Ross E. Shanberg (SBN 179842)
Shane C. Stafford (SBN 216151)
SHANBERG STAFFORD LLP
4100 Newport Place Drive, Suite 820
Newport Beach, California 92660
Telephone: (949) 205-7515
Facsimile: (949) 205-7144
rshanberg@ssbfirm.com
sstafford@ssbfirm.com

Attorneys for Plaintiff
KAYLE HARDMAN
on behalf of herself and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF VENTURA

KAYLE HARDMAN, an individual on behalf of herself and others similarly situated, Plaintiff, vs. OJAI VALLEY ASSISTED LIVING LLC dba THE ARTESIAN OF OJAI, a California Limited Liability Company; MICHAEL WEYRICK, an individual; MIKE ONEILL, an individual; AMBER WINTERSTEIN, an individual; W&J INVESTMENTS, LLC, a California Limited Liability Company; W&J MANAGEMENT GROUP, LLC, a California Limited Liability Company; and DOES 1 to 100, inclusive, Defendants.	Case No.: 56-2022-00568891-CU-OE-VTA Assigned for all purposes to Dept. 40 Hon. Mark S. Borrell **CLASS ACTION** **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR APPROVAL OF PRIVATE ATTORNEYS GENERAL ACT SETTLEMENT, FOR ATTORNEYS' FEES AND COSTS AND ADMINISTRATIVE FEES; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** **(Filed Concurrently with the Declaration of Ross E. Shanberg In Support Thereof)** Date: November 25, 2025 Time: 8:30 a.m. Dept: 40 Complaint Filed: August 5, 2022 TAC Filed April 8, 2025 Trial Date: None Set

PLEASE TAKE NOTICE that November 25, 2025, at 8:30 a.m., or as soon thereafter as the matter may be heard before the Honorable Mark S. Borrell, Dept. 40 of the Ventura County Superior Court, 800 South Victoria Avenue, Ventura, California 93009, Plaintiff Kayle Hardman ("Plaintiff") will and hereby does move for entry of an order and judgment as follows:

1. Granting approval, pursuant to California Labor Code section 2699, subd. (l)(2) of the proposed settlement between Plaintiff and Defendants Ojai Valley Assisted Living LLC dba The Artesian Of Ojai ("The Artesian"), Michael Weyrick, W&J Investments, LLC, and W&J Management Group, LLC ("Defendants") of the claims brought pursuant to the Private Attorneys General Act of 2004 ("PAGA") as set forth in the Joint Stipulation of PAGA Settlement and Release ("Settlement Agreement"), attached as **Exhibit 1** to the Declaration of Ross E. Shanberg;

2. Approving the Net Settlement Amount payable to the State of California and Aggrieved Employees as authorized by California Labor Code section 2699, subd. (i);

3. Appointing ILYM Group, Inc. as the Settlement Administrator;

4. Directing Defendants to transmit settlement funds to the Settlement Administrator in the total amount of Two Hundred Fifty Thousand Dollars ($250,000.00) pursuant to the Settlement Agreement;

5. Directing the Settlement Administrator to distribute the settlement funds to the Aggrieved Employees, and distributing funds to the Labor and Workforce Development Agency ("LWDA"), Plaintiff's Counsel, and for Settlement Administration Costs, in accordance with the terms of the Settlement Agreement;

6. Awarding to Plaintiff's Counsel the amount of One Hundred Thousand Dollars ($100,000.00) as compensation for reasonable attorneys' fees, $16,308.35 for reimbursement of litigation costs and expenses, and $4,350.00 for Settlement Administration Costs to ILYM Group.

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This motion is based on this Notice of Motion and Motion, the Memorandum of Points and Authorities, the Settlement Agreement, the Declarations of Ross E. Shanberg and Kayle Hardman, 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: October 24, 2025

SHANBERG STAFFORD LLP

By: /s/Shane C. Stafford/s/
ROSS E. SHANBERG
SHANE C. STAFFORD
Attorneys for Plaintiff
KAYLE HARDMAN, on behalf of herself and all others similarly situated

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I. INTRODUCTION AND SUMMARY OF MOTION

This action was brought by Plaintiff Kayle Hardman ("Plaintiff"), pursuant to the Private Attorneys General Act of 2004 ("PAGA"), to recover civil penalties for herself and other aggrieved employees ("PAGA Members") and the State of California. The PAGA Members are all current and former employees of Defendants who are California citizens and who worked for Defendants in California during the relevant time period and who were subject to Defendants' wage and hour policies and/or practices at any point in time from August 5, 2021 through the date of the final executed settlement agreement resolving the Action, October 21, 2025.

Plaintiff has agreed to settle the PAGA penalties for a Gross Settlement Fund of $250,000. There are approximately 161 employees covered by this settlement and the estimated PAGA pay period count is 5007. Thus, the settlement calls for an average payment of approximately $50 per pay period. See Declaration of Ross Shanberg, "Decl. Shanberg", ¶ 20, 21, filed concurrently herewith, and Joint Stipulation of PAGA Settlement and Release "Settlement Agreement", attached as Exhibit 1 thereto.

