

Theodore Tang (SBN 313294)  
[theodore@frontierlawcenter.com](mailto:theodore@frontierlawcenter.com)  
Manny Starr (SBN 319778)  
[manny@frontierlawcenter.com](mailto:manny@frontierlawcenter.com)  
**FRONTIER LAW CENTER**  
23901 Calabasas Road, Suite 1084  
Calabasas, CA 91302  
Telephone: (818) 914-3433  
Facsimile: (818) 914-3433

Larry W. Lee (SBN 228175)  
[lwlee@diversitylaw.com](mailto:lwlee@diversitylaw.com)  
Christine S. Lee (SBN 339947)  
[christine@diversitylaw.com](mailto:christine@diversitylaw.com)  
**DIVERSITY LAW GROUP, A.P.C.**  
515 S. Figueroa St., Suite 1250  
Los Angeles, CA 90071  
Telephone: (213) 488-6555  
Facsimile: (213) 488-6554

William L. Marder (SBN 170131)  
[bill@polarislawgroup.com](mailto:bill@polarislawgroup.com)  
**POLARIS LAW GROUP**  
501 San Benito Street, Suite 200  
Hollister, CA 95023  
Telephone: (831) 531-4214  
Facsimile: (831) 634-0333

Attorneys for Plaintiffs  
Renee Bullock, and Maryam Khoshchin,

**IN THE SUPERIOR COURT OF CALIFORNIA**

**COUNTY OF NEVADA**

RENEE BULLOCK and MARYAM  
KHOSHCHIN individually and on behalf of all  
other Aggrieved Employees

Plaintiffs,

v.

ATRIA MANAGEMENT COMPANY, LLC;  
ATRIA SENIOR LIVING, INC.; and DOES 1  
through 100,

Defendant(s).

Case No. CU22-086285

**PLAINTIFFS' NOTICE OF MOTION  
AND MOTION FOR APPROVAL OF  
PAGA SETTLEMENT; MEMORANDUM  
OF POINTS AND AUTHORITIES;  
DECLARATION OF THEODORE TANG;  
DECLARATION OF LARRY LEE;  
DECLARATION OF RENEE BULLOCK;  
DECLARATION OF MARYAM  
KHOSHCHIN; PROPOSED ORDER**

**Date: December 13, 2023**

**Time: 10:00 a.m.**

**Dept: 6**

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE THAT on December 13, 2023 at 10:00 a.m. in Department 6  
3 Nevada County Superior Court at 201 Church Street, Nevada City, California 95959, Plaintiffs  
4 Renee Bullock and Maryam Khoshchin will move the court for an order approving the Settlement  
5 of this PAGA action.

6 The motion is based on this Notice, the Memorandum of Points and Authorities, the  
7 Declarations of Theodore Tang, Larry Lee, Renee Bullock, and Maryam Khoshchin, pleadings on  
8 file, and arguments at the hearing on this motion.

9  
10  
11 DATED: November 21, 2023



THEODORE TANG  
Attorney for Plaintiffs  
Renee Bullock, et al.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 This is a PAGA action seeking penalties on behalf of the LWDA and Aggrieved Employees  
4 for alleged violations of Labor Code §§ 201, 202, 203, 226.7, 510, 558, 1194 and 1197.1, and 1198  
5 (incorporating IWC Wage Orders). Plaintiffs Renee Bullock and Maryam Khoshchin (“Plaintiffs”)  
6 worked for Defendant Atria Management Company, LLC and Atria Senior Living, Inc.,  
7 (collectively “Atria”) as nonexempt hourly employees in assisted care facilities for seniors. Bullock  
8 worked at Atria’s Grass Valley facility, and Khoshchin worked at an Atria facility in Sacramento  
9 County. Plaintiffs allege that Atria did not provide compliant meal and rest breaks, failed to  
10 properly account for non-discretionary bonuses in the regular rate of pay for calculating overtime,  
11 failed to provide accurate itemized wage statements, and failed to pay all employees all wages due  
12 at time of termination. (Declaration of Theodore Tang (“Tang Decl.”) ¶14)

