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

Attorneys for Plaintiff CARLOS DANILO ESCOBAR RIVAS, as an individual and on behalf of all employees similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

CARLOS DANILO ESCOBAR RIVAS, as an individual and on behalf of all employees similarly situated,

Plaintiff,

v.

FOUR SEASONS TREE CARE INC., a California corporation; and DOES 1 through 50, inclusive,

Defendants.

Case No. 24CU015430C

Assigned for all purposes to Hon. Judy S. Bae, Department C-62

PLAINTIFF'S 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

Date: July 10, 2026
Time: 9:10 a.m.
Courtroom: Dept. C-62
Judge: Hon. Judy S. Bae

Action Filed: October 7, 2024
Trial Date: Not Set

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

PLEASE TAKE NOTICE that on July 10, 2026, at 9:10 a.m., or as soon thereafter as the matter may be heard, in Department C-62 of the above-captioned Court, located at 330 W. Broadway, San Diego, CA 92101, Plaintiff CARLOS DANILO ESCOBAR RIVAS ("Plaintiff") will and hereby does move this Court for an order approving of the PRIVATE ATTORNEYS GENERAL ACT SETTLEMENT AGREEMENT ("Agreement" or "Settlement") reached with Defendant FOUR SEASONS TREE CARE INC. ("Defendant"), a true and correct copy of which is attached as Exhibit 1 to the Declaration of Lilit Tunyan submitted herewith.

Specifically, the Plaintiff moves 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 Aggrieved Employees; the amounts allocated to attorneys' fees and costs; the amount allocated to Plaintiff's Service Award; the amount allocated to the settlement administrator; and,

2. direct disbursement of the Maximum 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 Lilit Tunyan, Plaintiff 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: December 1, 2025

TUNYAN LAW, APC

By: ______________________

Lilit Tunyan
Artur Tunyan
Attorneys for Plaintiff CARLOS DANILO ESCOBAR RIVAS, as an individual and on behalf of all employees similarly situated

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CALIFORNIA DECISIONAL AUTHORITY

FEDERAL DECISIONAL AUTHORITY

STATUTES

TREATISES

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff CARLOS DANILO ESCOBAR RIVAS ("Plaintiff") 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 Defendant FOUR SEASONS TREE CARE INC. ("Defendant") (Plaintiff and Defendant collectively referred to herein as the "Parties"). After exchanging documents and voluminous data prior to mediation, Plaintiff and Defendant 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"), Defendant shall pay a maximum sum of **$110,000.00**, referred to in the Agreement as the Maximum Settlement Amount, for approximately **45** PAGA Employees employed in California as non-exempt hourly employees during the designated PAGA period. This is a fair and reasonable result, based upon the facts and circumstances discovered to exist.

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 PAGA Employees.

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, Plaintiff requests 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 persons who, during the PAGA or Representative Period, have previously been or currently are employed in California by Defendant, as a non-exempt employee. An "Aggrieved Employee" shall mean an individual who is a member of the Aggrieved Employees (or if any such person is incompetent, deceased, or unavailable due to military service, the person's legal representative or successor in interest evidenced by reasonable verification). It is estimated that there are approximately 2,665 pay periods from October 7, 2023 through August 19, 2025. (Agreement, ¶¶ 2, 12)

(b) **<u>PAGA Period or Representative Period</u>**: The period of time from October 7, 2023, through October 19, 2025 or as modified under Paragraph 12 of the Agreement. (Agreement, ¶¶ 12, 18)

(c) **<u>No Reversion</u>:** The Settlement is ***non-reversionary***. (Agreement, ¶ 46)

(d) **<u>Maximum Settlement Amount</u>:** Defendant agrees to pay the maximum sum of **$110,000.00** (hereinafter referred to as the "Maximum Settlement Amount" or "MSA") unless that amount is increased pursuant to Paragraph 12 of the Agreement for settlement of the PAGA Penalties, which shall be inclusive of Individual PAGA Payments, the LWDA PAGA Payment, Plaintiff's Counsel's attorneys' fees and costs, Plaintiff's Service Award and the Settlement Administrator's fees. (Agreement, ¶ 11, 13)