The Gross Settlement Fund includes all attorneys' fees and costs, settlement administration expenses, and penalties payments to the aggrieved employees and the Labor and Workforce Development Agency (LWDA). The Net Settlement Amount to be distributed to the aggrieved employees and the LWDA is approximately $129,341.65. The Net Settlement Amount will be distributed 75% to the LWDA ($97,006.24), and 25% to the aggrieved employees ($32,335.41). Each of the aggrieved employees will, therefore, receive on average approximately $200.84 in penalties. Decl. Shanberg ¶ ¶ 21, 22; Exhibit 1.

In exchange for such payment, the aggrieved employees are giving up no rights whatsoever to recover for underlying violations of the Labor Code other than for PAGA penalties. Any aggrieved employee may file a claim against Defendants for such violations. This settlement is fair, reasonable and adequate, and therefore should be approved by this Court.

II. CASE BACKGROUND

A. Background Facts

Defendant, The Artesian, operates a senior living facility that offers assisted living and memory care for seniors in Ventura County California. Plaintiff was hired by Defendants as a Lead Guide in July 2020. Plaintiff was subsequently moved into the position of Medication Tech. Plaintiff's job duties included passing out medication, assisting with wound care and cleaning, administering eye drops, and general patient observation. She was terminated by Defendants on or about May 27, 2022. Decl. Shanberg, ¶ 3.

Plaintiff alleges that during the course of Plaintiff's employment, Defendant The Artesian was significantly understaffed and Plaintiff was frequently the only Medication Tech on site. Plaintiff was required to engage in additional job duties such as assisting patients with everyday needs, medical care, and emergencies (in the event of a fall or injury). Decl. Shanberg, ¶ 4.

Plaintiff alleges that she was never authorized or permitted to take 10- minute rest breaks and was rarely, if ever, able to take a 30-minute duty free meal period. Plaintiff further alleges she frequently was unable to take a meal period within the first 5 hours of work, let alone take a meal period at all. Plaintiff asserts she was also frequently pulled off her meal periods as she would have to take incoming calls from doctors and nurses. If Plaintiff was pulled off her meal period and was either unable or forgot to clock back out/in for lunch, she was nevertheless instructed to fill out a "time correction form" thus documenting that she received a 30-minute meal period. Plaintiff contends that Defendants failed to pay Plaintiff one hour of pay at the regular rate of pay for each workday that a 30-minute duty-free meal period or a ten minute rest period was not provided. Decl. Shanberg, ¶ 5.

Plaintiff further alleges Defendant failed to pay Plaintiff Hardman and other aggrieved current and former employees the proper amount of overtime wages and violated various sections of the Labor Code, including §§ 510 and 1194, by failing to provide her, and all other aggrieved current and former employees, overtime compensation for work over 8 hours in a day and/or 40 hours in a week. Decl. Shanberg, ¶ 6.

The pleadings also assert that Defendants knowingly and intentionally failed to provide Plaintiff with timely and accurate wage and hour statements showing gross wages earned, total hours worked, all deductions made, net wages earned, the name and address of the legal entity employing that Plaintiff, and all applicable hourly rates in effect during each pay period and the corresponding number of hours worked at each hourly rate by that Plaintiff. Decl. Shanberg, ¶ 7.

Finally, the pleadings allege that Defendants willfully failed and refused to timely pay all compensation due and owing to Plaintiff whose employment was terminated during the relevant time period, by failing to pay overtime wages, failing to pay Plaintiff for time worked during meal and rest periods, failing to pay Plaintiff for an extra hour at the regular rate because Defendant failed to provide compliant meal and rest periods. Decl. Shanberg, ¶ 8.

B. **Procedural Background**

Plaintiff filed her original class action Complaint against Defendant The Artesian on August 5, 2022. Plaintiff, on behalf of herself and all other aggrieved current and former employees, alleged violations of California Labor Code §§ 201-203, 226, 226.7, 510, 512, 1194, 2802, and Business & Professions Code §17200, all applicable Industrial Welfare Commission (IWC) Wage Orders. Decl. Shanberg, ¶ 9.

On or about August 9, 2022, Plaintiff provided written notice to the Labor and Workforce Development Agency ("LWDA") and Defendants of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations pursuant to PAGA. After 65 days from the service of the LWDA letter described above, the LWDA failed to respond to Plaintiff's correspondence notifying the LWDA of the Labor Code violations committed by Defendants, thereby permitting Plaintiff to pursue claims and penalties against Defendant The Artesian pursuant to Labor Code § 2699. On October 17, 2022, Plaintiff filed a First Amended Complaint ("FAC") adding allegations under the PAGA. Decl. Shanberg, ¶ 10.

After the filing and service of Plaintiff's FAC, the parties agreed to attend mediation and exchanged substantial data and information to prepare for same. The mediation was delayed for several months but was finally conducted on May 22, 2023 before experienced employment attorney Craig J. Ackermann. Unfortunately, the mediation was unsuccessful. Decl. Shanberg, ¶ 11.

On November 2, 2023, Plaintiff filed a Second Amended Complaint ("SAC") adding The Artesian's member owner, Michael Weyrick, and officers/managers Mike O'Neill and Amber Winterstein as individual Defendants to the case. On April 8, 2025, Plaintiff filed a Third Amended Complaint ("TAC") adding Mr. Weyrick's other entities, W&J Investments, LLC and W&J Management Group, LLC as defendants to the case. Decl. Shanberg, ¶ 12, Exh 2.

