Lilit Tunyan (SBN 329351)
ltunyan@tunyanlaw.com
Artur Tunyan (SBN 349174)
atunyan@tunyanlaw.com
TUNYAN LAW, APC
535 N Brand Blvd. Suite 285
Glendale, California 91203
Telephone: (323) 410-5050

Seung Yang (SBN 249857)
seung.yang@thesentinelfirm.com
Tiffany Hyun (SBN 311743)
tiffany.hyun@thesentinelfirm.com
THE SENTINEL FIRM, APC
707 Wilshire Blvd., Suite 4700
Los Angeles, California 90017
Telephone: (213) 985-1150
Facsimile: (213) 985-2155

Attorneys for Plaintiff OLIVIA PASS

Additional counsel on next page

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

OLIVIA PASS, and HADIZA JIMADA, as individuals, and on behalf of all employees similarly situated,

Plaintiffs,

v.

DEL AMO HOSPITAL, INC., a California Corporation; UHS OF DELAWARE, INC., a Delaware corporation; DEL AMO BEHAVIORAL HEALTH SYSTEM, an unknown business entity; DEL AMO BEHAVIORAL HEALTH SYSTEM OF CALIFORNIA, an unknown business entity and DOES 1 through 50, inclusive,

Defendants.

Case No.: 24STCV03085

[Assigned for all purposes to Hon. William E. Weinberger, Dept. 37]

PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR AN ORDER APPROVING SETTLEMENT OF CLAIMS BROUGHT PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT OF 2004; MEMORANDUM OF POINTS AND AUTHORITIES

Reservation ID: 476005153224
Date: May 26, 2026
Time: 8:30 a.m.
Courtroom: Dept. 37
Judge: Hon. William E. Weinberger

Action Filed: February 5, 2024
Trial Date: Not Set

Joanna Ghosh (SBN 272479)
Daniel Bass (SBN 287466)
Brian J. St. John (SBN 304112)
LAWYERS *for* JUSTICE, PC
450 North Brand Boulevard, Suite 900Glendale, California 91203
Tel: (818) 265-1020
Fax: (818) 265-1021

Attorneys for Plaintiff HADIZA JIMADA

TO THE COURT, ALL PARTIES, AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on May 26, 2026, at 8:30 a.m., or as soon thereafter as the matter may be heard, in Department 37 of the above-captioned Court, located at 111 N. Hill Street, Los Angeles, CA 90012, Plaintiffs OLIVIA PASS and HADIZA JIMADA ("Plaintiffs") will and hereby does move this Court for an order approving of the PRIVATE ATTORNEYS GENERAL ACT SETTLEMENT AGREEMENT ("Agreement" or "Settlement") reached with Defendants DEL AMO HOSPITAL, INC., UHS OF DELAWARE, INC., DEL AMO BEHAVIORAL HEALTH SYSTEM, DEL AMO BEHAVIORAL HEALTH SYSTEM OF CALIFORNIA ("Defendants"), a true and correct copy of which is attached as Exhibit 1 to the Declaration of Lilit Tunyan submitted herewith.

Specifically, the Plaintiffs move for an order to:

1. grant approval of the terms of the Agreement pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code § 2698, *et seq*., including the amount of the settlement; the amount of distributions to the State and PAGA Employees; the amounts allocated to attorneys' fees and costs; the amounts allocated to the enhancement awards; the amount allocated to the settlement administrator; and,

2. direct disbursement of the Gross Settlement Amount pursuant to the terms of the Agreement.

This motion is based on this Notice, the following Memorandum of Points and Authorities, the Declarations of Plaintiffs' counsel, Plaintiffs and Phoenix Class Action Administration Solutions submitted herewith, all other pleadings and papers on file in this action, and any oral argument or other matter that may be considered by the Court.

Respectfully submitted,

Dated: March 9, 2026 **TUNYAN LAW, APC**

By: ____________________
Lilit Tunyan
Artur Tunyan
Attorneys for Plaintiff OLIVIA PASS

Dated: March 9, 2026

THE SENTINEL FIRM, APC

By:__________________________

Seung Yang
Tiffany Hyun
Attorneys for Plaintiff OLIVIA PASS

Dated: March 9, 2026

LAWYERS *for* JUSTICE, PC

By:__________________________

Joanna Ghosh
Daniel Bass
Brian J. St. John
Attorneys for Plaintiff HADIZA JIMADA

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs OLIVIA PASS and HADIZA JIMADA ("Plaintiffs") filed this action seeking civil penalties under the Private Attorneys General Act of 2004, California Labor Code §§ 2698 et seq. ("PAGA") stemming from alleged wage and hour claims against Defendants DEL AMO HOSPITAL, INC., UHS OF DELAWARE, INC., DEL AMO BEHAVIORAL HEALTH SYSTEM, DEL AMO BEHAVIORAL HEALTH SYSTEM OF CALIFORNIA ("Defendants") (Plaintiffs and Defendants collectively referred to herein as the "Parties"). After exchanging documents and voluminous data prior to mediation, Plaintiffs and Defendants reached a proposed settlement that will resolve the PAGA claims pending in this action (the "Action").

Under the PRIVATE ATTORNEYS GENERAL ACT SETTLEMENT AGREEMENT ("Agreement" or "Settlement"), Defendants shall pay a maximum sum of **$525,000.00**, referred to in the Agreement as the Gross Settlement Amount. This is a fair and reasonable result, based upon the facts and circumstances discovered to exist. The Agreement is based upon the model agreement template made available by the Los Angeles Superior Court.

