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Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

ADRIANA MEZA individually, and on behalf of other aggrieved employees pursuant to the California Private Attorneys General Act;

Plaintiff,

vs.

VALLEY WEST CARE CENTER, an unknown business entity, VALLEY WEST POST ACUTE LLC, a California limited liability company; and DOES 1 through 100, inclusive,

Defendants.

Case No.: 30-2021-01222125-CU-OE-CXC

Honorable Melissa R. McCormick
Department CX-104

PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR APPROVAL OF PRIVATE ATTORNEYS GENERAL ACT (CAL. LABOR CODE § 2698, *ET SEQ.*) SETTLEMENT AGREEMENT AND AWARD OF ATTORNEYS' FEES AND COSTS, GENERAL RELEASE FEE, AND SETTLEMENT ADMINISTRATION COSTS; MEMORANDUM OF POINTS AND AUTHORITIES

Reservation ID:	74510372
Date:	July 17, 2025
Time:	2:00 p.m.
Department:	CX-104

Complaint Filed:	September 17, 2021
Trial Date:	None Set

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PLEASE TAKE NOTICE that on July 17, 2025, at 2:00 p.m. or as soon thereafter as the matter may be heard before the Honorable Melissa R. McCormick in Department CX-104 of the Superior Court of the State of California, for the County of Orange, located at 751 W Santa Ana Blvd, Santa Ana, California 92701, Plaintiff Adriana Meza ("Plaintiff") will and hereby does move for entry of the following orders:

1. Granting approval, pursuant to California Labor Code § 2699(l)(2), of the settlement between Plaintiff and Defendants Valley West Post Acute, LLC and David Johnson (together, the "Defendants") of the claims brought pursuant to the Private Attorneys General Act of 2004 ("PAGA"), as set forth in the Private Attorneys General Act Settlement Agreement and Release ("Settlement," "Agreement," or "Settlement Agreement"), attached as "**EXHIBIT 1**" to the Declaration of Vartan Madoyan, including and not limited to, the plan of allocation and distribution of the Total Settlement Amount for payment of the LWDA Payment to the California Labor and Workforce Development Agency ("LWDA"), Individual Settlement Shares to the Aggrieved Employees, Attorneys' Fees and Costs to Plaintiff's Counsel, Settlement Administration Costs to the PAGA Settlement Administrator, and General Release Fee to Plaintiff;
2. Approving the Net Settlement Amount, estimated to be no less than $76,774.86 which will be distributed to the LWDA and the Aggrieved Employees, pursuant to California Labor Code section 2699(i), of which 75% will be paid to the LWDA ("LWDA Payment") and 25% will be paid to the Aggrieved Employees ("Employees' Portion");
3. Appointing ILYM Group, Inc. ("ILYM") as the PAGA Settlement Administrator, to handle the administration of the Settlement;
4. Directing Defendants to fund the Total Settlement Amount, and directing the PAGA Settlement Administrator to distribute payments in accordance with the Settlement Agreement;
5. Directing the mailing of Individual Settlement Share checks to the Aggrieved Employees along with the Cover Letter, which is substantially similar in content and form to that attached as "**EXHIBIT A**" to the [Proposed] Order and Judgment Granting Approval of Private

Attorneys General Act (Cal. Labor Code § 2698, *Et Seq.*) Settlement Agreement and Award of Attorneys' Fees and Costs, General Release Fee, and Settlement Administration Costs ("[Proposed] Order and Judgment") filed concurrently herewith;

6. Awarding $5,000.00 to Plaintiff Adriana Meza as her General Release Fee;
7. Awarding $4,250.00 to the PAGA Settlement Administrator as Settlement Administration Costs; and
8. Awarding to Lawyers *for* Justice, PC ("Plaintiff's Counsel") the amount of $52,500.00 as compensation for reasonable attorneys' fees and the amount of $11,475.14 for reimbursement of litigation costs and expenses (together, "Attorneys' Fees and Costs"), pursuant to California Labor Code § 2699(g)(1).

Unless otherwise specified, all citations and references to the Private Attorneys General Act of 2004, California Labor Code § 2698, *et seq.* ("PAGA") are to the version of the statute prior to the recent amendment effective July 1, 2024; the amended statute does not apply to the above-captioned action and the Settlement pursuant to California Labor Code § 2699(v)(1), as amended, because the above-captioned action was filed prior to June 19, 2024.

The Settlement Agreement and moving and supporting papers for this motion are being concurrently submitted to the California Labor and Workforce Development Agency in conformity with California Labor Code section 2699(l)(2).

This motion is made pursuant to California Labor Code § 2699(l)(2), which provides for review and approval by the Court of the settlement of a civil action filed pursuant to PAGA.

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This motion will be based upon the following Memorandum of Points and Authorities, the Settlement Agreement, the Declarations of Plaintiff's Counsel (Vartan Madoyan) and Plaintiff Adriana Meza in support thereof, as well as the pleadings and other records on file with the Court in this matter, and such evidence and oral argument as may be presented at the hearing on this motion.