In approximately January 2025, the parties attempted to mediate the case a second time with Michelle Reinglass from Judicate West, which was also unsuccessful. During this litigation, and the multiple mediations, Defendants repeatedly claimed they were considering filing for bankruptcy rather than resolving this case. Through formal and informal discovery, Plaintiff's counsel confirmed that Defendants had, indeed, been coordinating with bankruptcy counsel and had legitimate current debts and financial constraints prior to agreeing to this settlement. Decl. Shanberg, ¶ 13.

C. Discovery in this Case Was Extensive, Contentious, and Costly

The parties have litigated this case for over three years and the proceedings have been contentious from the beginning. To that end, Plaintiff propounded an initial set of written discovery to Defendants on or about November 4, 2022, seeking the class list and identification of all putative class members and aggrieved employees so that Plaintiff could investigate the claims on behalf of all affected employees. The Artesian served its initial written responses and documents on June 5, 2023, and supplemental written responses on July 18, 2023. Decl. Shanberg, ¶ 14.

The parties then agreed to engage in the Belaire-West process to protect employee privacy rights. The initial mailing of the Class Notice was scheduled for July 6, 2023. Simultaneously, and unbeknownst to Plaintiff and her counsel, Defendant's representatives met with then current employees and had many sign release agreements and/or opt out of the lawsuit. Plaintiff ultimately sought court intervention via a motion to limit communications with putative class members, which was denied by the Court, but caused the parties substantial time and effort to resolve. Decl. Shanberg, ¶ 15.

Plaintiff propounded a second set of written discovery on or about July 25, 2023, regarding the release agreements and improper, unilateral communications with putative class members. Defendant served its initial responses, consisting of only objections, on or about August 29, 2023. After substantial meeting and conferring by Plaintiff, Defendant served supplemental responses and documents on or about September 18, 2023. Decl. Shanberg, ¶ 16.

Plaintiff served additional discovery on each Defendant as they were added to the case. Over the course of this litigation, Plaintiff served seven sets of Requests for Production of Documents, six sets of Special Interrogatories, and ten sets of Form Interrogatories on Defendants. In response, Defendants repeatedly served objection-only or evasive discovery responses. As a result, the parties were forced to engage in numerous IDC's with the court and Plaintiff had to file four different motions to compel further responses, all of which were granted by the Court at least in part. Ultimately, Defendants produced in excess of 10,000 pages of documents in response to Plaintiff's discovery requests. The document production included extensive financial records, including several years of bank statements, tax returns, credit card statements, loan documents, investor data, corporate records, consolidated financial reports, property records, title reports, balance sheets, and profit and loss statements demonstrating the severe economic distress of the corporate entities. Decl. Shanberg, ¶ 17.

Plaintiff also served ten subpoenas on third party witnesses, including Defendants' financial institutions. Defendants objected to several of them and filed motions to quash that were denied by the Court. Decl. Shanberg, ¶ 18.

Plaintiff also took the depositions of Defendant The Artesian's PMK in November 2023, and of Defendant Weyrick in February 2025. Defendant Weyrick's deposition was never completed at the time. The parties met and conferred extensively, held IDCs with the Court, and Plaintiff eventually filed a Motion to Compel the Continued Deposition of Defendant Weyrick. The parties continued the motion while settlement negotiations were ongoing. This ongoing discovery dispute caused the parties to incur substantial time and expense attempting to resolve. Decl. Shanberg, ¶ 19.

III. SUMMARY OF SETTLEMENT

D. Aggrieved Employees

The Settlement covers the following aggrieved employees:

All current and former employees of Defendants who are California citizens and who worked for Defendants in California during the relevant time period and who were subject to Defendants' wage and hour policies and/or practices at any point in time from August 5, 2021, through the date of the final executed settlement agreement resolving the Action. Based upon Defendants' records, there are approximately 161 employees covered by the settlement and the estimated PAGA pay period count is approximately 5007. Decl. Shanberg ¶ 20.

E. Settlement Fund Allocation

Defendants will pay into a common fund the total amount of $250,000 to settle the matter. The net settlement fund shall be allocated 75% to the LWDA and 25% to the aggrieved employees. The Net Settlement Amount shall be calculated by deducting the Attorneys' Fees and Costs and Settlement Administration Costs from the Gross Settlement Amount. A breakdown of the Gross Settlement Fund of **$250,000.00** is provided below:

a. Individual Settlement Payments: $32,335.41;

b. LWDA Settlement Payment: $97,006.24;

c. Attorneys' Fees: $100,000;

d. Costs: $16,308.35;

e. Administration Expenses Payment: $4,350.

The settlement funds will be paid in two installments of $125,000 on or before August 31, 2026; and $125,000 on or before December 31, 2026. Decl. Shanberg ¶ 21-23.

F. <u>Release</u>

The "Released Parties" include Defendants OJAI VALLEY ASSISTED LIVING LLC dba THE ARTESIAN OF OJAI, MICHAEL WEYRICK, MIKE ONEILL, AMBER WINTERSTEIN, W&J INVESTMENTS, LLC, and W&J MANAGEMENT GROUP, LLC. and each of their parents, subsidiaries, affiliates, owners, predecessors, successors, and associated organizations, past and present, and each of their respective trustees, directors, officers, agents, joint employers, attorneys, managing agents, employees, contractors, insurers, representatives, assigns, all persons acting on their behalf. Decl. Shanberg ¶ 24.