13 On December 17, 2021, Plaintiff Bullock sent a PAGA letter to Atria via certified mail, and  
14 uploaded it to the LWDA website, explaining the bases for the PAGA allegations. On or about  
15 April 18, 2022, Plaintiff Khoshchin sent a written notice to the LWDA and Atria alleging similar  
16 violations. On March 7, 2022, having received no response from the LWDA, Plaintiff Bullock filed  
17 the instant action. On April 18, 2022, Plaintiff Khoshchin filed a complaint against Atria in the  
18 Superior Court of California, County of Sacramento, alleging class and individual causes of action  
19 for: (1) violation of Labor Code §§ 226.7 and 512; (2) violation of Labor Code § 226; and (3)  
20 violation of Business and Professions Code § 17200, *et seq.* (Declaration of Larry W. Lee (“Lee  
21 Decl.”) ¶¶ 2-3) On August 9, 2022, Plaintiff Khoshchin dismissed her class claims and submitted  
22 her individual claims to arbitration. (*Id.*) On June 22, 2022, Plaintiff Khoshchin filed a separate  
23 PAGA action in the Sacramento County Superior Court.

24 On December 16, 2022 this Court granted Atria’s motion to compel arbitration against  
25 Bullock. Subsequently, Bullock initiated arbitration while the PAGA case was stayed. Both cases  
26 proceeded on parallel tracks in their respective arbitrations until the Parties agreed to a global  
27 mediation. The Parties conducted a full day mediation with experienced employment law mediator  
28 Michael Loeb of JAMS on June 19, 2023. In preparation for mediation, Atria informally produced

1 Plaintiffs’ employee files, employee handbooks, and relevant company policies. Atria also  
2 informally produced a sampling of time and payroll records for the Aggrieved Employees. With the  
3 mediator’s assistance, the Parties ultimately reached a global resolution.<sup>1</sup> That resolution was  
4 memorialized in a Stipulation of Settlement and Release (the “Settlement”). (Tang Decl. ¶12)

5 In order to facilitate settlement, the Parties agreed to file an amended complaint in the  
6 Bullock case to bring Khoshchin’s claims before the jurisdiction of this Court, so that the settlement  
7 may be approved in one consolidated action. Upon Approval of this Settlement becoming effective,  
8 Plaintiff Khoshchin’s counsel shall file a request for dismissal for the Sacramento County case. (Lee  
9 Decl. ¶5)

10  
11 **II. A COPY OF THE SETTLEMENT AGREEMENT HAS BEEN GIVEN TO THE LWDA**  
12 **PURSUANT TO LABOR CODE § 2699(1)(2)**

13 When enacting PAGA, the Legislature intended to ensure the LWDA retained “primacy”  
14 over private enforcement actions of the Labor Code. *See* 2003 Cal. Stat. ch. 906 § 1(d). To that end,  
15 PAGA requires parties who seek approval of a proposed PAGA settlement to submit the proposed  
16 settlement to the LWDA online “at the same time that it is submitted to the court,” to give LWDA  
17 an opportunity to comment on the proposed settlement. *See* Cal. Lab. Code §§ 2699(1)(2),  
18 2699(1)(4). In satisfaction of that requirement, Plaintiffs submitted a copy of the Settlement and this  
19 motion to the LWDA through the LWDA’s online filing system in conjunction with filing this  
20 motion. (Tang Decl. ¶18)

21  
22 **III. FAIRNESS OF THE SETTLEMENT**

23 The present settlement resolves claims under PAGA on a representative basis. This is not a  
24 class settlement, and does not purport to resolve any individual claims (other than for the named  
25 Plaintiffs) on behalf of any class of individuals. As a result, the usual procedures for class actions  
26

27  
28 <sup>1</sup> “Global” in this case referring to the PAGA claims and individual claims based thereon for all  
Plaintiffs. Plaintiff Bullock’s wrongful termination claim, also pending in arbitration, was  
specifically carved out of this settlement. As of the date of this filing, it was settled in principle.