(e) **<u>Net Settlement Amount</u>**: At least **<u>$43,792.33</u>** will be available for distribution to the Aggrieved Employees and the LWDA. Of this amount, the LWDA will receive at least 65% or **<u>$28,465.01</u>** under the Agreement, and the Aggrieved Employees will receive 35% or at least **<u>$15,327.32</u>**. (Agreement, ¶ 13)

(f) **<u>Service Award</u>**: Plaintiff will receive Service Award in his capacity as Plaintiff and PAGA representative to compensate him for prosecuting this Action and performing work in support of the Action and a general release of all known and unknown claims beyond PAGA claims in the amount of $10,000. (Agreement, ¶¶ 19, 53 (a))

(g) **<u>Attorneys' Fees</u>:** Plaintiff's Counsel request an award of attorneys' fees in the amount of **<u>$36,666.67</u>**, which is one third of the MSA. (Agreement, ¶ 53 (b))

(h) **<u>Litigation Costs</u>**: Plaintiff's Counsel's litigation costs are capped to a maximum amount of **<u>$20,000.00</u>**. The actual costs are **$16,141.00** which is significantly less than the maximum amount and which include the future costs of approval motion, final report, notice, dismissal request and status report filing fees. Therefore, Plaintiff requests **$16,141.00** for litigation costs. (Agreement, ¶ 53 (b))

(i) **Settlement Administration**: Payment to Aggrieved Employees 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 **$3,400.00**, which is reasonable, based on all of the services offered. (Agreement, ¶¶ 21, 53 (d))

(j) **Uncashed Checks:** 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 Controller of the State of California Unclaimed Property Fund in the name of the Aggrieved Employee. (Agreement, ¶¶ 45,46)

(k) **Release**: In exchange for the above settlement consideration, Defendant shall be entitled to a release from the LWDA and each and every Aggrieved Employee, including Plaintiff.[1] (Agreement, ¶ 57)

(l) **Notice to LWDA**: The Declaration of Lilit Tunyan confirms that notice was provided to the LWDA and attaches the confirmatory submission documents. (Tunyan Decl., ¶ 47 and Exh.3.)

III. STATEMENT OF FACTS

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

Defendant is a commercial tree care company specializing in long-term seasonal maintenance programs, risk assessment, plant health care, and mapping services for both residential and commercial

[1] This comports with settled California Supreme Court authority. *See Arias v. Superior Court*, 46 Cal. 4th 969, 986 (2009) (concluding that "with respect to the recovery of civil penalties, nonparty employees as well as the government are bound by the judgment in an action brought under the act….").

properties. (Tunyan Decl., ¶ 4.) For purposes of this settlement, Defendant employed individuals in non-exempt positions in California. (Tunyan Decl., ¶ 5.) Plaintiff worked for Defendant in California during the PAGA Period. (Tunyan Decl., ¶ 6.)

IV. PROCEDURAL HISTORY

On October 7, 2024, Plaintiff's Counsel sent a letter to the LWDA on behalf of Plaintiff, in compliance with California Labor Code § 2699.3. More than 65 days passed after the letter was 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 October 7, 2024, Plaintiff commenced a wage-and-hour class action alleging seven causes of action against Defendant in San Diego Superior Court entitled *Escobar v. Four Seasons Tree Care Inc*., Case No. 24CU015430C (the "Action"). On December 12, 2024, Plaintiff filed a First Amended Complaint adding a cause of action for civil penalties under the Private Attorneys General Act of 2004, California Labor Code §§ 2698 et seq. ("PAGA") based on the same Labor Code violations alleged in their initial complaint. On January 24, 2025, Plaintiff filed an application to dismiss class claims without prejudice, which was granted on January 28, 2025, leaving PAGA and Plaintiff's individual claims in the Action ("Operative Complaint"). (Tunyan Decl., ¶ 8.) After exchanging documents and voluminous data prior to mediation, Plaintiff and Defendant reached a proposed settlement that will resolve the PAGA claims and Plaintiff's individual claims pending in this Action. Defendant denies all liability and admits to no claim by virtue of their agreement to settle. (Tunyan Decl., ¶ 9.) Because Court approval of a PAGA settlement is required, the settlement is presented for approval. (Tunyan Decl., ¶ 10.)