The "Released Claims" means all claims for PAGA penalties and penalties under California Labor Code sections §§ 201, 202, 203, 226, 226.7, 510, 512, 558, 558.1, 1194, and 2802 that were alleged, or reasonably could have been alleged, based on the facts and allegations in the Third Amended Complaint, as well as those statutory violations pled in prior complaints and in the August 9, 2022 LWDA letter. These claims are released by Plaintiff in her representative capacity as an authorized proxy and agent for the State of California and the LWDA and as a private attorney general acting on behalf of herself and the Aggrieved Employees, for civil penalties under the PAGA, based on any claim that arises under the California Labor Code and that were alleged, or reasonably could have been alleged, based on the facts and allegations in the pleading and PAGA notices, including the alleged (1) failure to pay overtime compensation; (2) failure to provide meal periods or provide compensation in lieu thereof; (3) failure to authorize and permit rest periods or provide compensation in lieu thereof; (4) waiting time penalties; (5) failure to properly maintain and submit accurate itemized wage statements; (6) failure to reimburse for necessary business expenditures; (7) unfair competition; (8) declaratory relief; and (9) violation of PAGA (Labor Code § 2699). Decl. Shanberg ¶ 25.

In addition, Plaintiff will seek court approval to dismiss the class claims without prejudice.[1] During this litigation, Defendants repeatedly claimed they were financially

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[1] Plaintiff's counsel is filing the Declaration Of Shane C. Stafford Re: Dismissal Of Class Allegations Without Prejudice Pursuant To California Rule of Court 3.770 concurrently with this Motion for PAGA approval.

distressed and would not be able to fund a class settlement, possibly even filing for bankruptcy. In support of these claims, Defendants produced substantial financial records, including several years of bank statements, tax returns, credit card statements, loan documents, investor data, corporate records, consolidated financial reports, property records, title reports, balance sheets, and profit and loss statements demonstrating the severe economic distress of the corporate entities. After reviewing this financial data, as well as numerous arbitration agreements and release agreements Defendants obtained from current and former employees, Plaintiff agreed to dismiss class claims without prejudice and to focus this settlement on PAGA claims and penalties. As such, none of the aggrieved employees are releasing their wage and hour claims; the PAGA settlement will solely be for PAGA penalties. Decl. Shanberg ¶ 26.

IV. LEGAL STANDARD FOR APPROVAL OF PAGA SETTLEMENT

The PAGA statute allows an "aggrieved employee" to bring a civil action on behalf of himself or herself and on behalf of other aggrieved employees and the State to recover civil penalties which are specifically established by the PAGA with respect to provisions of the California Labor Code which does not otherwise provide for civil penalties (Lab. Code § 2699(g)), and also, civil penalties which, outside of PAGA, only the LWDA can assess upon and collect from an employer (Lab. Code § 2699(a)). Before bringing a civil action under PAGA, an employee must comply with California Labor Code section 2699.3. *See* Labor Code § 2699(a).

The settlement of a PAGA claim requires court approval. *See* Labor Code § 2699, subd. (1)(2) ("The superior court shall review and approve any settlement of any civil action pursuant to this part"). However, "[a] PAGA claim asserted on a non-class representative basis . . . is not considered a class action but a law enforcement action" and therefore one does not have to meet the requirements of a class action. *Casida v. Sears Holding Corp.*, 2012 WL 253217, at *3 (E.D. Cal. Jan. 26, 2012); *Thomas v. Aetna Health of Cal., Inc.*, 2011 WL 2173715, at * 11 (E.D. Cal. June 2, 2011); *Arias v. Superior Court,* 46 Cal.4th 969, 980-88 (2009) (affirming lower court's holding that "plaintiff need not satisfy class action requirements" to assert a PAGA claim); *Pedroza v. PetSmart, Inc.*, 2013 WL 1490667, at *15 (C.D. Cal. Jan. 28, 2013). As such, a court's review of a PAGA settlement involves analysis of several unique features that render the approval process distinct from approval of 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,* 3 Cal.5th 531, 549 (2017).

In a PAGA case, the Court's focus is not the monetary amount which aggrieved employees or the State are to receive, but instead, whether the total settlement amount achieves the PAGA's objectives. The purpose of the PAGA 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 v. Cjaders Foods, Inc.,* 2010 WL 1340777, at *4 (N.D. Cal. Apr. 2, 2010) (citing *Arias, supra,* 46 Cal.4th at 986). Penalties recovered under the PAGA 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 finding to the agency for those purposes." See Labor Code § 2699(j).

V. <u>THE SETTLEMENT IS FAIR, ADEQUATE, AND REASONABLE</u>

This settlement resulted from Plaintiff's aggressive litigation stance to obtain a reasonable recovery after making a full and fair evaluation of the case. This PAGA settlement should therefore be approved.

A. <u>The Settlement Is Presumed Fair</u>

A representative settlement is presumed fair 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) [and] counsel is experienced in similar litigation. *See Dunk v. Ford Motor Company,* 48 Cal. App. 4th 1794, 1802 (1996). Similar to class actions, PAGA settlements are subject to a court's approval under a fair, adequate and reasonable standard. *See Moniz v. Adecco USA, Inc.*, 72 Cal.App.5th 56, 76-77 (2021). A court may also consider relevant factors such as the strength of the plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, [and] the presence of a governmental participant. . .. *See Officers of Justice v. Civil Service Com'n of City and County of San Francisco,* 688 F.2d 615, 624 (9th Cir. 1995). "This list is not exhaustive and should be tailored to each case. Due regard should be given to what is otherwise a private consensual agreement between the parties." *Dunk, supra*, 48 Cal. App. 4th at 1801. Moreover, the trial court has broad powers to determine whether a proposed [representative action] settlement is fair. *See Mallick v. Superior Court,* 89 Cal. App. 3d 434 (1979).