Dated: March 12, 2025

LAWYERS *for* JUSTICE, PC

By: Vartan S. Madoyan

Vartan Madoyan
Matthew Richard Soto
Attorneys for Plaintiff

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Adriana Meza ("Plaintiff") seeks approval of the Private Attorneys General Act Settlement Agreement and Release ("Settlement," "Agreement," or "Settlement Agreement") entered into between Plaintiff, individually and on behalf of the State of California with respect to Aggrieved Employees, and Defendants Valley West Post Acute, LLC and David Johnson (together, the "Defendants"), pursuant to California Labor Code section 2699(l)(2).[1] Plaintiff and Defendants (the "Parties") have agreed to resolve this action, brought pursuant to the Private Attorneys General Act of 2004, Labor Code section 2698, *et seq.* ("PAGA"), for a Total Settlement Amount of $150,000.00.[2]

The Settlement is fair, adequate, and reasonable. It is a reasoned compromise of a disputed claim that has been reached through arm's-length negotiations, in light of the risks, complexity, and expense of further litigation. The Settlement meets the requirements for Court approval based upon the relevant fairness factors. Plaintiff respectfully requests Court approval of the Settlement as detailed herein.

The Settlement Agreement and moving and supporting papers for this motion are being concurrently submitted to the LWDA and Plaintiff now moves for an order granting approval of the Settlement, in conformity with California Labor Code section 2699(l)(2).[3]

II. FACTUAL BACKGROUND AND RELEVANT PROCEDURAL HISTORY

For a discussion of relevant procedural history and facts regarding this case, please see the Declaration of Vartan Madoyan at paragraphs 8 to 11.

III. SUMMARY OF THE SETTLEMENT TERMS

A. Scope of the Settlement

If the Court grants approval of the Settlement, Plaintiff and the State of California with respect to Aggrieved Employees[4] will release the Released Parties from the Released Claims[5].

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[1] The Private Attorneys General Act Settlement Agreement and Release ("Settlement Agreement") is attached as "**EXHIBIT 1**" to the Declaration of Vartan Madoyan ("Madoyan Decl.").

[2] Settlement Agreement, § 3(a). The Total Settlement Amount is subject to possible increase pursuant to Section 3(b) of the Settlement Agreement.

[3] The Court is referred to the concurrently-filed Proof of Service, which confirms submission of the papers to the LWDA.

[4] Settlement Agreement, § 3(a)(1)-(5), and Madoyan Decl., ¶ 13. "PAGA Period" is defined as the period of July 14, 2020 through the date on which the Court grants approval of the Settlement. *Id*., § 3(a)(5).

[5] The definitions of "Released Parties" and "Released Claims" are set forth in the Settlement Agreement, § 8(a).

B. Funding and Distribution of the Total Settlement Amount

Defendants will pay a Total Settlement Amount of $150,000.00,[6] inclusive of: (1) Attorneys' Fees and Costs to Lawyers *for* Justice, PC ("Plaintiff's Counsel"), (2) General Release Fee to Plaintiff, (3) Settlement Administration Costs to the PAGA Settlement Administrator, and (4) Net Settlement Amount to the California Labor and Workforce Development Agency ("LWDA") and Aggrieved Employees. The Net Settlement Amount (estimated to be $76,774.86)[7] is the Total Settlement Amount less Court-approved Attorneys' Fees and Costs, Settlement Administration Costs, and General Release Fee. The Net Settlement Amount will be distributed as follows: 75% (approximately $57,581.15) to the LWDA ("LWDA Payment"); and 25% (approximately $19,193.71) ("Employees' Portion") to the Aggrieved Employees on a *pro rata* basis, based on their Compensable Pay Periods.[8] Pursuant to Section 3(b) of the Settlement Agreement, if the actual number of Compensable Pay Periods during the PAGA Period is more than ten percent (10%) above 4,200, then the Total Settlement Amount will be increased by the percentage that the actual number exceeds 4,620 Compensable Pay Periods.[9]

Within 21 calendar days of the Court's order granting approval: (1) Defendants will transmit the Total Settlement Amount to the PAGA Settlement Administrator's qualified settlement account;[10] and (2) Defendants will send the Aggrieved Employee List to the PAGA Settlement Administrator, containing contact information and other information to calculate Aggrieved Employees' payments.[11]

Within 14 calendar days after the PAGA Settlement Administrator receives the Aggrieved Employee List and the Total Settlement Amount, the PAGA Settlement Administrator will calculate payments and mail the Cover Letter[12] and Individual Settlement Share[13] checks (together, the "PAGA

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[6] Settlement Agreement, § 3(a), Madoyan Decl., ¶ 14, and see footnote 2.
[7] Settlement Agreement, § 3(a)(4).
[8] *Id.*, § 7(b)(1).
[9] *Id.*, § 3(b)
[10] *Id.*, § 7(a).
[11] *Id.*, § 7(c)(1).
[12] The Parties have prepared a simple Cover Letter for transmission to the Aggrieved Employees along with their Individual Settlement Share checks, substantially in the form attached as "**EXHIBIT A"** to the [Proposed] Order and Judgment and as "EXHIBIT A" to the Settlement Agreement. The Cover Letter informs the Aggrieved Employees about the Action and the Settlement.
[13] Each Aggrieved Employee's share of the Employees' Portion ("Individual Settlement Share"), will be calculated by the PAGA Settlement Administrator based on their Compensable Pay Periods. *Id.*, § 7(b). Payments to Aggrieved Employees are considered 100% penalties, reported on IRS Form 1099 if required. *Id.*, §§ 3(b) & 7(b)(1).