The proposed settlement will dispose of the PAGA claim alleged in this matter – which was predicated upon certain alleged violations of the Labor Code – on behalf of the California Labor and Workforce Development Agency ("LWDA") and all individuals who were employed by Defendants Del Amo Hospital, Inc. in the State of California and classified as non-exempt who performed work, or continue to work, at any time during the PAGA period.

This motion is brought pursuant to Labor Code § 2699.3(b)(4). This motion and the Agreement were served on the LWDA prior to the filing of this Motion. Labor Code § 2699(e)(2).

For the reasons below, Plaintiffs request that the Court enter an order approving the settlement.

II. SUMMARY OF THE TERMS OF SETTLEMENT

The full terms of the settlement are in the Agreement. The key material terms are as follows:

(a) **Aggrieved Employees**: Aggrieved Employees (also known as the "PAGA Employees") are: "All individuals who were employed by Defendants Del Amo Hospital, Inc. in the State of California and classified as non-exempt who performed work, or continue to work, at any time during the PAGA Period, whether current or former employees. (Agreement, ¶ 1.4.)

(b) **PAGA Period:** The period from February 5, 2023 through the date of entry of the Judgment and Approval Order or as modified under Paragraph 8 of the Agreement. (Agreement, ¶ 1.19.)

(c) **No Reversion**: The Settlement is ***non-reversionary***. (Agreement, ¶ 3.1.)

(d) **Gross Settlement Amount:** Defendants agree to pay the maximum sum of **$525,000.00** (hereinafter referred to as the "Gross Settlement Amount" or "GSA") for settlement of the PAGA Penalties, which shall be inclusive of Individual PAGA Payments, the LWDA PAGA Payment, Plaintiffs' Counsel's attorneys' fees and costs, PAGA representatives' Enhancement Awards and the Administrator's fees. (Agreement, ¶ 1.10.)

(e) **Net Settlement Amount:** At least **$284,750.00** will be available for distribution to Aggrieved Employees and the LWDA. Of this amount, the LWDA will receive at least **$213,562.50** under the Agreement, and Aggrieved Employees will receive at least **$71,187.50**. (Agreement, ¶¶ 1.15., 3.2.4.)

(f) **Enhancement Awards**: Plaintiffs will receive $10,000 each (total $20,000) as Enhancement Award for representing the State of California and Aggrieved Employees and for otherwise complying with the terms of this Agreement. (Agreement, ¶ 3.2.2.)

(g) **Attorneys' Fees:** Plaintiffs' Counsel request an award of attorneys' fees in the estimated amount of **$183,750.00** if the Gross Settlement Amount remains $525,000, which is 35% of the GSA. (Agreement, ¶ 3.2.1.)

(h) **Litigation Costs**: Plaintiffs' Counsel's litigation costs are capped to a maximum amount of **$30,000.00**. The actual costs are **$31,760.68** which include the future costs of motion, final report, and notice of entry of court order filing fees. Since the actual costs are more than the capped amount of $30,000.00, Plaintiffs request **$30,000.00** for litigation costs. (Agreement, ¶

3.2.1.)

(i) **<u>Settlement Administration</u>**: Payment to Aggrieved Employees, LWDA, Plaintiffs' counsel and administration will be accomplished through third-party settlement administrator Phoenix Class Action Administration Solutions, which has agreed to perform Administrator duties for a flat not to exceed fee of **<u>$6,500.00,</u>** which is reasonable, based on all of the services offered. (Agreement, ¶ 3.2.3.)

(j) **<u>Uncashed Checks</u>:** Funds represented by checks returned as undeliverable after a re-mailing, and funds represented by checks remaining un-cashed for more than 180 days after issuance, will be tendered to the California Controller's Unclaimed Property Division in the name of the Aggrieved Employee. (Agreement, ¶¶ 4.4.1, 4 .4.3.)

(k) **<u>Release</u>**: In exchange for the above settlement consideration, Defendants shall be entitled to a release from the LWDA and each and every Aggrieved Employee, including Plaintiffs. (Agreement, ¶ 5)

(l) **<u>Notice to LWDA</u>**: The Declarations of Lilit Tunyan and Daniel Bass confirm that notice was provided to the LWDA and attach the confirmatory submission documents. (Tunyan Decl., ¶ 50 and Exh.2.)

III. <u>STATEMENT OF FACTS</u>

Plaintiffs allege that Defendants engaged in practices and procedures that violated the California Labor Code. These alleged statutory violations subject Defendants to potential liability for PAGA penalties pursuant to Labor Code § 2698, the PAGA. Through this action, Plaintiffs seek to recover civil penalties pursuant to Labor Code § 2698, *et. seq*. (Tunyan Decl., ¶ 3.)

Defendants are alleged to own and operate Del Amo Behavioral Health System psychiatric hospital located at 23700 Camino Del Sol, Torrance, CA 90505 and 6920 Avalon Blvd, Carson, CA 90746. (Tunyan Decl., ¶ 4.) In Fact, Defendant DEL AMO HOSPITAL, INC. employed individuals, such as Plaintiffs, in non-exempt positions in California. (Tunyan Decl., ¶ 5.) Plaintiffs are alleged to have worked for Defendants in California during the PAGA Period. (Tunyan Decl., ¶ 6.)

IV. **PROCEDURAL HISTORY**

On February 5, 2024, February 9, 2024 and December 8, 2025, Plaintiffs' Counsel sent letters to the LWDA on behalf of Plaintiffs, in compliance with California Labor Code § 2699.3. More than 65 days passed after the letters were sent to the LWDA, and the LWDA did not indicate that it intended to investigate the alleged violations referenced in the letter. (Tunyan Decl., ¶ 7.)