B. <u>The Settlement Is The Product of Arm's Length Negotiations</u>

On May 22, 2023, the Parties participated in an all-day mediation presided over by experienced wage and hour mediator, Craig J. Akermann. The mediation was unsuccessful. Prior to mediation, Plaintiff obtained from defendants a sampling of (1) Defendants' payroll records for 20% of all Aggrieved Employees; (2) Defendants' time keeping records for 20% of all Aggrieved Employees; and (3) Defendants' relevant policy documents, including employee handbooks during the relevant time period. From this data Plaintiff was able to derive relevant data points, including the number of Aggrieved Employees, the estimated number of pay periods, and average pay rate. In the interest of avoiding further litigation, the Parties desire to fully and finally settle all actual or potential PAGA claims as pleaded in the operative Complaint or that could have been pleaded in the operative Complaint and this Action. Decl. Shanberg ¶ 27.

As detailed above, the parties engaged in two failed mediation attempts, substantial discovery, including written interrogatories, requests for production, numerous depositions, and third party discovery including subpoenas to Defendants' financial institutions. The parties also engaged in numerous IDCs with the Court and substantial motion practice, including Plaintiff having to file four separate motions to compel further responses, all of which were granted in part, and Defendants' seeking to quash third party subpoenas, which was denied by this Court. Plaintiff did not settle this case until she had conducted sufficient investigation into the claims, engaged in substantial discovery, and reviewed sufficient data to make a settlement determination. Plaintiff's counsel believes the approximate $50 per pay period settlement is an excellent result. cases. Importantly, the settlement will not affect any aggrieved employee's right to pursue underlying Labor Code violations against Defendants if he or she chooses to do so. Decl. Shanberg ¶ 28.

C. <u>Plaintiff's Counsel Is Experienced In Similar Litigation And Endorses The Settlement</u>

The view of attorneys in representative litigation is "entitled to significant weight." *Fisher Bros. v. Cambridge-Lee Industries, Inc.,* 630 F. Supp. 482, 488 (E.D. Pa. 1985); *see also Ellis v. Naval Air Rework Facility,* 87 F.R.D. 15, 18 (N.D. Cal. 1980). Plaintiff's counsel has significant experience in complex representative and class action wage and hour litigation. Decl. Decl. Shanberg ¶¶ 29-34. As such, they are experienced and qualified to evaluate the claims and defenses in this case, and unequivocally support the settlement reached herein.

D. The Strength of Plaintiffs' Case, The Amount Offered In Settlement, and The Risk, Expense, Complexity, and Duration of Further Litigation Favors Settlement

Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v. Chrysler Comm.,* 150 F.3d 1011, 1026 (9th Cir. 1998). Moreover, "[t]he expense and possible duration of the litigation should be considered in evaluating the reasonableness of [a] settlement." *In re Mega Financial Corp. Securities Litigation,* 213 F.3d 454, 458 (9th Cir. 2000).

In this case, Plaintiff seeks PAGA penalties only. The sole PAGA claim that is at issue in this settlement concerns Defendants': (1) failure to pay all wages, including overtime compensation; (2) failure to provide meal periods or provide compensation in lieu thereof; (3) failure to authorize and permit rest periods or provide compensation in lieu thereof; (4) failure to timely pay all wages owed (at termination or otherwise); (5) failure to properly maintain and submit accurate itemized wage statements; (6) failure to reimburse for necessary business expenditures. Decl. Shanberg ¶ 35. Plaintiff's penalties exposure analysis for the PAGA claims is set forth below.

1. Failure to Pay Overtime

Plaintiff contends that she regularly worked overtime without being compensated in violation of Labor Code §§ 510 and 1194. In response to Plaintiff's allegations, Defendants contend they have valid defenses to Plaintiff's unpaid wage claims and/or that the evidence shows Plaintiff did not work overtime or "off the clock." Moreover, Defendants claim that employees were paid for all hours worked at the correct rate of pay.

Plaintiff's evaluation of this claim reflects the maximum potential PAGA penalty exposure for the unpaid wage claim is approximately $933,850 as calculated by Plaintiffs' expert, James Toney. Given Defendants' financial inability to pay, Plaintiff believes a reduction of 40% is reasonable. In addition, based on the issues and defenses above, including the difficulty with proving the "off the clock" claim with documentary evidence, Plaintiff believes she has an 50% chance of success on the unpaid wage theories of liability. Nevertheless, Labor Code section 2699(e)(2) also gives a trial court broad discretion to reduce PAGA penalties: "[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." Case law supports a trial court's discretion in downgrading penalties based on these factors. *See Thurman v. Bayshore Transit Management, Inc.*, 203 Cal.App.4th 1112, 1135-1136 (2012) (no abuse of discretion by reducing penalty by 30 percent). Thus, Plaintiff believes that the real value of the unpaid wage penalties is **$196,108.5** ($933,850 x .6 [ability to pay] x .5 [chances of success] x .7 [court discretion] = $196,108.50. Decl. Shanberg ¶ 35, Exh 3.