V. SETTLEMENT NEGOTIATIONS

Counsel for Plaintiff has 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 Defendant. Based on their investigation and evaluation of this case, Plaintiff's Counsel have concluded that the settlement is fair, reasonable, and adequate in light of all known facts and circumstances, including the defenses asserted by Defendant, potential adverse findings regarding liability, and numerous potential appellate issues. (Tunyan Decl., ¶ 11.)

The Parties agreed to participate in a mediation in an effort to resolve the PAGA claims asserted in this matter. The Parties selected mediator Lynn Frank, Esq., a neutral with extensive experience mediating wage and hour class and representative actions. The Parties participated in a full-day mediation on August 19, 2025 and reached a settlement at the mediation. 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., ¶ 12.) Prior to the mediation, Plaintiff requested substantial data from Defendant, and Defendant provided requested data. (Tunyan Decl., ¶ 13.)

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. After recognizing that PAGA actions are a form of *qui tam* action, *Iskanian* concluded that because the State was the real party in interest in a PAGA suit, it would violate public policy to compel an individual employee to waive representative claims under PAGA: "[W]here, as here, an employment agreement compels the waiver of representative claims under the PAGA, it is contrary to public policy and unenforceable as a matter of state law." *Iskanian*, 59 Cal. 4th at 384.

VII. <u>THE STANDARDS FOR APPROVAL OF A PAGA SETTLEMENT</u>

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.[2]

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 plaintiff's case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the amount offered in settlement; (4) the extent

[2] 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.

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 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."[3] *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

[3] 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.

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 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 plaintiff 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.[4] Applying the above standards to this Settlement, the Settlement meets all criteria for approval.

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 Plaintiff weighs in favor of the Court finding that the settlement is fair, adequate, and reasonable, since there are significant risk factors that Plaintiff 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

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[4] 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.

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 Defendant 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, Defendant 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, Plaintiff has concluded that the value of this Settlement is fair, adequate, and reasonable. (Tunyan Decl., ¶ ¶ 13-15.)

The Settlement of **<u>$110,000.00</u>** is 82.6% of the **$133,250.00** 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. The Settlement of **$110,000.00** is about 41.3% of roughly estimated penalty maximum exposure value of **$266,500.00**. (Tunyan Decl., ¶ 25.)

/ / /

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. Plaintiff's Counsel also considered defense arguments and defenses. (Tunyan Decl., ¶ ¶ 21-23.)

C. The Amount Offered in Settlement Under the Agreement

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 $110,000.00

Under the Agreement, Defendant shall pay a maximum sum of $110,000.00. Plaintiff's Counsel assessed the maximum plausible penalty exposure to be **$266,500.00**. (Tunyan Decl., ¶ 25.) This estimate is overly optimistic. The Settlement is 41.3% 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, Defendant asserted a number of defenses that potentially could have undermined Plaintiff's claims if they were to be litigated. Specifically, Defendant argued that they had compliant policies and practices, Aggrieved Employees signed valid meal waivers, Defendant provided compliant meal periods, numerous individualized inquiries would be needed to determine liability on Plaintiff's claims, including (1) whether employees worked off-the-clock with knowledge of a supervisor or Defendant, (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>$43,792.33</u> in Penalties

Under the Agreement, the amount available for distribution as penalties under PAGA is at least **<u>$43,792.33</u>**. 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 $28,465.01

As 65% of the penalties are allocated to the LWDA, the LWDA stands to receive at least **<u>$28,465.01</u>** 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 $15,327.32

Approximately 200 Aggrieved Employees shall receive at least **<u>$15,327.32</u>** (35% 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. <u>The Presence of a Government Participant</u>

As set forth above, 65% 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, 18-23.) 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 is experienced with employment class actions and representative actions, as set forth more fully in the Declaration of Lilit Tunyan filed herewith. (Tunyan Decl. ¶¶ 28-34.)