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Settlement Package(s)") to all Aggrieved Employees by first-class U.S. mail.[14] For each PAGA Settlement Package that is returned as undeliverable within 30 calendar days of the initial mailing, the PAGA Settlement Administrator will promptly attempt to locate an alternate, updated address by using a skip-trace search and shall attempt one (1) re-mailing of the PAGA Settlement Package.[15]

The Individual Settlement Share checks issued to Aggrieved Employees will remain valid for 90 calendar days, and thereafter, will be canceled.[16] Funds associated with canceled checks will be transmitted to the State Controller's Office Unclaimed Property Division in the name of the Aggrieved Employee(s) at issue and in the amount of their respective Individual Settlement Share(s).[17]

C. Standards for Approval of PAGA Settlement

PAGA allows an "aggrieved employee" to bring a civil action on behalf of the State of California to recover civil penalties on behalf of employees, against an employer, without the employees' involvement. Unnamed employees need not be given notice of the claim nor do they have the ability to opt-out.[18] Before bringing a civil action under PAGA, an employee must comply with California Labor Code section 2699.3. *See* Cal. Lab. Code § 2699(a). Plaintiff has complied with this requirement.

PAGA settlements require court approval. *See* Cal. Lab. Code § 2699(l)(2). However, a PAGA claim is not a class action but a law enforcement action.[19] A court's review of a PAGA settlement involves consideration of unique factors that render the approval process distinct from, and simpler than the two-step court approval process for a class action settlement. A court reviewing a PAGA settlement need only "ensur[e] that a negotiated resolution is fair to those affected." *Williams v. Superior Court*

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[14] *Id.*, § 7(c)(3).
[15] *Ibid.*
[16] *Id.*, § 7(c)(4).
[17] *Ibid.*
[18] *Robinson v. Southern Counties Oil Co.* (2020) 53 Cal.App.5th 476 (no opt out in PAGA settlements); *Williams v. Superior Court* (2017) 3 Cal.5th 531, 546-48 ("PAGA action is a statutory action for penalties brought as a proxy for the State," "whatever personal claims the absent employees might have for relief are not at stake[,]" as such, "there is no need to protect absent employees' due process rights" and they "will be bound by the outcome of any PAGA action"); *Ochoa-Hernandez v. CJADERS Foods, Inc.* (N.D. Cal. Apr. 2, 2010), 2010 WL 1340777, at *5 (Unnamed employees need not be given notice); *Arias v. Superior Court* (2009) 46 Cal.4th 969, 984-86 (Same).
[19] *Casida v. Sears Holdings Corp.* (E.D. Cal. Jan. 26, 2012) 2012 WL 253217, at *3; *Thomas v. Aetna Health of Cal., Inc.* (E.D. Cal. June 2, 2011) 2011 WL 2173715, at *11; *Arias, supra*, 46 Cal.4th at 980-88 (affirming lower court's holding that "plaintiff need not satisfy class action requirements" to assert a PAGA claim); *Pedroza v. PetSmart, Inc.* (C.D. Cal. Jan. 28, 2013) 2013 WL 1490667, at *15; *Amalgamated Transit Union, Local 1756, Afl-Cio v. Superior Court* (2009), 46 Cal.4th 993, 1003; see also *Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 58 Cal.4th 348, 381.

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(2017) 3 Cal.5th 531, 549 (citing Cal. Lab. Code § 2699(l)(2)). Although California Labor Code section 2699(l) does not set forth the criteria on which a PAGA settlement is to be judged, courts have approved settlements of PAGA claims.[20]

In a PAGA case, the court's focus is not on the monetary amounts, but whether the total settlement amount achieves PAGA's objectives. PAGA's purpose is "to incentivize private parties to recover civil penalties for the government that otherwise may not have been assessed and collected by overburdened state enforcement agencies." *See Ochoa-Hernandez, supra*, 2010 WL 1340777, at *4 (citing *Arias*, *supra*, 46 Cal.4th at 986). PAGA penalties are, in part, to "be distributed to the [LWDA] for enforcement of labor laws . . . and for education of employers and employees about their rights and responsibilities under this code, to be continuously appropriated to supplement and not supplant the funding to the agency for those purposes." *See* Cal. Lab. Code § 2699(j).

IV. THE SETTLEMENT IS FAIR AND SHOULD BE APPROVED

The Settlement resulted from hard-fought negotiations, fulfills the objectives of the PAGA statute, is fair, adequate, and reasonable, and meets all of the criteria for approval for the reasons discussed below.

A. The Factors Giving Rise to a Presumption of Fairness Exist

The Parties reached the Settlement after conducting extensive, arm's-length settlement negotiations and the involvement of a neutral mediator Hon. Jeffrey Winikow (Ret.).[21] A settlement that is "the product of extensive and hard-fought adversarial negotiations between the parties" is entitled to a presumption of fairness. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245.

As discussed in the Declaration of Vartan Madoyan, the Settlement is presumptively fair because: (1) it is the product of adversarial non-collusive, and arm's-length negotiations with the assistance of a neutral mediator knowledgeable in complex labor and employment matters; (2) it was negotiated by counsel with significant experience in similar complex labor and employment matters; and

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[20] *See, e.g., Resendez v. Bridgestone Retail Operations, LLC*, Los Angeles Superior Court, Case No. BC596892 (June 2016), *DCH Auto Wage and Hour Cases*, Los Angeles Superior Court, Case No. JCCP4833 (May 2017); *Garcia v. Gordon Trucking* (E.D. Cal. Oct. 31, 2012) 2012 WL 5364575, at *3; *Schiller v. David's Bridal, Inc.* (E.D. Cal. June 11, 2012) 2012 WL 2117001, at *14; *Chu v. Wells Fargo Invs., LLC* (N.D. Cal. Feb. 16, 2011) 2011 WL 672645, at *1; *Franco v. Ruiz Food Prods.* (E.D. Cal Nov. 27, 2012) 2012 WL 5941801, at *14; *Nordstrom Commissions Case* (2010) 186 Cal.App.4th 576, 589.