2. Failure to Authorize and Permit Meal Periods

Plaintiff alleges Defendants were severely understaffed and her workload prevented her from taking meal breaks or taking them in a timely manner. Often Plaintiff would be interrupted or have to respond to various communications and in order to respond to patient needs thereby interrupting or preventing her from taking meal breaks.

Labor Code section 512(a) reads: An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes... IWC Wage Order 4-2001 sections 11(A) and (B) mirror the same mandatory meal period requirements as Labor Code section 512. IWC Wage Order 4-2001 § 11(A) further provides in pertinent part that: "Unless the employee is relieved of all duty during the 30 minute meal period, the meal period shall be considered an on duty meal period and counted as time worked....".

As set forth in the California Supreme Court's seminal *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004 decision, "[t]he employer satisfies [its meal period obligation] if it relieves its employees of all duty, relinquishes control over their activities and permits them a reasonable opportunity to take an uninterrupted 30-minute break, and does not impede or discourage them from doing so." (*Brinker*, *supra*, 53 Cal.4th at 1040.)

Defendants contend that they had a lawful meal and rest break policy that fully complied with California law. Where employees did not receive a compliant meal break due to involuntary reasons, the Company paid a meal break premium. Plaintiff received all of her meal and rest breaks and any violations of the meal break policy were voluntary in nature, which are not actionable.

The maximum potential PAGA penalties recoverable for meal period violations, as calculated by Plaintiffs' expert, is $313,000. Given Defendants' financial inability to pay, Plaintiff believes a reduction of 40% is reasonable. In addition, based on the various issues raised above regarding proving meal period violations, Plaintiff believes she has a 50% chance of proving a right to recover all meal period penalties during the employee training period. Thus, Plaintiff believes that the real value of the meal period penalties is **$65,730**. ($313,000 x.6 [ability to pay] x .5 [chances of success] x .7 [court discretion] = $65,730). Decl. Shanberg ¶ 35, Exh 3.

3. Failure to Provide Rest Periods

Plaintiff alleges Defendants were severely understaffed and her workload prevented her from taking rest breaks. Often Plaintiff would be interrupted or have to respond to various communications and in order to respond to patient needs thereby interrupting or preventing her from taking rest breaks.

§Section 12(A) of the IWC Wage Order(s) states: "Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.

Section 12(B) of the IWC Wage Order(s) states: "If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided." Moreover, during rest periods, "employees must not only be relieved of work duties, but also be freed from employer control over how they spend their time." *Augustus v. ABM Sec. Servs., Inc.*, 2 Cal.5th 257, 270 (2016).

Defendants contend that they had a lawful meal and rest break policy that fully complied with California law. Where employees did not receive a compliant meal break due to involuntary reasons, the Company paid a meal break premium. Plaintiff received all of her meal and rest breaks and any violations of the meal break policy were voluntary in nature, which are not actionable.

The maximum potential PAGA penalties recoverable for rest period violations, as calculated by Plaintiffs' expert, is $313,000. Given Defendants' financial inability to pay, Plaintiff believes a reduction of 40% is reasonable. In addition, based on the various issues raised above regarding proving meal period violations, Plaintiff believes she has a 50% chance of proving a right to recover all meal period penalties during the employee training period. Thus, Plaintiff believes that the real value of the meal period penalties is **$65,730**. ($313,000 x .6

[ability to pay] x .5 [chances of success] x .7 [court discretion] = $65,730). Decl. Shanberg ¶ 35, Exh 3.

4. Failure to Reimburse Necessary Business Expenditures

Plaintiff alleges that Defendants failed to properly reimburse Plaintiff, and the class members, for necessary business expenses incurred while performing their duties for Defendants, including, but not limited to, the use of personal cell phones for business purposes and related expenses. Defendants contend that they had a lawful reimbursement policy that fully complied with California law.

California Labor Code section 2802(a) provides that "An employer shall indemnify employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful." Cal. Lab. Code § 2802.

According to Plaintiff's expert, and assuming a maximum PAGA penalty of $100 per pay period per employee, the maximum exposure on the unreimbursed business expense claim is approximately $144,600. Given Defendants' financial ability to pay, Plaintiff believes a reduction of 40% is reasonable. In addition, Plaintiff believes she has a 50% chance of recovering all of the potentially recoverable civil penalties. Moreover, Plaintiffs apply the same discounts as set forth above in the analysis as to the court's discretion to reduce penalties. As such, Plaintiff believes the real exposure on this claim to be **$30,366**. ($144600 x .6 [ability to pay] x .5 [chances of success] x .7 [court discretion] = $30,366). Decl. Shanberg ¶ 35, Exh 3.

5. Improper pay stubs

Plaintiff further alleges that Defendants failed to provide proper pay statements that complied with Labor Code § 226. Pay stub civil penalties are potentially recoverable because Defendants allegedly failed to provide accurate pay stubs. Cal. Lab. Code § 226.

For instance, as a result of Defendants' failure to pay all wages due and owing, as well as to compensate for missed meal and rest breaks, the wage statements fail to accurately state all gross wages earned, total hours worked, and premium payments.

Plaintiff further alleges that to obtain PAGA penalties for pay stub violations, a plaintiff need not satisfy the "injury" or "knowing and intentional" requirements of Labor Code section 226(e)(1). *See Raines v. Coastal Pacific Food Distributors, Inc.*, 23 Cal.App.5th 667 (2018).