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 Plaintiff's Counsel to evaluate the strength and value of the claim for purposes of settlement. (Tunyan Decl., ¶¶ 13-14, 21-22.) As discussed above, Plaintiff's Counsel reviewed policies, performed calculations with data, and inspected related documents, such as handbooks and wage statements, to assess exposure and risk.

Based on Plaintiff's 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., ¶¶ 18-21.)

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 Plaintiff.

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 33.3% of the Maximum 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).

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. Moses*, 24 Cal. 4th 1122, 1132-33 (2001). This matter has been litigated by Plaintiff's Counsel in a manner that is reasonable, diligent, and efficient. The actual lodestar incurred by Plaintiff's Counsel to date is no less than $77,590.00 not including at least $3,000.00 in estimated future work. (Tunyan Decl., ¶¶ 39-41.) Attorneys for Plaintiff 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. (Tunyan Decl., ¶ 20-24.) Plaintiff's Counsel requests <u>**$36,666.67**</u>, as specified in the Settlement, which constitutes **a negative lodestar** multiplier of 2.1 when compared to recorded lodestar of <u>**$77,590.00**</u>**.** (Tunyan Decl., ¶ 41.)

The Agreement also provides for the award of actual costs, up to $20,000.00, based on Plaintiff's Counsel's actual out of pocket expenses in taking on representation in this Action on a contingency basis. (Tunyan Decl., ¶ 42.) Plaintiff requests an award of <u>**$16,141.00**</u> in actual costs which include future approval motion, dismissal request, notice, final report and status report filing fees. (Tunyan Decl., ¶ 42.)

2. Administration Fees Are Very Reasonable

Administration will be completed by Phoenix Class Action Administration Solutions for <u>**$3,400.00**</u>, a very reasonable amount for the services rendered. (Tunyan Decl., ¶ 43.)

3. Plaintiff's Service Award is Fair and Reasonable

Payment of $10,000.00 is requested as a Service Award to Plaintiff in his capacity as Plaintiff and PAGA representative to compensate him for prosecuting this Action and performing work in support of the Action, for release of Plaintiff's individual wage-an-hour non PAGA claims alleged and pending in this Action and a general release of all known and unknown claims beyond PAGA claims and wage-and-hour claims. Neither of other Aggrieved Employees other than Plaintiff provides such a broad release. Approval of the payment of $10,000.00 is requested under the terms of this Settlement. The Service Award also recognizes the considerable risks Plaintiff undertook on behalf of the Aggrieved

Employees and the State of California as well as the personal risk of facing intrusive discovery and potential disclosure to future employers that Plaintiff sued a former employer, making future employment prospects uncertain and general release of all claims beyond wage-and-hour claims released in this action.

IX. CONCLUSION

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

Respectfully submitted,

Dated: December 1, 2025

TUNYAN LAW, APC

By: ______________________________

Lilit Tunyan
Artur Tunyan
Attorneys for Plaintiff CARLOS DANILO ESCOBAR RIVAS

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 535 N Brand Blvd. Suite 285, Glendale, California 91203.

On the date indicated below, I served the document described as: **PLAINTIFF'S 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:

Matthew Sgnilek
MSgnilek@ohaganmeyer.com
Demi Flores
dflores@ohaganmeyer.com
Maysa Saeed
msaeed@ohaganmeyer.com
Nolinnda Hing
nhing@ohaganmeyer.com
Matthew Torres
mtorres@ohaganmeyer.com
O'HAGAN MEYER
4695 MacArthur Ct., Suite 900
Newport Beach, California 92660
Telephone: (949)942-8500
Direct 949-942-8502

Attorneys for Defendant FOUR SEASONS TREE CARE 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 December 1, 2025, at Glendale, California.

Natalia Zevallos
Name

Signature