[21] Madoyan Decl., ¶ 16.

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(3) it occurred after counsel for the Parties engaged in significant investigation to evaluate the strength and potential value of the PAGA claim, and risks and expenses of litigating this claim through trial.[22]

Based on all of the information available to the Parties, the Parties agree that this matter is well-suited for settlement given the strengths and weaknesses of the PAGA claim and the facts and circumstances of the case.[23] Plaintiff's Counsel have extensive experience handling representative and class action wage-and-hour litigation and used that experience to achieve a settlement recovery for Plaintiff, the State of California, and the Aggrieved Employees.[24] Therefore, the Court should give considerable weight to the competency, experience, and opinion of counsel and the involvement of a neutral mediator in assuring that the settlement is a product of arm's length bargaining.[25]

B. <u>The Relative Strengths and Weaknesses of the PAGA Claim and the Range of Possible Outcomes Strongly Favor Approval of the Settlement</u>

For a discussion of the relative strengths and weaknesses of the PAGA claim and the range of possible outcomes in the litigation, see the Declaration of Vartan Madoyan at paragraphs 20-38.

C. <u>The Settlement Avoids Risky, Complex, and Lengthy Further Litigation</u>

Courts favor voluntary conciliation and settlement of complex litigation. *Class Plaintiffs v. City of Seattle* (9th Cir. 1992) 955 F.2d 1268, 1276. Generally, unless the settlement is clearly inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with uncertain results. *Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.* (C.D. Cal. Jan. 5, 2004) 221 F.R.D. 523, 526.

Prior to reaching the Settlement, the Parties investigated the veracity, strength, and scope of the PAGA claim and allegations and considered a large volume of information, documents, and data relevant to Plaintiff's claim and Defendants' defenses thereto.[26] The Parties thoroughly and sufficiently evaluated the PAGA claim and related allegations, including, and not limited to, calculating the potential monetary recovery under PAGA.[27] Plaintiff's Counsel performed other work as well, which is discussed in the

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[22] *Id.*., ¶¶ 2-7, 15-30.
[23] *Id.*, ¶ 44.
[24] *Id.*, ¶¶ 2-7.
[25] *See Kirkorian v. Borelli* (N.D. Cal. 1988) 695 F.Supp. 446, 451 (opinion of experienced counsel entitled to considerable weight); *Boyd v. Bechtel Corp.* (N.D. Cal. 1979) 485 F.Supp. 610, 616-17, 622 (recommendations of plaintiffs' counsel presumptively reasonable); *Satchell v. Fed. Express Corp.* (N.D. Cal. Apr. 13, 2007) 2007 WL 1114010, at *4 (assistance of experienced mediator confirms settlement is non-collusive).
[26] Madoyan Decl., ¶ 17.
[27] *Ibid.*

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Declaration of Vartan Madoyan.[28]

Had the case not settled, the Parties would have conducted extensive additional formal discovery, including propounding additional written discovery, and multiple depositions of party and percipient witnesses all over the State of California, to prepare the case for trial. From the inception of this litigation, Defendants indicated they would aggressively litigate this case.[29] Even if Defendants failed on their defenses, litigating a complex PAGA action is inherently expensive, and the litigation could continue beyond entry of judgment if either party were to appeal adverse rulings.[30] Additionally, there is a real possibility that Plaintiff could recover nothing on behalf of the State of California or the Aggrieved Employees after years of costly and labor-intensive litigation. Avoiding these risks and the likelihood of future contentious litigation, which would involve significant costs, favors settlement.

D. <u>The Settlement Is Fair, Adequate, and Reasonable</u>

The Settlement provides significant benefits to the State of California and Aggrieved Employees and falls well-within the range of acceptable settlements . "[T]he very essence of a settlement is compromise, 'a yielding of absolutes and an abandoning of highest hopes.'" *Officers for Justice v. Civil Service Comm'n* (9th Cir. 1981) 688 F.2d 615, 624. "The proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators." *Id.* at 625.

The Settlement is a compromise of highly disputed claims. Plaintiff and her counsel recognize the expense and length of continued proceedings necessary to pursue the matter through trial and any possible appeals.[31] Plaintiff and her counsel have also taken into account the uncertainty and risk of the outcome of further litigation, and the difficulties and delays inherent in such litigation.[32] Plaintiff and her counsel are also aware of the burdens of proof necessary to establish liability, both generally and in response to Defendants' defenses thereto, and the difficulties in establishing Defendants' liability for, and the right to recover, penalties on behalf of Plaintiff, the State of California, and other Aggrieved Employees.[33] Plaintiff and her counsel have also taken into account Defendants' agreement to enter into

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[28] Madoyan Decl., ¶ 31-38.
[29] *Id*., ¶¶ 21-27.
[30] *Id*., ¶¶ 19, 29-30, & 44.
[31] Madoyan Decl., ¶¶ 19, 29-30, & 44.
[32] Ibid.
[33] *Id*., ¶¶ 20-30.