On February 5, 2024, Plaintiff Olivia Pass filed her Class Action Complaint, thereby commencing a wage-and-hour class action alleging seven causes of action against Defendants Del Amo Hospital Inc. On April 11, 2024, Plaintiff Olivia Pass filed a First Amended Complaint ("*Pass*") adding a cause of action for civil penalties pursuant to PAGA based on the same California Labor Code violations alleged in her initial complaint. On April 23, 2024, Plaintiff Olivia Pass filed an application to dismiss class and individual non-PAGA claims without prejudice leaving PAGA only claims in her action, which was granted. On June 18, 2024, Defendants Del Amo Hospital Inc. filed a motion to compel PAGA individual claims to arbitration and stay PAGA representative claims, which was denied. On July 12, 2024, Plaintiff Olivia Pass filed an application to dismiss PAGA individual claims leaving only PAGA representative claims in her action, which was granted. On August 15, 2024 and on February 26, 2025, Defendants Del Amo Hospital filed two motions to reconsider the order dismissing PAGA individual claims, which were both denied. (Tunyan Decl., ¶ 8.)

On April 15, 2024, Plaintiff Hadiza Jimada filed her Complaint for Enforcement Under the Private Attorneys General Act, California Labor Code §2698, *et seq*. ("*Jimada* ") commenced an action alleging one cause of action for civil penalties pursuant to the PAGA against Defendants, UHS of Delaware, Inc. and Del Amo Behavioral Health System and Del Amo Behavioral Health System of California. Defendants represented that UHS of Delaware, Inc. never employed Plaintiffs or the Aggrieved Employees, and that they were further erroneously sued as non-entities Del Amo Behavioral Health System and Del Amo Behavioral Health System of California, neither of which exists as a legal entity, in the *Jimada* action. On July 15, 2024, Defendants filed a motion to compel arbitration of PAGA individual claims and stay PAGA representative claims which was granted. (Tunyan Decl., ¶ 9.)

On February 2, 2026, the parties filed a joint stipulation seeking leave of the court to file Plaintiff Olivia Pass' Second Amended Complaint consolidating *Pass* and *Jimada matter*, adding Plaintiff Hadiza

Jimada to *Pass* matter, and adding any theories of liability alleged in *Jimada* not currently included in the *Pass'* complaint consistent with purported claims raised at mediation and adding three additional defendants named in *Jimada* action, which was granted on February 9, 2026. On February 11, 2026, Plaintiffs filed their Second Amended Complaint which is the operative complaint in the Action ("Operative Complaint"). (Tunyan Decl., ¶ 10.)

Defendants deny the allegations in the Operative Complaint, deny any failure to comply with the laws identified in the Operative Complaint, and deny any and all liability for the causes of action alleged. After exchanging documents and voluminous data prior to mediation and after mediation, Plaintiffs and Defendants reached a proposed settlement that will resolve the PAGA claims pending in this action. Defendants deny all liability and admit to no claim by virtue of their agreement to settle. (Tunyan Decl., ¶ 11.) Because Court approval of a PAGA settlement is required, the settlement is presented for approval. (Tunyan Decl., ¶ 12.)

V. <u>SETTLEMENT NEGOTIATIONS</u>

Counsel for Plaintiffs have thoroughly investigated the facts relating to the claims alleged in the Complaint and have made a thorough study of the legal principles applicable to the claims asserted against Defendants. Based on their investigation and evaluation of this case, Plaintiffs' Counsel have concluded that the settlement is fair, reasonable, and adequate in light of all known facts and circumstances, including the defenses asserted by Defendants, potential adverse findings regarding liability, pending appellate proceedings and numerous potential appellate issues. (Tunyan Decl., ¶ 13.)

The Parties agreed to participate in a mediation in an effort to resolve the PAGA claims asserted in this matter. The Parties selected mediator Deborah Saxe, Esq., a neutral with extensive experience mediating wage and hour class and representative actions. The Parties participated in a full-day mediation on September 30, 2025 and reached a settlement of the Actions through a mediator's proposal accepted on October 10, 2025. The Parties then spent many weeks thereafter negotiating the detailed terms of the Settlement memorialized in a long-form agreement to resolve this matter. (Tunyan Decl., ¶ 14.) Prior to the mediation, Plaintiffs requested substantial data from Defendants, and Defendants provided requested data. (Tunyan Decl., ¶ 15.)

DISCUSSION

VI. THE QUI TAM NATURE OF PAGA CLAIMS

This case is solely a PAGA claim, not a class action, and the standard for determining the reasonableness of a settlement has not been the subject of significant judicial discussion. In 2003, California enacted the Private Attorneys General Act of 2004 to remedy systemic underenforcement of many worker protections. *Williams v. Superior Court*, 3 Cal. 5th 531, 545 (2017).

The solution enacted by the Legislature deputized private citizens to recover civil penalties for the State, where those penalties were previously only available to State law enforcement agencies:

> The Legislature declared that ***adequate financing of labor law enforcement was necessary to achieve maximum compliance with state labor laws, that staffing levels for labor law enforcement agencies had declined and were unlikely to keep pace with the future growth of the labor market***, and that it was therefore in the public interest to allow Aggrieved Employees, acting as private attorneys general, to recover civil penalties for Labor Code violations, with the understanding that labor law enforcement agencies were to retain primacy over private enforcement efforts.

Arias v. Superior Court, 46 Cal. 4th 969, 980 (2009) (emphasis added).

"Because an aggrieved employee's action under the Labor Code Private Attorneys General Act of 2004 functions as a substitute for an action brought by the government itself, a judgment in that action binds all those, including nonparty Aggrieved Employees, who would be bound by a judgment in an action brought by the government." *Arias*, 46 Cal. 4th at 986. With limited exceptions, "[o]f the civil penalties recovered, 75 percent goes to the Labor and Workforce Development Agency, leaving the remaining 25 percent for the 'Aggrieved Employees.'" *Iskanian v. CLS Transp. Los Angeles, LLC*, 59 Cal. 4th 348, 380 (2014), cert. denied, 574 U.S. 1121 (2015). Thus, a PAGA claim is, predominantly, a claim belonging to the State.

