral estoppel, release,  
15 waiver, good-faith settlement, judgment bar or reduction, full faith and credit, or any other theory  
16 of claim preclusion, issue preclusion or similar defense or counterclaim.

17 18. Judgment in this matter is entered in accordance with the terms of the Settlement  
18 Agreement and Approval Order. This judgment is intended to be a final disposition of the above  
19 captioned action in its entirety and is intended to be immediately appealable.

20 19 The Court reserves exclusive and continuing jurisdiction over the lawsuit for the  
21 purposes of supervising the implementation, enforcement, construction, administration, and  
22 interpretation of the Settlement Agreement and this Order.

23 **IT IS SO ORDERED.**

24 DATED: 2.9.23

**DAVID COHN**

HONORABLE DAVID COHN  
JUDGE OF THE SUPERIOR COURT