1 approval do not apply. (*Arias v. Superior Court (Angelo Dairy)* (2009) 46 Cal.4th 969.) This  
2 action seeks penalties under PAGA under Labor Code sections 201, 202, 203, 226(a), 226.7, 510,  
3 512, 558, 1194, 1197.1, 1198, and 2699 *et seq.*

4 Further, in the recent case of *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, the court  
5 found that the “fair, reasonable, and adequate” standard applicable to class actions applies to PAGA  
6 settlements. (*Id.*, at 64.) The Court also held that the trial court must assess “the fairness of the  
7 settlement’s allocation of civil penalties between the affected aggrieved employees”. (*Id.*, at 64-65.)  
8 California law provides some general guidance concerning judicial approval of any settlement.  
9 First, public policy generally favors settlement. (*Neary v. Regents of University of California* (1992)  
10 3 Cal.4th 273.) Nonetheless, the court should not approve an agreement contrary to law or public  
11 policy. (*Bechtel Corp. v. Superior Court* (1973) 33 Cal.App.3d 405, 412; *Timney v. Lin* (2003) 106  
12 Cal.App.4th 1121, 1127.) Moreover, “The court cannot surrender its duty to see that the judgment  
13 to be entered is a just one, nor is the court to act as a mere puppet in the matter.” (*California State*  
14 *Auto. Assn. Inter-Ins. Bureau v. Superior Court* (1990) 50 Cal.3d 658, 664.) As a result, courts have  
15 specifically noted that *Neary* does not always apply, because “Where the rights of the public are  
16 implicated, the additional safeguard of judicial review, though more cumbersome to the settlement  
17 process, serves a salutatory purpose.” (*Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of*  
18 *America* (2006) 141 Cal.App.4th 46, 63.) As explained below, the settlement with Atria is fair,  
19 reasonable, and adequate, and should be approved.

20 Under the civil penalty formula applicable under PAGA, Plaintiffs’ estimated a maximum  
21 exposure of approximately **\$7,850,000.00** (of which approximately \$3,590,000 million is for the  
22 overtime regular rate violations, \$1,260,000 million is for the meal/rest break regular rate violations,  
23 and approximately \$3 million is for wage statement and waiting time penalties).

24 The regular rate violations are based on the theory that Atria, prior to January 13, 2023, paid  
25 premiums for missed breaks at the base rate of pay instead of the regular rate of pay and failed to  
26 account for nondiscretionary amounts including shift differentials and “Career Commitment  
27 Rewards” (“CCR”) payments, which are akin to bonuses, into the regular rate for overtime.

28 The meal/rest break violations are based on the theory that Atria policy did not properly

1 provide proper meal/rest breaks since any breaks were on-duty, or missed break premiums were not  
2 paid at the correct regular rate of pay. The wage statement and waiting time claims are derivative of  
3 the regular rate and missed break violations.

4 The maximum exposure of \$7,850,000 had the following risks: A previous class action  
5 settlement with Atria exists that contains a release and judgment extending through February 15,  
6 2021, possibly precluding recovery for violations that occurred before that date. Further, Atria's  
7 written policy regarding rest breaks in effect since February 15, 2021 no longer includes language  
8 stating that the employees are precluded from leaving the premises during their rest breaks. While  
9 Plaintiffs contend this was still the practice of remaining on the premises, the lack of a written  
10 policy explicitly stating this is a cognizable risk. Further, there is an open question of law as to  
11 whether, shift differentials are "production bonuses" or "flat bonuses" subject to the method of  
12 calculating the regular rate as stated in *Alvarado v. Dart Container Corporation of California* 4  
13 Cal.5th 542 (2018).