"The civil penalties recovered on behalf of the state under the PAGA are distinct from the statutory damages to which employees may be entitled in their individual capacities." *Iskanian*, 59 Cal. 4th at 381. Because of this distinction, and the fact that the penalties made available through PAGA fell previously within the exclusive domain of State enforcement, the California Supreme Court explained that PAGA suits are best viewed as a species of *qui tam* action. *Iskanian*, 59 Cal. 4th at 382.

VII. THE STANDARDS FOR APPROVAL OF A PAGA SETTLEMENT

In deciding whether to grant approval of the proposed Settlement, the primary issue to be decided is whether the Settlement is fair, adequate, and reasonable. Specifically, the issues are whether the PAGA penalties to which the parties have agreed provide "genuine and meaningful" relief, "consistent with the underlying purpose of the statute to benefit the public" and whether the penalties are reasonable in light of the potential verdict value in this case. *Villalobos v. Calandri Sonrise Farm LP*, 2015 WL 12732709, Case No. CV 12-2615 PSG (JEMx) (C.D. Cal., July 22, 2015).

In *O'Connor v. Uber Technologies*, No. 13-CV-03826-EMC, 2016 WL 4398271 (N.D. Cal. Aug. 18, 2016) the court was faced with a proposed class action settlement which also included a claim under PAGA. The court separately discussed the standard for approval under PAGA. The court recognized that cases discussing class action standards may be helpful and required the parties to demonstrate that either the factors set forth in the class action case of *Hanlon v. Chrystler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998) "or any other coherent analysis" justified the proposed settlement of the PAGA claim.[1]

Therefore, although class settlement jurisprudence has no direct application to this case, it is not inappropriate to consider the *Hanlon* factors: (1) the strength of the Plaintiffs' case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the amount offered in settlement; (4) the extent of discovery completed and the stage of the proceedings; (5) the experience and views of counsel; and (6) the presence of a government participant.

The *Hanlon* court also mentioned, as a factor, the "reaction of the class members to the proposed settlement." That factor has no analogous component here. The interest served is that of the State of California and the LWDA is the only person or entity who has standing to comment upon any settlement. Labor Code § 2699.3(b)(4). The *Hanlon* court also identified "the risk of maintaining class action status throughout the trial" as a factor, but, again, that factor has no application here. Otherwise, the six remaining factors provide a useful framework for evaluating the settlement. *Hanlon*, 150 F.3d at 1026; *see also Allen v. Bedolla*, 787 F.3d 1218, 1222 (9th Cir. 2015) (same); *Churchill Vill., L.L.C. v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004) (same).

Dunk v. Ford Motor Co., 48 Cal. App. 4th 1794 (1996), held that "a presumption of fairness

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[1] The *O'Connor v. Uber* court did not approve the settlement, finding the disparity between the amount proposed for the class compared to the PAGA settlement was not fair to the LWDA. That is not a concern here. Seventy-five percent of the net will be paid to the LWDA by statute.

exists where: (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small."[2] *Id*. at 1801; *In re Microsoft I-V Cases*, 135 Cal. App. 4th 703, 723 (2006); *see also* Newberg & Conte, Newberg on Class Actions, (2d.Ed. 1987) § 11.41, p. 11-91.

It would also be appropriate for this Court to look to case law concerning settlement of a claim brought under the Fair Labor Standards Act 28 U.S.C. § 201 et seq. ("FLSA") which, likewise, requires court approval. Because the Ninth Circuit has not established a standard for district courts to follow when evaluating an FLSA settlement, California district courts have applied the standard established by the Eleventh Circuit in *Lynn's Food Stores, Inc. v. U.S. By & Through U.S. Dept of Labor*, 679 F.2d 1350, 1352 (11th Cir. 1982). *See Dunn v. Teaches Ins. & Annuity Ass'n of Am*., 2016 WL 153266, at *3 (N.D. Cal. Jan. 13, 2016) and *Ambrosino v. Home Depot U.S.A., Inc*., No. 11 CV 1319 L (MDD), 2014 WL 3924609, at * 1 (S.D. Cal. Aug. 11, 2014) ("A district court may approve an FLSA settlement if the proposed settlement reflects 'a reasonable compromise over [disputed] issues.'") (quoting *Lynn's Food Stores, Inc*., 679 F.2d at 1354). Although the standard for approving FLSA collective actions may be different from the standard for approving class actions under Federal Rule of Civil Procedure 23, courts have applied the *Hanlon* factors to a settlement of an FLSA claim. *Millan v. Cascade Water Sews., Inc*., No. 1:12 - cv -1821-AWI-EPG, 2016 WL 3077710, at * 3 (E.D. Cal. Jun. 2, 2016); see also *Otey v. CrowdFlower, Inc*., No. 12-CV-05524-JST, 2014 WL 1477630, at * 11 (N.D. Cal. Apr. 15, 2014). In *Selk v. Pioneers Mem'l Healthcare Dist*., 159 F. Supp. 3d 1164, 1173 (S.D. Cal. 2016) the court evaluated an FLSA settlement using a totality of the circumstances approach "that replicates the factors relevant to Rule 23 class actions where appropriate, but adjusts or departs from those factors when necessary to account for the labor rights at issue."