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a settlement that confers significant relief upon the Aggrieved Employees and the State of California.[34]

Considering all of the facts in this case, Plaintiff and her counsel have determined that the Settlement represents a fair, adequate, and reasonable resolution of the PAGA claim, and that it is in the best interests of the Aggrieved Employees and the State of California.[35]

The result achieved in this case, and the monetary recovery provided by this settlement, are well-within the range of an acceptable settlement under the circumstances, especially when compared to trial court penalties assessments in contested cases and the settlement of PAGA claims in other cases. Here, the value obtained for settlement of the PAGA claim is significant, and it will be distributed in accordance with and in fulfillment of the objectives of the PAGA statute.

E. The Experience and Views of Plaintiff's Counsel Favor Settlement Approval

Plaintiff's Counsel are highly experienced in complex representative and class action wage-and-hour litigation.[36] In the view of Plaintiff's Counsel, the benefits conferred by the settlement are eminently fair and reasonable, and in the best interests of the State of California and the Aggrieved Employees in light of the risk, delay, and uncertainty of continued litigation and the substantial monetary benefits provided for by the Settlement.[37] Furthermore, courts have acknowledged that "the interests of plaintiff, counsel and other potentially aggrieved employees are largely aligned. All stand to gain from proving as convincingly as possible as many Labor Code violations as the evidence will sustain[.]" *Williams, supra,* 548 (citing Cal. Lab. Code § 2699(g)(1)(i)).

V. THE REQUESTED ATTORNEYS' FEES AWARD SHOULD BE APPROVED

A. A Fee Award of a Percentage of the Entire Fund Is Appropriate

While the Settlement provides for attorneys' fees in an amount of up to 40% of the Total Settlement Amount,[38] Plaintiff's Counsel seeks approval of only 35% of the Total Settlement Amount, which is $52,500.00 (assuming the Total Settlement Amount remains $150,000.00).[39] The requested attorneys' fees award is commensurate with: (1) the risk that Plaintiff's Counsel took in bringing and litigating the case, (2) the time, effort, and expense dedicated to the case, (3) the skill and determination

[34] *Id.*, ¶ 14.
[35] *Id.*, ¶ 44.
[36] Madoyan Decl., ¶¶ 2-7.
[37] *Id.*, ¶¶ 19, 29-30, 42 & 44.
[38] *Id.*, § 3(a)(1).
[39] *See* footnote 2.

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that Plaintiff's Counsel has shown, (4) the results that Plaintiff's Counsel has achieved in the case, (5) the value that Plaintiff's Counsel has achieved in the case, and (6) the other cases that Plaintiff's Counsel has turned down in order to work on this matter.

Plaintiff's Counsel is entitled to recover reasonable attorneys' fees and costs as a matter of right under PAGA. *See* Cal. Lab. Code § 2699(g)(1) ("Any employee who prevails in any [PAGA] action shall be entitled to an award of reasonable attorney's fees and costs"). Plaintiff's Counsel is also entitled to fees and costs under California Code of Civil Procedure section 1021.5, as the instant PAGA action is by definition "for the benefit" of others and secures monetary recovery for a large number of allegedly aggrieved employees, as well as the State of California.[40] The settlement will also provide funds to the state labor agency, to enhance enforcement of labor laws and education of "employers and employees about their rights and responsibilities under [the California Labor Code]." Cal. Lab. Code § 2699(i).

Courts may calculate and award attorneys' fees as a percentage of a monetary fund that has, by litigation, been preserved or recovered for the benefit of others. *Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480 at 486 & 506. Trial courts "retain the discretion to forgo a lodestar cross-check and [may] use other means to evaluate the reasonableness of a requested percentage fee." *Id.* (internal quotes omitted); see also *Wershba*, *supra*, 91 Cal.App. 4th at 253.

Courts award fees as an economic incentive for lawyers to pursue litigation that will enhance and facilitate access to the judicial system for meritorious claims, deter wrongdoing, and address multiple similar alleged wrongs that would not be economically feasible to pursue individually, such as here. See A. Conte, *Attorney Fee Awards* (2d ed. 1993) 104, at 6.

The percentage method is particularly appropriate where a monetary settlement has been recovered and "the benefit [recovered can be] easily quantified." *In re Bluetooth Headset Prods. Liab. Litig.* (9th Cir. 2011) 654 F.3d 935, 942. Where the amount of a settlement is a "certain easily calculable sum of money," California courts may calculate attorneys' fees as a reasonable percentage of the settlement created. Weil and Brown, California Practice Guide, *Civil Procedure Before Trial,* Chapter 14, section 14:145; *Dunk v. Ford Motor Co.*(1996) 48 Cal. App. 4th 1794, 1808.

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[40] *See Estrada v. FedEx Ground Package Sys. Inc.* (2007) 154 Cal.App.4th 1, 16-17 (recognizing that recovery obtained on behalf of 209 individuals satisfies the "significant benefit," "public interest," and "large class of persons" requirements of Code of Civil Procedure section 1021.5, regardless of plaintiff's personal motivation).