14 Another risk is that the Court could refuse to "stack" civil penalties resulting from multiple  
15 violations. In addition, Defendant could argue there was a lack of willfulness for waiting time  
16 penalties or "knowing and intentional conduct" for wage statement penalties. Similarly, even if  
17 Plaintiff prevailed, the recoverable penalties under PAGA are subject to reduction at the Court's  
18 discretion. *See Carrington v. Starbucks Corporation*, 30 Cal. App. 5th 504, 517 (2018)  
19 (approving PAGA penalty reduction to \$5 per pay period); *accord Atempa v. Pedrazzani*, 27 Cal.  
20 App. 5th 809 (2018).

21 Further, although class certification is not required for a PAGA claim, Defendant could  
22 contend that Plaintiffs should show that the PAGA claims are manageable. In *Ortiz v. CVS*  
23 *Caremark Corp.*, the court dismissed a PAGA claim because it was unmanageable. 2014  
24 WL1117614, at \*3-4 (N.D. Cal. 2014). Moreover, in a PAGA case, the plaintiff must prove  
25 liability with respect to "each and every individual" through representative evidence – but without  
26 sacrificing the defendant's due process right to present proof of their affirmative defenses. *Elkins v.*  
27 *Superior Court*, 41 Cal. 4th 1337, 1357 (2007); *Walmart Stores, Inc. v. Dukes*, 131 S. Ct. 2541,  
28 2561 (2011); *Duran v. U.S. Bank Nat'l Ass'n*, 59 Cal. 4th 1, 33-34 (2014). In this case this risk is

1 pointed, as the offending language about rest breaks was taken out of Atria's written policy,  
2 potentially removing one method to show a common policy.

3 The Parties further recognize that the issues presented in the PAGA Claim are likely only to  
4 be resolved with extensive and costly pretrial and trial proceedings, and that further litigation will  
5 cause inconvenience, distraction, disruption, delay, and expense disproportionate to the maximum  
6 potential benefits to the Aggrieved Employees, Plaintiffs, and ultimately from the State from  
7 continued litigation.

8 In view of the risks, the Settlement represents a fair, adequate, and reasonable compromise  
9 amount for these claims and is in the best interest of Plaintiffs and Aggrieved Employees and thus,  
10 warrants approval. *See Laguna v. Coverall N. Am., Inc.*, Case No. 12-55479 (9th Cir. June 3, 2014)  
11 2014 WL 2465049, at \*3. The PAGA settlement and its terms are fair, just, reasonable, adequate,  
12 and equitable to Defendant, Plaintiffs, and the State, especially in light of the current economic  
13 climate, and are the product of good faith, and informed arms-length negotiations between the  
14 Parties consistent with public policy and fully comply with applicable provisions of law.

15  
16 **IV. TERMS AND PROCEDURES OF THE SETTLEMENT**

17 Defendant agrees to pay \$1,695,000 (the "Gross Settlement Amount" or "GSA") which will  
18 be distributed by the Settlement Administrator as follows:

- 19 a. Up to \$565,000 (33.33% of the GSA) in attorney fees; 50% to Frontier Law Center,  
20 and 50% to Diversity Law Group, and Polaris Law Group collectively (Frontier Law  
21 Center, Diversity Law Group, and Polaris Law Group are collectively referred to as  
22 "PAGA Counsel");
- 23 b. Up to \$50,000 in costs to PAGA Counsel (PAGA Counsel requesting \$15,838.89  
24 with the remainder going back to the Net Settlement);
- 25 c. Up to \$17,000 in administrative costs to Simpluris (hereafter "Settlement  
26 Administrator");
- 27 d. \$10,000 enhancement award to Plaintiff Renee Bullock;
- 28 e. \$10,000 enhancement award to Plaintiff Maryam Khoshchin;

f. The remainder, \$1,043,000, will be divided as follows:

i. \$782,250 (75% of the Net Settlement Amount) to the LWDA; and

ii. \$260,750 (25% of the Net Settlement Amount) to the Aggrieved Employees.