While a court should not simply "rubber stamp" a proposed settlement with little or no

[2] PAGA provides no notice or claim procedures as exist in class action cases. Therefore, objections (other than potentially by the LWDA) are not contemplated in PAGA actions. Despite the absence of any right to object, the Agreement here contemplates informing Aggrieved Employees of the resolution so that they are made aware of the result, despite having no standing to object to this settlement.

independent evaluation, the court "must stop short of the detailed and thorough investigation that it would undertake if it were actually trying the case." *Clark v. Am. Residential Sews. LLC*, 175 Cal. App. 4th 785, 799 (2009). The court should not expect that the parties offer concrete "proof" in support of settlement, but rather that the parties have made a good faith effort to explain the reasoning behind certain strategic decisions and the valuation of specific claims. "[W]hether a settlement is fundamentally fair within the meaning of Rule 23(e) is different from the question whether the settlement is perfect in the estimation of the reviewing court." *Lane v. Facebook, Inc.*, 696 F.3d 811, 819 (9th Cir. 2012). "It is, of course, the strong public policy of this state to encourage the voluntary settlement of litigation." *Osumi v. Sutton*, 151 Cal. App. 4th 1355, 1359 (2007).

Finally, the factors identified above are not exclusive and the court is free to balance factors depending on circumstances. *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 244-245 (2001).

While class settlement factors provide some guidance as to how a Court may approach the evaluation of a PAGA settlement, there are significant differences between PAGA settlements and class action settlements that must be recognized. Unlike a class action settlement, the scope of release permitted in a PAGA settlement is limited. While "judgment in [a PAGA] action is binding not only on the named employee Plaintiffs but also on government agencies and any aggrieved employee not a party to the proceeding," *Arias*, 46 Cal. 4th at 986, "the nonparty employees, because they were not given notice of the action or afforded any opportunity to be heard, would not be bound by the judgment as to remedies other than civil penalties." *See id.*, at 987. Thus, with the possible exception of Plaintiffs, the scope of a release in a PAGA settlement is confined to PAGA penalties and not related individual claims.[3] Applying the above standards to this Settlement, the Settlement meets all criteria for approval.

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[3] This is contrasted with the much broader release permitted in a class action context, which may be based on "any matter or fact" alleged in the complaint. *See In re Corrugated Container Antitrust Litigation*, 643 F.2d 195, 221 (5th Cir. 1981) ("The weight of authority establishes that … a court may release not only those claims alleged in the complaint and before the court, but also claims which 'could have been alleged by reason of or in connection with any matter or fact set forth or referred to in' the complaint."); *Hesse v. Sprint Corp.*, 598 F.3d 581, 590 (9th Cir. 2010) ("we have held that federal district courts properly released claims not alleged in the underlying complaint where those claims depended on the same set of facts as the claims that gave rise to the settlement."). In this matter, the Agreement will not affect the rights of Aggrieved Employees who may possess individual wage and hour claims.

VIII. THE SETTLEMENT MEETS ALL THE CRITERIA FOR APPROVAL

Applying the class settlement fairness factors discussed above – limited to those compatible with the unique features of PAGA claims – the proposed settlement embodies all of the key features of a settlement that is fair, reasonable, adequate, and as such, meets all the criteria necessary for approval.

A. The Relative Strength of the PAGA Claim, and the Realistic Range of Outcomes in the Litigation, Strongly Favor Approval of the Settlement

"In determining whether the proposed settlement falls within the range of reasonableness, perhaps the most important factor to consider is Plaintiffs' expected recovery balanced against the value of the settlement offer." *Cotter v. Lyft, Inc*., 176 5 F. Supp. 3d 930, 935 (N.D. Cal. 2016) (internal quotation omitted). Here, the relative strength of the PAGA claim brought by Plaintiffs weighs in favor of the Court finding that the settlement is fair, adequate, and reasonable, since there are significant risk factors that Plaintiffs would face if he did not settle this matter.

Most significantly, the ultimate decision as to the amount of penalties is always up to the discretion of the Court. Labor Code § 2699(e)(2) states: "In any action by an aggrieved employee seeking recovery of a civil penalty available under subdivision (a) or (f), 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." Subdivision (a) states, "Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Section 2699.3." Subdivision (f) specifies the penalties in instances where the underlying statute does not specify any civil penalty. In other words, where the facts and circumstances of the case demonstrate that an unreduced award would be "unjust, arbitrary and oppressive, or confiscatory," the court (or arbitrator) may reduce the award to ameliorate such.

In *Moniz v. Adecco USA, Inc., 72 Cal. App. 5th 56 (2021)* the court said:

[W]hile PAGA does not require the trial court to act as a fiduciary for Aggrieved

> Employees, adoption of a standard of review for settlements that prevents " ' " 'fraud, collusion or unfairness' " ' " (*Dunk*, supra, 48 Cal.App.4th at pp. 1800–1801, 56 Cal.Rptr.2d 483), and protects the interests of the public and the LWDA in the enforcement of state labor laws is warranted. Because many of the factors used to evaluate class action settlements bear on a settlement's fairness—including the strength of the Plaintiff's case, the risk, the stage of the proceeding, the complexity and likely duration of further litigation, and the settlement amount—these factors can be useful in evaluating the fairness of a PAGA settlement.
>
> Given PAGA's purpose to protect the public interest, we also agree with the LWDA and federal district courts that have found it appropriate to review a PAGA settlement to ascertain whether a settlement is fair in view of PAGA's purposes and policies. (*O'Connor v. Uber Technologies, Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110, 1132–1134; *Jordan v. NCI Group, Inc.* (Jan. 5, 2018, No. EDCV 16-1701-JVS) 2018 WL 1409590, at *1–*2, 2018 U.S. Dist. Lexis 25297, at *3–*4; *Chamberlain v. Baker Hughes, a GE Co., LLC, supra*, 2020 WL 4350207 at *3–*4, 2020 U.S. Dist. Lexis 134582 at *10–*11; see *Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal.App.4th 46, 59, 61–62, 45 Cal.Rptr.3d 647 [where the Legislature required court approval of private settlements of Proposition 65 actions brought to vindicate the public interest, court must evaluate the resulting consent decree to determine if it is "just" and "serves the public interest"].) 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].) The trial court below used this standard.