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The percentage fee method is preferred in representative actions because "it better approximates the workings of the marketplace than the lodestar approach." *Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 49. California law provides that the award for attorneys' fees should be equivalent to fees freely negotiated in the legal marketplace and paid in comparable litigation based on the result achieved and risk incurred. *See Lealao, supra,* 82 Cal.App.4th at 47-50; *Laffitte, supra,* 1 Cal.5th 480 at 503. In cases where the settlement agreement provides that the defendant will pay the plaintiff's attorneys a percentage of the fund created by the settlement, use of that percentage method is appropriate. *Lealao, supra,* 82 Cal.App.4th at 32. Fee awards that are too small will "chill the private enforcement essential to the vindication of many legal rights and obstruct the representative actions that often relieve the courts of the need to separately adjudicate numerous claims." *Id.* at 53. Therefore, fees in representative actions should approximate the probable terms of a contingent fee contract negotiated by a sophisticated attorney and client in comparable litigation. *Id.* at 48. "The ultimate goal . . . is the award of a 'reasonable' fee to compensate counsel for their efforts, irrespective of the method of calculation." *Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 557-58 (quoting *Apple Computer, Inc. v. Superior Court* (2005) 126 Cal.App.4th, 1253, 1270).

Plaintiff's Counsel's application for attorneys' fees in light of the facts and circumstances surrounding the case is well-within the range of reasonableness. Courts have awarded fees as high as 50% of the settlement in complex actions, depending on the circumstances of the case.[41]

Plaintiff's Counsel has performed significant work in this matter, as discussed in the Declaration of Vartan Madoyan with the very real possibility of an unsuccessful outcome and no fee recovery of any kind.[42] In the present case, Plaintiff's Counsel has borne all of the risks and costs of litigation and will not receive any compensation until recovery is obtained.[43] Plaintiff's Counsel is experienced in complex wage-and-hour litigation and used that experience to obtain a significant settlement recovery for Plaintiff, the Aggrieved Employees, and the State of California.[44] Considering the amount of fees requested, work

[41] *See In re Ampicillin Antitrust Litig.* (D.D.C. 1981) 526 F.Supp. 494 (awarding 45% fees on $7.3 million settlement); *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.* (S.D.N.Y. 1979) 480 F.Supp. 1195 (awarding approximately 53% of the settlement as fees). California courts routinely approve fee awards "average[ing] around one-third of the recovery." *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (lower court found range of fees in marketplace to be 20%-40% and determined such a percentage fee was appropriate).
[42] Madoyan Decl., ¶¶ 40-41.
[43] *Id.*, ¶ 42.
[44] *Id.*, ¶¶ 2-7.

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performed, risks incurred, results obtained, and experience of Plaintiff's Counsel in handling similar matters, Plaintiff maintains that the requested attorneys' fees are reasonable and should be awarded.

B. **The Requested Fee Award is Reasonable Based on the Factors Considered in Determination of Fee Awards**

The factors which courts consider in determining whether fee awards are reasonable, all of which support the fee award requested by Plaintiff's Counsel, are: the time and labor required; the novelty and difficulty of the questions involved; the skill requisite to perform the legal services properly; the preclusion of other employment by the attorney due to the acceptance of the case; the customary fee; whether the fee is fixed or contingent; the time limitation imposed by the client or the circumstances; the amount involved and results obtained; the experience, reputation, and ability of the attorney; the undesirability of the case; the nature and length of the professional relationship with the client; and awards in similar cases. *Camden I Condominium Association, Inc. v. Dunkel* (11th Cir. 1991) 946 F.2d 768, 772. Some of the most relevant factors to this Court's fee determination will be addressed below.

It should be highlighted that the percentage award sought is commensurate with the time, effort, and expense dedicated to the case, the contingent nature of Plaintiff's Counsel's representation and the risks taken in commencing the case, the skill and determination required, the results that Plaintiff's Counsel has achieved, and the value of the settlement that Plaintiff's Counsel has obtained on behalf of Plaintiff, the Aggrieved Employees, and the State of California. For the reasons discussed herein, an award of attorneys' fees in the amount of 35% of the Total Settlement Amount is reasonable.

1. Time & Labor

Plaintiff's Counsel has used its experience and skills in litigating complex wage-and-hour actions to bring this matter to a successful conclusion. Plaintiff's Counsel conducted a significant amount of investigation into the factual and legal issues, Defendants' business, and their operations and employment policies, practices, and procedures.[45] During litigation , Plaintiff's Counsel obtained information from Plaintiff, Defendants, and other sources, conducted legal research, reviewed and analyzed a large volume of documents and data, prepared for and participated in mediation and robust settlement discussions, and evaluated the PAGA claim and potential monetary recovery under PAGA.[46]

[45] Madoyan Decl., ¶¶ 8 & 17.
[46] Madoyan Decl., ¶ 17.

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Plaintiff's Counsel also met and conferred with Defendants' counsel regarding the pleadings, case management, discovery, arbitration, mediation, and settlement negotiations, among other issues.[47] Plaintiff's Counsel performed other work including, case strategy and analysis; researching, drafting, reviewing, and revising pleadings, court filings, motion-related papers (e.g., with respect to settlement approval motion papers), briefs for settlement negotiations and mediation, and the settlement agreement; propounding written discovery notices of depositions; claims evaluation and analysis; preparing for and participating in settlement negotiations and mediation; and appearing for court proceedings.[48]

Plaintiff's Counsel dedicated the full extent of staffing and monetary resources necessary to prosecute the case with maximum efficiency. The Attorney Task and Time Chart, which is attached as "**EXHIBIT 3**" to the accompanying Declaration of Vartan Madoyan, sets forth in detail the hours that Plaintiff's Counsel has spent performing tasks in this matter. Attorneys at Lawyers *for* Justice, PC have spent **173.10 hours** to obtain a recovery on behalf of Plaintiff, the Aggrieved Employees, and the State of California. These hours were required to bring the case to its successful conclusion.