On the other hand, Defendants argue the wage statements were facially compliant with Labor Code section 226. There was no systemic error, nor were there any violations that were "knowingly and intentionally" undertaken, as required by *Naranjo v. Spectrum Security Services, Inc*. 15 Cal.5th 1056, 1076-1080 (2024).

Plaintiffs' expert calculated total pay stub penalty exposure based on the assumption that all employees incurred pay stub violations during the entire PAGA period. This amounted to approximately $313,000. Given Defendants' financial inability to pay, Plaintiff believes a reduction of 40% is reasonable. Although the pay stub penalty claims are primarily derivative in nature, Plaintiff still believes she had a 50% chance of recovering all of the potentially recoverable civil penalties. After applying the same discount based on the court's discretion to reduce penalties, Plaintiff believes the real exposure on this claim to be **$65,730**. ($313,000 x .6 [ability to pay] x .5 [chances of success] x .7 [court discretion] = $65,730). Decl. Shanberg ¶ 35, Exh 3.

6. Waiting time penalties

Plaintiff alleges Defendants willfully failed and refused to timely pay all compensation due and owing to Plaintiff whose employment was terminated during the relevant time period, by failing to pay overtime wages, failing to pay Plaintiff for time worked during meal and rest periods, failing to pay Plaintiff for an extra hour at the regular rate because Defendants failed to provide compliant meal and rest periods. As such, Defendants are liable for accrued wages due, and waiting time penalties owed, in accordance with Labor Code §§ 201, 202, and 203.

Defendant counters that no waiting-time penalties should be awarded. Defendants pointed out that waiting-time penalties are derivative of each and every other underlying alleged California Labor Code violation and contended that it paid the terminated employees all wages due and owing. Moreover, Defendants emphasized that, under California Labor Code section 203, employers are only obligated to pay waiting-time penalties if they "willfully" fail to pay wages due and owing at the time of termination or resignation.

Plaintiff's expert calculates PAGA penalties on this claim in the amount of $11,400. Given Defendants' financial inability to pay, Plaintiff believes a reduction of 40% is reasonable. Based on the heightened willfulness standard, as well as the case law undermining Plaintiffs' ability to recover waiting time penalties under Labor Code § 256, Plaintiffs estimate that the real exposure of this claim is 50% of those total penalties. Plaintiff again applies the same discount as set forth above in the above analysis as to the court's discretion to reduce penalties. As such, Plaintiffs believe the real exposure on this claim to be **$2,394** ($11400 x .6 [ability to pay] x .5 [chances of success] .70 [court discretion] = $2,394). Decl. Shanberg ¶ 35, Exh 3.

7. Total exposure PAGA penalties

Based upon the alleged Labor Code violations, Plaintiff believes the total actual PAGA exposure is approximately **$426,058.5**. Based on a settlement value of $250,000, this amounts to approximately 59**%** of the total exposure to PAGA penalties. Plaintiff believes this to be an excellent result, given that Defendants have demonstrated an inability to pay a large settlement or judgment, Defendants have arguably valid defenses to Plaintiff's claims, and that there is a substantial question as to whether a trial court will award cumulative penalties sought by Plaintiff for alleged multiple Labor Code violations because there is no precedent for such an award. Decl. Shanberg ¶ 35, Exh 3.

The purpose of the PAGA is to "achieve maximum compliance with [California's] labor laws." *See Iskanian v. CLS Transp. Los Angeles, LLC*, 59 Cal.4th 348, 379 (2014). The penalties recovered here on behalf of the State and aggrieved employees achieve that purpose.

VI. <u>NOTICE OF THE SETTLEMENT IS NOT REQUIRED</u>

"[A] PAGA action is a statutory action for penalties brought as a proxy for the State," and as such, "there is no need to protect absent employees' due process rights[.]" *Williams v. Superior Court,* 3 Cal.5th 531, 546 (2017). "Unnamed employees need not be given notice of the PAGA claim, nor do they have the ability to opt-out of the representative PAGA claim." *Ochoa-Hernandez v. Cjaders Foods, Inc.,* 2010 WL 1340777, at *5 (N.D. Cal. Apr. 2, 2010). A representative PAGA action need not satisfy class action requirements, and no due process concern arises from the fact that there are "nonparty aggrieved employees who are not given notice if, and an opportunity to be heard in, a representative action that is not brought a class action." *Arias v. Sup. Ct.,* 46 Cal.4th 969, 984 (2009).

Nonetheless, the parties are providing a one-page Notice of Settlement to be included with the aggrieved employees' payments so that aggrieved employees are apprised of the nature of the payment and the release of penalties, and the Notice of Settlement clearly states that "No wage claims are released by this settlement." (See <u>Ex. A to Settlement Agreement</u>.)

VII. ATTORNEYS' FEES AND COSTS

A. Fees Can Be Awarded As A Percentage of the Common Fund

When a common fund is created, attorneys who secured the fund are entitled to a percentage of the fund. (*See Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480, 503 ["the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created]; *Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 26 ["percentage fees have traditionally been allowed in . . . common fund cases"]). "[F]ee awards in class actions average around one-third of the recovery." *Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 66, n.11 (2008); s*ee also* Rubinstein, Conte and Newberg, Newberg on Class Actions at § 14:6 (surveying cases, and finding that 30-50% of fees awarded in cases in which the common fund is relatively small); *see also In re Ampicillin Antitrust Litigation* (D.D.C. 1981) 526 F. Supp. 494 (court approved attorney fee award equal to 45% of the settlement fund).