Moniz, 72 Cal. App. 5th at 77. *Moniz*, in agreeing with the federal courts that have considered how to evaluate a PAGA settlement, concluded that the class action factors are appropriately considered, along with a consideration of whether the settlement furthers "PAGA's purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws."

A final note on the analysis discussion in *Moniz* is appropriate. In *Moniz*, the Court found the record lacked any support for the disparate allocation of PAGA penalties between different types of employees: "[T]he settlement's allocation of shares of civil penalties to Colleagues that are fifteen times greater than the shares allocated to Associates does not seem to have been justified below and may be contrary to PAGA's purposes." *Moniz*, 72 Cal. App. 5th at 87. Here, PAGA penalties are allocated by pay period, irrespective of job classification, an equitable method of allocation.

In addition, there is no evidence that a court or a commissioner had informed Defendants that any conduct violated the Labor Code. *Amaral v. Cintas Corp.*, 163 Cal. App. 4th 1157, 1209 (2008); *Willis v. Xerox Bus. Servs., LLC*, 2013 WL 6053831, *7-8 (E.D. Cal. 2013) ("Under California law, courts have held that employers are not subject to heightened penalties for subsequent violations until and unless a court or commissioner notified the employer that it is in violation of the Labor Code.") And in *Cotter*, the court found a significant reduction of the PAGA claim would be appropriate because "[t]his does not appear to be a case where a company has deliberately sought to evade the law." *Cotter v. Lyft, Inc.*, 176 F. Supp. 3d 930, 941 (N.D. Cal. 2016). Here, Defendants can state a strong case that, as the Court concluded in *Cotter*, the efforts to devise compliant operational policies do not indicate an organization that has deliberately sought to evade the law. This is a very significant risk factor. Establishing violations for purposes of PAGA would be difficult in this matter.

After analyzing the claims in this matter and thorough investigation of the claims and defenses, Plaintiffs have concluded that the value of this Settlement is fair, adequate, and reasonable. (Tunyan Decl., ¶ ¶ 13-17.)

The Settlement of $525,000.00 is **60%** of the $875,796.00 estimate of *risk-adjusted* realistic penalty recovery at this stage in the litigation. On that basis, it would be unwise to pass up this settlement opportunity. This assessment is based on a carefully constructed model of the current fair value of the case, using estimated risks, appellate authority, and estimates of violation frequency by pay period. (Tunyan Decl., ¶ 26.)

B. The Risk, Expense, and Complexity of Further Litigation Balances Strongly in Favor of Approval of the Settlement

To assess the fairness, adequacy, and reasonableness of a class action settlement, the court should consider the expense, complexity and likely duration of further litigation. *Dunk*, 48 Cal. App. 4th at 1801. Here, the expense, complexity and likely duration of future litigation was to some extent an unknown. What is certain is that to adequately establish the foundational violations that would support a substantial penalty award, tremendous time and expense would be invested. To adequately establish that Aggrieved Employees experience the alleged violations, and at what frequency, most of the Aggrieved Employees would need to be interviewed in a systematic fashion and their testimony cataloged in way sufficiently meaningful to permit the submission of summary evidence at trial, such as via survey. *First*, the burdensome nature of such a process would be expensive and time-consuming. *Second*, the substantial risk that the Court would either substantially reduce any penalty ultimately awarded *or* conclude that the conduct was insufficient to support a penalty award. *Third*, it would be essentially impossible to formulate an objectively reliable means of summarizing testimonial experiences, other than by an extraordinarily detailed survey. And formulating such a survey would have been important, since frequency of violations would need to be established before any penalties could be recovered. Alternatively, direct testimony would have been required from as many of the roughly 647 Aggrieved Employees as could be obtained, which would be, at best, very difficult. Plaintiffs' Counsel also considered defense arguments and defenses. (Tunyan Decl., ¶ ¶ 20-23.)

C. <u>The Amount Offered in Settlement Under the Agreement</u>

The Settlement provides a monetary benefit that falls well within "the range of an acceptable settlement" under the circumstances, which is the standard on which the instant Settlement must be judged. As held by the Ninth Circuit, a settlement may be fair and reasonable even where it only provides a fraction of what could have been obtained at trial. *See Linney v. Cellular Alaska P'ship*, 151 F.3d 1234, 1242 (9th Cir. 1998).

1. The Total Amount Offered in Settlement is $525,000.00

Under the Agreement, Defendants shall pay a maximum sum of $525,000.00. Plaintiffs' Counsel assessed the maximum plausible penalty exposure to be $2,273,700.00. (Tunyan Decl., ¶ 26.) This estimate is overly optimistic. The Settlement is 23.1% of that maximum plausible exposure before factoring in the many risk adjustments and the Court's ability to reduce the penalty at its discretion.

Furthermore, Defendants asserted a number of defenses that potentially could have undermined Plaintiffs' claims if they were to be litigated. Specifically, Defendants argued that they had compliant written policies and practices, Aggrieved Employees signed meal waivers, they provided compliant meal periods, numerous individualized inquiries would be needed to determine liability on Plaintiffs' claims, including (1) whether employees worked off-the-clock with knowledge of a supervisor or Defendants, (2) whether each individual took a particular meal period or rest break on a particular occasion, (3) where the individual skipped the meal or rest period, ***why*** it was skipped for each of the allegedly Aggrieved Employees.