In light of the value of time expended and the carrying of costs involved in this litigation, the requested attorneys' fees award is fair, adequate, and reasonable.

2. The Skill Required to Perform Legal Services Properly

The skill required to properly litigate this case is evident not only in the results achieved, but in the steps necessary to reach the same. Defendants retained highly-respected counsel to represent them. Plaintiff's Counsel's effort and skill were used to, among other things, investigate the allegations and gather facts, research the legal issues, analyze data, documents, and information obtained from Plaintiff, Defendants, and other sources, to evaluate the PAGA claim and negotiate the settlement. Despite all of the obstacles that had to be overcome, Plaintiff's Counsel used their extensive experience and skill in the handling of complex wage-and-hour matters to advocate for and obtain a recovery now, with maximum efficiency, as opposed to the possibility of recovery in the future, after significant expense and time.[49]

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[47] *Ibid.*
[48] *Ibid.*
[49] Madoyan Decl., ¶¶ 15-30.

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3. Whether the Fee Is Fixed or Contingent

Plaintiff's Counsel provided representation on a contingency basis, has borne all of the risks and costs of litigation, and will not receive any compensation until recovery is obtained.[50] Plaintiff's Counsel have invested **173.10 hours** performing work in this matter. Plaintiff's Counsel is also requesting reimbursement of litigation costs and expenses of $11,475.14.[51] If Plaintiff's Counsel had not been successful, the time that they have devoted to litigating the case would have been for naught and would not have produced any fee or any reimbursement of costs or expenses. Plaintiff's Counsel are well-experienced in complex wage-and-hour litigation and used that experience to obtain a great result in this matter.[52] The skill and determination that Plaintiff's Counsel has shown throughout the prosecution of the case justifies the requested attorneys' fees and costs. Considering the amounts requested, work performed, and risks incurred, the requested fees and costs are reasonable and should be awarded.

4. The Amount Involved and the Results Achieved

The Settlement represents an excellent resolution given the uncertainty and risks of further litigation.[53] Had the case not settled, Defendants would have vigorously defended the case and challenged manageability and liability, and also sought a reduction of any civil penalties. Defendants, however, faced risks too, including and not limited to, the risk of trial and the risk of having the Court assess civil penalties. Additionally, preparing for trial would have been extraordinarily expensive for the Parties. The risks and expenses of further litigation outweighed any benefit that might have been gained otherwise. The Settlement provides an immediate recovery and avoids an uncertain result and additional risk, expense, and delay (e.g., prolonged expert discovery, trial preparation, and appellate review). The results achieved, in light of the difficulties inherent in this case and similar cases, are considerable and support the requested fee award.

5. The Reputation and Ability of the Attorneys

Plaintiff's Counsel is a recognized class action and complex litigation law firm, and its attorneys employed their knowledge, skill, and experience to bring the case to a successful conclusion. Plaintiff's Counsel has years of wage-and-hour class action and complex litigation experience, has recovered

[50] *Id.*, ¶¶ 39-40 & 42.
[51] *Id.*, ¶¶ 40-41, & Exh. 3.
[52] *Id.*, ¶¶ 2-7.
[53] *Id.*, ¶¶ 19, 29-30, & 44.

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millions of dollars on behalf of thousands of individuals in California, and has successfully handled numerous significant wage-and-hour class action and representative action cases.[54]

C. The Lodestar Methodology Also Justifies Approval of the Requested Fees.

While the percentage-of-the-benefit approach is endorsed as the better approximation of the workings of the marketplace than the lodestar approach, courts may also use the lodestar method to "cross-check" the results of the other.[55] The lodestar is calculated based on reasonable hours at reasonable prevailing hourly rates for the attorneys, and counsel is entitled to compensation for every hour reasonably spent on the matter. *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1131-33.

The reasonableness of hours is assessed by "the entire course of the litigation, including pretrial matters, settlement negotiations, discovery, litigation tactics, and the trial itself[.]" *Vo v. Las Virgenes Municipal Water Dist.* (2000) 79 Cal.App.4th 440, 447. As set forth in Part VI.B.1 *infra*, and the Declaration of Vartan Madoyan, Plaintiff's Counsel performed significant work in this matter. The Attorney Task and Time Chart details the numerous tasks performed and the time required to do so--**173.10 hours**, which is reasonable and supports the requested fee award.[56]

California recognizes that attorneys should be compensated for providing contingency representation and be provided with financial incentives to enforce important rights and protections like those at issue here. *Ketchum, supra*, 24 Cal.4th at 1132-33. In awarding fees, the aim is to mirror "the established practice in the private legal market of rewarding attorneys for taking the risk of nonpayment by paying them a premium over their normal hourly rates for winning contingency cases." *See id.*

Plaintiff's Counsel has been actively involved in the prosecution of this case and their work on this matter has precluded other employment. Here, Plaintiff's Counsel bore the risk that, despite all of their efforts and skills employed, there may be no recovery. Ultimately, Plaintiff's Counsel was successful in reaching a settlement of no less than $150,000.00.[57]

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[54] Madoyan Decl., ¶¶ 2-7.