The amount to the Aggrieved Employees will distributed by 1) giving \$5 to each Aggrieved Employee, then 2) the remaining amount will distributed by dividing each Aggrieved Employee's number of at-issue pay periods by the total number of at-issue pay periods for all Aggrieved Employees, then multiplying that quotient by the remaining amount above.<sup>2</sup>

For purposes of computing taxes, one-hundred percent (100%) of the Aggrieved Employee Settlement Award shall be considered to be a civil penalty and shall not be subject to withholding, unless otherwise required by law.

**V. THE PROPOSED ATTORNEYS' FEES AND COSTS ARE FAIR, ADEQUATE, AND REASONABLE AND SHOULD BE APPROVED**

**A. The Settlement Agreement Allocates a Fair, Adequate, and Reasonable Amount to the Payment of Attorneys' Fees**

PAGA allows a prevailing plaintiff to recover reasonable attorneys' fees. *See* Cal. Lab. Code § 2699(g). In recognition of this, the Settlement Agreement allows Plaintiffs' counsel to request up to \$565,000, in attorneys' fees. *See* Agreement ¶ 3.2.1. For two reasons, this amount is fair, adequate, and reasonable in light of PAGA's policy and purpose.

First, in class actions, state and federal courts have held that when a class action establishes a monetary fund for the benefit of the class members out of which attorneys' fees may be paid, courts may determine the amount of a reasonable fee by "choosing an appropriate percentage of the fund created." *See Laffitte v. Robert Half Int'l*, 1 Cal. 5th 480, 503 (2016) (affirming a fee award representing 33 1/3 percent of the fund and joining "the overwhelming majority of federal and state courts" in approving the "percentage method" as a reasonable means for determining attorney fee awards in class actions). While different from class action settlements in important ways, PAGA

<sup>2</sup> An "at-issue pay period" is a pay period where the Aggrieved Employee either 1) was paid a meal or rest break premium and non-discretionary pay in the same pay period between April 17, 2021 and January 13, 2023 OR 2) paid overtime and non-discretionary pay in the same pay period between February 16, 2021 and July 31, 2023. The same pay period will NOT count twice if it falls under both categories for the employee.

1 settlements also involve the establishment of a common fund for the benefit of persons other than  
2 the named plaintiff, so the reasons for utilizing the percentage method are the same. *See id.* (noting  
3 that the percentage method provides “ease of calculation,” “alignment of incentives between  
4 counsel and the class,” “a better approximation of market conditions in a contingency case,” and the  
5 “encouragement...to seek an early settlement”). The \$565,000 requested by Plaintiff’s counsel  
6 represents one-third of the Gross Settlement Amount, which is consistent with awards usually  
7 approved in class actions. *See Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66, fn. 11 (2008)  
8 (“[F]ee awards in class actions average around one-third of the recovery”); *see also Laffitte*, 1 Cal.  
9 5th at 506 (upholding the approval of a fee award equal to one-third of the total settlement amount).

10 **B. The Settlement Agreement Allocates a Fair, Adequate, and Reasonable Amount to**  
11 **the Payment of Litigation Costs.**

12 PAGA also allows a prevailing plaintiff to recover litigation costs. *See* Cal. Lab. Code §  
13 2699(g). Accordingly, the Settlement allows Plaintiffs’ Counsel to request up to \$50,000.00 in  
14 litigation costs. Settlement ¶ 2.c.iv.