2. Payment of At Least <u>$284,750.00</u> in Penalties

Under the Agreement, the amount available for distribution as penalties under PAGA is at least

$284,750.00. The amount is a significant penalty, but it is not confiscatory, nor is it, in the terms of the PAGA statute, "unjust, arbitrary, or oppressive." Labor Code § 2699(e)(2).

a) The LWDA shall receive at least $213,562.50

As 75% of the penalties are allocated to the LWDA, the LWDA stands to receive at least **$213,562.50** under the Agreement. Further, pursuant to Labor Code § 2699.3(b)(4) the "provisions of the settlement relating to health and safety laws shall be submitted to the division at the same time that they are submitted to the court. This requirement shall be construed to authorize and permit the division to comment on the settlement provisions, and the court shall grant the division's commentary appropriate weight." The LWDA will have an opportunity to comment upon the amount to be paid to it. This provision protects against collusive settlements for less than a reasonable value of the claim.

b) Aggrieved Employees shall receive at least $71,187.50

Approximately **647** Aggrieved Employees shall receive at least **$71,187.50** (25% of the penalties) under the terms of the Agreement and by operation of PAGA. The Court should give weight to the fact that the primary purpose of PAGA is not to provide a windfall to Aggrieved Employees; the penalties recovered under PAGA are not surrogate individual damages. Instead, the amount available to Aggrieved Employees is in addition to any damages that could be recovered via individual claims.

D. The Presence of a Government Participant

As set forth above, 75% of the penalty is paid to the LWDA. In connection therewith, Labor Code § 2699.3(b)(4) permits the LWDA to comment on the penalties. The LWDA was notified of the Settlement. (Tunyan Decl., ¶ 46.)

E. PAGA Counsel Are Experienced and Negotiated Aggressively

The Court may also consider that negotiations between the Parties were conducted at arm's length, in an adversarial manner, despite a mutual desire to resolve the case. (Tunyan Decl. ¶¶ 13-14, 20-23.) The court may consider the opinion of all counsel that the Settlement is fair, reasonable and in the best interests of the Aggrieved Employees. PAGA Counsel are experienced with employment class actions and representative actions, as set forth more fully in the Declaration of Lilit Tunyan filed herewith. (Tunyan Decl. ¶¶ 31-37.)

F. The Substantial Exchange of Data and the Stage of the Proceedings Favor Approval

In evaluating the Parties' basis for valuing a settlement, "'formal discovery is not a necessary ticket to the bargaining table.'" *Linney*, 151 F.3d at 1239.

Here, the substantial exchange of data was sufficient to enable Plaintiffs' Counsel to evaluate the strength and value of the claim for purposes of settlement. (Tunyan Decl., ¶¶ 13-14, 24-28.) As discussed above, Plaintiffs' Counsel reviewed policies, performed calculations with data, and inspected related documents, such as handbooks and wage statements, to assess exposure and risk.

Based on Plaintiffs' Counsel's experience litigating wage and hour claims, such investigation was sufficient to determine the potential value of the PAGA claim, and to evaluate the strength of this claim for purposes of settlement. (Tunyan Decl., ¶¶ 20-28; Bass Decl. ¶¶ 10-14.)

G. Additional Factors Weigh in Favor of Approving the Terms of the Proposed Settlement, Including the Requested Fees and Costs

In addition to the factors presented above, the proposed settlement does not possess any obvious deficiencies with respect to its other terms, including the agreed-upon fees and costs.

1. Fees and Costs

Courts in the Ninth Circuit and California generally use the "percentage method" rather than the lodestar approach when awarding attorneys' fees in a common fund settlement. *See* 7 Witkin, B.E., CALIFORNIA PROCEDURE (2007 Supp.) §§ 255-261 at 236-241 (describing prevalence of percentage method under California law); *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980) ("[A] litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole"); *In re Activision Sec. Litig.*, 723 F. Supp. 1373, 1377-78 (N.D. Cal. 1989) (Patel, J.) (endorsing percentage method). *See generally*, *Serrano*, 20 Cal. 3d at 25; *accord Hanlon*, 150 F.3d 1011 (9th Cir. 1998). While this settlement is what is traditionally imagined when using the term "common fund," it does create benefit for others beyond Plaintiffs.

According to a leading treatise on class actions, "No general rule can be articulated on what is a reasonable percentage of a common fund. Usually 50% of the fund is the upper limit on a reasonable fee award from a common fund in order to assure that the fees do not consume a disproportionate part of the recovery obtained for the class, although somewhat larger percentages are not unprecedented." *See*

Conte & Newberg, Newberg on Class Actions (3rd Ed.) § 14.03. Attorneys' fees that are fifty percent of the fund are typically considered the upper limit, with ***thirty to forty percent commonly awarded in cases where the settlement is relatively small***. *See id*; *see also, Van Vranken v. Atlantic Richfield Company*, 901 F. Supp. 294 (N.D. Cal. 1995) (stating that most cases where 30-50 percent was awarded involved "smaller" settlement funds of under $10 million).

While this is not a class action, the custom and practice in class actions is to award approximately one-third of a fund as a fee award. *See Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66, n.11 (2008) ("Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around ***one-third*** of the recovery.") (emphasis added). The proposed attorney fee award here is 35% of the Gross Settlement Amount, an amount reasonably comparable to "average" fees awarded in California state court class action cases used for comparison purposes here. *Chavez*, 162 Cal. App. 4th at 66 n. 11. Again, this is ***not*** a class action. It is more akin to contingent representation with an additional requirement of Court review due to the qui tam nature of a PAGA claim.