[55] *Laffitte, supra*, 1 Cal.5th at 505 (explaining that "[a] lodestar cross-check is simply a quantitative method for bringing a measure of the time spent by counsel into the trial court's reasonableness determination" and "the lodestar calculation . . . does not override the trial court's primary determination of the fee as a percentage" and "does not impose an absolute maximum or minimum on the potential fee award."); *see also, e.g., Vizcaino v. Microsoft Corp.*, (9th Cir. 2002) 290 F.3d 1043, 1050 ("[W]hile the primary basis of the fee award remains the percentage method, the lodestar may provide a useful perspective on the reasonableness of a given percentage award.").

[56] Madoyan Decl., Exh. 3.

[57] See footnote 2.

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As set forth in the Declaration of Vartan Madoyan, the professional backgrounds and experience of Plaintiff's Counsel support a reasonable blended hourly rate of compensation of at least $850 per hour for services provided by Plaintiff's Counsel.[58] Lawyers *for* Justice, PC has been awarded attorneys' fees, compensating the firm at the rate of at least $850 for legal services performed, by courts of this state.[59] While the circumstance of every case is unique, the fact remains that the work performed and efforts undertaken by Plaintiff's Counsel in this matter justify the requested attorneys' fees award.

Applying the rate of $850 per hour to **173.10** hours worked by Plaintiffs' Counsel, would place a base lodestar value of $147,135.00 on the services provided by Plaintiffs' Counsel. However, Plaintiff's Counsel only seeks an attorneys' fee award of $52,500.00. The lodestar method as a cross-check to the percentage figure sought strongly supports the reasonableness of the fee request. Accordingly, Plaintiff requests that the Court approve attorney fees in the amount of $52,500.00.

VI. <u>REIMBURSEMENT OF PLAINTIFF'S COUNSEL LITIGATION COSTS AND EXPENSES SHOULD BE APPROVED</u>

The Settlement provides for reimbursement of litigation costs and expenses of up to $25,000.00. Plaintiff's Counsel seeks reimbursement of only $11,475.14 in litigation costs and expenses.[60] These expenses were reasonable and necessary in the prosecution of this matter and to obtain the Settlement, and is less than the maximum amount allocated under the Settlement Agreement.[61] The cost savings of $13,524.86 will be part of the Net Settlement Amount.[62] Accordingly, the Court is requested to award reimbursement of litigation costs and expenses to Plaintiff's Counsel in the amount of $11,475.14.

VII. <u>THE SETTLEMENT ADMINISTRATION COSTS SHOULD BE APPROVED</u>

The Parties have agreed to retain, subject to Court approval, ILYM Group, Inc. to handle the administration of the Settlement. ILYM's fees and expenses are estimated not to exceed $4,250.00, based on the quote provided by ILYM Group, Inc., although the Parties have allocated up to $6,500.00. The anticipated cost savings of $2,250.00 will be part of the Net Settlement Amount. The costs and expenses of settlement administration include, but are not limited to, preparing, printing, and mailing the

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[58] Madoyan Decl., ¶ 40.
[59] Madoyan Decl., ¶ 40.
[60] Madoyan Decl., ¶ 41.
[61] *Ibid.*
[62] *Ibid.*

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Cover Letter and Individual Settlement Shares checks to the Aggrieved Employees (i.e., PAGA Settlement Packages); performing skip-trace searches; re-mailing returned PAGA Settlement Packages; and handling inquiries from Aggrieved Employees regarding the Settlement, among other things. Accordingly, the Court should grant approval of the Settlement Administration Costs in the amount of up to $4,250.00 to ILYM Group, Inc., a necessary third-party for handling the settlement process.

VIII. THE GENERAL RELEASE FEE SHOULD BE APPROVED

The Settlement provides for a General Release Fee to be paid to Plaintiff in the amount of $5,000.00 for her broader individual waiver and release of claims with a California Civil Code Section 1542 waiver (set forth in Section 8(b) of the Settlement Agreement).[63] It is reasonable and just for Plaintiff to receive this payment. Plaintiff contributed considerable time and effort to the litigation of this case in order to enforce the California Labor Code on behalf of the State of California and for the benefit of other Aggrieved Employees. Plaintiff discussed her employment experiences with her counsel, gathered and produced relevant documents and information, and provided the facts and evidence necessary to attempt to prove the allegations.[64] Plaintiff was available whenever her counsel needed her and tried to obtain and provide documents and information that would aid in the litigation of the PAGA claim and pursuit of recovery on behalf of the State of California and Aggrieved Employees.[65]

IX. CONCLUSION

For the reasons detailed above, Plaintiff respectfully requests that the Court approve the Settlement, including the plan of allocation and distribution of the Total Settlement Amount.

Dated: March 12, 2025

LAWYERS *for* JUSTICE, PC

By: ______________________

Vartan Madoyan
Matthew Richard Soto
Attorneys for Plaintiff

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[63] Settlement Agreement, §§ 3(a)(2) & 8(b). The PAGA statute recognizes that a plaintiff employee may pursue or recover other remedies and relief available to the plaintiff employee under state or federal law through an action under PAGA. See, Cal. Lab. Code § 2699(k)(1) (formerly Cal. Lab. Code § 2699(g)(1). As such, it is appropriate for Plaintiff to receive a payment for her broader individual release of claims.

[64] Madoyan Decl., ¶ 43; Declaration of Adriana Meza ("Meza Decl."), ¶¶ 3 & 4.

[65] *Ibid.*

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