15 As set forth in accompanying declarations of Plaintiffs’ Counsel, these costs were all  
16 directly incurred in the prosecution of this action, including, but not limited to, filing fees, service  
17 fees, and mediation fees. As such, Plaintiffs’ Counsel’s request for costs in the amount of  
18 \$15,838.98 is fair, adequate, reasonable, and consistent with PAGA’s policies. Because this amount  
19 is less than the \$50,000.00 that was provided in the Settlement, the difference will be distributed to  
20 the LWDA and Aggrieved Employees.

21  
22 **VI. PAYMENTS TO PLAINTIFFS**

23 Courts have held that named plaintiffs in class, or private attorney general actions can  
24 request a service award. *Rodriguez v. W. Publ’g Corp.*, 563 F.3d 948, 958-59 (9th Cir. 2009)  
25 (explaining that service awards “are intended to compensate class representatives for work done on  
26 behalf of the class, to make up for financial or reputational risk undertaken in bringing the action,  
27 and, sometimes, to recognize their **willingness to act as a private attorney general**”) (emphasis  
28 added).

1 Here, Plaintiffs respectfully request \$10,000.00 each, which is intended to compensate  
2 Plaintiffs for the time spent on this case and for executing a general release, including of Civil Code  
3 § 1542, which was not required by Aggrieved Employees. This requested enhancement is consistent  
4 with awards approved in other common fund cases. *See Van Vranken v. Atlantic Richfield Co.*, 901  
5 F. Supp. 294, 299-300 (N.D. Cal. 1995) (incentive award of \$50,000); *In re Dun & Bradstreet*  
6 *Credit Servs. Customer Litig.*, 130 F.R.D. 366, 374 (S.D. Ohio 1990) (two incentive awards of  
7 \$55,000, and three incentive awards of \$35,000). Plaintiffs also took the risk of bringing the  
8 lawsuit, which was a matter of public record. Future employers may be less likely to hire an  
9 employee who have previously filed an action against an employer. This in conjunction with  
10 Plaintiffs' agreement to provide a general release supports the requested award.

11  
12 **VII. NO ADMISSION OF LIABILITY OR WRONGDOING**

13 The payment of consideration is not an admission of wrongdoing or liability on the part of  
14 Defendant, or any other person or business entity. Defendant adamantly denies all allegations of  
15 wrongdoing arising out of the employment relationship between the Parties, including the  
16 Aggrieved Employees. Defendant intends merely to avoid the expense, delay, uncertainty and  
17 burden of continued litigation.

18  
19 **VIII. PAGA SETTLEMENT ADMINISTRATION**

20 Because the Settlement requires payments not only to Plaintiffs, Plaintiffs' Counsel, and the  
21 LWDA, but also to Defendant's current and former employees, significant time and effort will be  
22 required to administer the Settlement if it is approved by this Court. Among other things, the  
23 Settlement Administrator will calculate each Aggrieved Employee's Settlement Award; issue  
24 appropriate tax forms to all parties who receive payments under the Settlement Agreement if  
25 applicable; mail payments to Plaintiffs, Plaintiffs' Counsel, the LWDA, and each Aggrieved  
26 Employee; and void any checks not cashed by Aggrieved Employees so that the unclaimed amount  
27 can be forwarded to the State of California Controller's Office Unclaimed Property Fund in the  
28 name of the Aggrieved Employee who did not cash their respective awards. *See Settlement ¶ 6.f.*

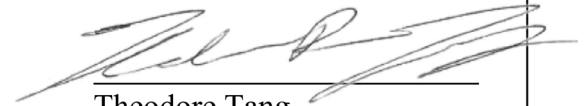
1 In contemplation of these expenses, the parties will engage Simpluris to act as a third-party  
2 settlement administrator and have allocated up to \$17,000.00 to cover the cost of settlement  
3 administration. Settlement ¶ 6.  
4

5 **IX. CONCLUSION**

6 Plaintiffs therefore respectfully request the Court to grant the motion.  
7

8 Date: November 21, 2023

FRONTIER LAW CENTER

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Theodore Tang  
Attorney for Plaintiff  
Renee Bullock