As a PAGA claim is unique to California, it is also appropriate to consider how California treats common fund recoveries. The California Supreme Court removed all doubt about the use of the percentage of the fund method to award attorneys' fees in California, stating, "We join the overwhelming majority of federal and state courts in holding that when class action litigation establishes a monetary fund for the benefit of the class members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created." *Laffitte v. Robert Half Intern. Inc.*, 1 Cal. 5th 480, 503 (2016).[4]

Thus, Ninth Circuit and California state courts regard circumstances in which class counsel's work is wholly contingent, such as in class actions and other common fund type cases, as a factor weighing in favor of approving a negotiated fee award that approximates market rates. *Ketchum v.*

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[4] The Supreme Court also corrected the misconception that *Dunk* should be viewed as expressing doubt about the use of the percentage method: "The *Dunk* court, while finding the percentage method inapplicable to the settlement before it due to the lack of a readily valued common fund, did not purport to bar its usage generally in common fund cases." *Laffitte*, at 501.

Moses, 24 Cal. 4th 1122, 1132-33 (2001). This matter has been litigated by Plaintiffs' Counsel in a manner that is reasonable, diligent, and efficient. The actual lodestar incurred by Plaintiffs' Counsel to date is no less than **$304,477.50** not including at least $6,000.00 in estimated future work. (Tunyan Decl., ¶¶ 42-44.) Attorneys for Plaintiffs invested substantial amounts of time evaluating data before the mediation in this matter, revising damage models, and in preparing for the mediation. Those efforts led to this reasonable settlement. Plaintiffs' Counsel requests **<u>$183,750.00</u>**, as specified in the Settlement, which constitutes a **negative** lodestar multiplier of **1.7** when compared to recorded lodestar of **<u>$304,477.50</u>.** (Tunyan Decl., ¶ 44.)

The Agreement also provides for the award of actual costs, up to $30,000.00, based on Plaintiffs' Counsel's actual out of pocket expenses in taking on representation in this Action on a contingency basis. (Tunyan Decl., ¶ 45; Bass Decl., ¶ 21; Seung Decl, Exhibit 2.) The actual costs are $31,760.68 which include the future costs of motion, final report, and notice of entry of court order filing fees. Since the actual costs are more than the capped amount of $30,000.00, Plaintiffs request an award of **<u>$30,000.00</u>** for litigation costs. (Tunyan Decl., ¶ 45.)

2. The Proposed Enhancement Awards to Plaintiffs Are Fair, Adequate, and Reasonable

Courts routinely approve enhancement awards to compensate named plaintiffs for the services they provide and the risks they incur during PAGA action litigation. The proposed enhancement awards to Plaintiffs are intended to recognize the substantial initiative and significant efforts on behalf of the Aggrieved Employees and the State. Plaintiffs contributed time to the prosecution of this matter, including assistance prior to the mediation with discovery, information and substantial time conferring with counsel over the course of this litigation and before it was filed. The enhancement also recognizes the considerable risks Plaintiffs undertook to be personally liable for all costs incurred regardless of the success of the litigation as well as the personal risk of facing intrusive discovery and potential disclosure to future employers that Plaintiffs sued a former employer, making future employment prospects uncertain and for general release of all claims beyond PAGA claims released in this action.

3. Administration Fees Are Very Reasonable

Administration will be completed by Phoenix Class Action Administration Solutions for

$6,500.00, a very reasonable amount for the services rendered. (Tunyan Decl., ¶ 46.)

IX. CONCLUSION

For the above reasons in fact and law, Plaintiffs requests this court enter an order approving the settlement memorialized in the Agreement.

Respectfully submitted,

Dated: March 9, 2026 **TUNYAN LAW, APC**

By:________________
Lilit Tunyan
Artur Tunyan
Attorneys for Plaintiff OLIVIA PASS

Dated: March 9, 2026 **THE SENTINEL FIRM, APC**

By:______________________
Seung Yang
Tiffany Hyun
Attorneys for Plaintiff OLIVIA PASS

Dated: March 9, 2026 **LAWYERS *for* JUSTICE, PC**

By:_ _______________
Arby Aiwazian
Joanna Ghosh
Daniel Bass
Attorneys for Plaintiff HADIZA JIMADA

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss
COUNTY OF LOS ANGELES)

I am employed in the county of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 707 Wilshire Blvd., Suite 4700 Los Angeles, California 90017

On the date indicated below, I served the document described as: **PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR AN ORDER APPROVING SETTLEMENT OF CLAIMS BROUGHT PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT OF 2004; MEMORANDUM OF POINTS AND AUTHORITIES** on the interested parties in this action by sending a true copy thereof to interested parties as follows and as stated on the attached service list:

Summer Young-Agriesti
syoung@kbylaw.com
Ana Thomas
athomas@kbylaw.com
Melissa Brandman
mbrandman@kbylaw.com
Andrew Cristea
acristea@yatlaw.com
Michelle Perciavalle
mperciavalle@kbylaw.com
Young-Agriesti & Thomas, LLP
7755 Center Avenue, Suite 1100
Huntington Beach, California 92647
Telephone: 949-221-8700
Facsimile: 949-222-1044

Attorneys for Defendants DEL AMO HOSPITAL, INC.

[✓] **BY E-MAIL:** I hereby certify that this document was served from Glendale, California, by e-mail delivery on the parties listed herein at their most recent known e-mail address or e-mail of record in this action.

[✓] **BY ELECTRONIC SERVICE:** Based on an agreement of the parties to accept electronic service, I caused the documents to be sent to the persons at the electronic service addresses listed above via electronic mail. I did not receive an error message.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on March 9, 2026, at Glendale, California.

Ivette Hernandez
Name

Signature