Under the common fund doctrine, "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." *Boeing Co. v. Van Gemert,* 444 U.S. 472, 478, 100 S.Ct. 745, 750, 62 L.Ed.2d 676 (1980). The Supreme Court explained:

> The doctrine rests on the perception that persons who obtain the benefit of a lawsuit without contributing to its cost are unjustly enriched at the successful litigant's expense. Jurisdiction over the fund involved in litigation allows a court to prevent this inequity by assessing attorney's fees against the entire fund, thus spreading fees proportionately among those benefitted by the suit." (Citations omitted.)

(*Id.*; *see also Laffitte, supra,* 1 Cal.5th at 503 ["the percentage method is a valuable tool that should not be denied our trial courts"]; *Serrano v. Priest* (1977) 20 Cal.3d 25, 34 ["one who expends attorneys' fees in winning a suit which creates a fund from which other derive benefits, may require those passive beneficiaries to bear a fair share of the litigation costs"].)

Thus, the common fund doctrine ensures that each member of the class contributes proportionately to the payment of attorney's fees recovered from monetary payments that the prevailing party recovered in the lawsuit. "Put another way, in common fund cases, a variant of the usual rule applies and the winning party pays his or her own attorney's fees. . .." *Stanton v. Boeing*, 327 F.3d 938, 967 (9th Cir. 2003), citing *Wininger v. SI Mgmt L.P.*, 301 F.3d 1115 (9th Cir. 2002).

Because Plaintiff's attorneys secured a fund for Plaintiff and the other aggrieved employees, they are entitled to a reasonable percentage of that fund.

B. <u>Plaintiff's Attorney's Fees Are Also Recoverable Under The Lodestar Adjustment Approach</u>

Fees in representative cases are also appropriate under the lodestar method, whereby the number of hours reasonably expended is multiplied by a reasonable hourly rate. *See Lealao, supra,* 82 Cal.App.4th at 26. Under PAGA, moreover, attorneys' fees and costs are statutorily recoverable. See Cal. Labor Code § 2699, subd. (g)(1). Once a lodestar has been established, it may "be adjusted, based on consideration of factors specific to the case, in order to fix the fee at the fair market value for the legal services provided." *PLCM Group, Inc. v. Drexler,* 22 Cal.4th 1084, 1095 (2000). In evaluating the lodestar, and whether an upward adjustment is appropriate, courts look to the qualifications of counsel, the reasonableness of the rates charged, the novelty and difficulty of the case, the contingent nature of the case, the results achieved, and related matters. *See, e.g.*, *Serrano, supra*, 20 Cal.3d 25, 49; *see also Press v. Lucky Stores, Inc.,* 34 Cal.3d 311, 321-322 (1983). All such factors support the fee award here.

1. Plaintiffs' Counsel Are Well-Qualified To Represent The Aggrieved Employees And Their Rates Are Reasonable

Counsel for Plaintiffs are experienced employment lawyers and have extensive experience in the specific subcategory of wage and hour claims. Decl. Shanberg ¶¶ 29-34. Moreover, counsel for Plaintiff have hourly rates that are reasonable in the relevant market, and below that found with other class action employment lawyers with similar expertise. Decl. Shanberg ¶ 36.

2. Plaintiffs' Counsel's Lodestar Is Well Documented

A properly supported motion for attorney's fees is prima facie evidence that the expenses and services were necessarily incurred. *Hadley v. Krepel*, 167 Cal.App.3d 677, 682 (1985). Here, counsel provided appropriately detailed declarations and detailed, contemporaneous billing statements in support of the lodestar amounts. Plaintiff's counsel's billing records reflect 500.95 hours spent on this matter, and Plaintiff has incurred **$393,677.50** in attorney's fees to date. As such, the fee requested ($100,000) is more than reasonable considering it is only 25% of the actual fees incurred in this case. Decl. Shanberg ¶ 36, Exh 4.

Plaintiffs' counsel took this case on a full contingency basis, and there was a substantial risk both at the beginning of the case and that this case could not move forward as a PAGA action given that numerous employees signed an arbitration agreements and/or release agreements. Decl. Shanberg ¶ 39. Plaintiff's hourly rates are also similar to market rates for hourly defense counsel and do not reflect the risk with this being a contingency case. Decl. Shanberg ¶ 36.

3. Novelty And Difficulty Of The Case

Plaintiff and her counsel were able to secure a favorable settlement only after investigating the claims and researching the theories of potential liability in this case. The claims alleged were not assured, however Plaintiff pushed forward and secured an excellent settlement. Plaintiff took aggressive settlement positions at every turn and achieved an excellent result for the aggrieved employees and the State of California. Decl. Shanberg ¶ 37.

4. Plaintiffs' Counsel Worked Efficiently And Skillfully

Plaintiff propounded significant representative discovery, conducted extensive witness outreach, and secured informal discovery to evaluate and investigate the alleged wage and hour violations. Plaintiff and her counsel resolved the case only after challenging Defendants at every turn to obtain the highest and best settlement possible from Defendants. Decl. Shanberg ¶ 38.

5. Plaintiff's Counsel Worked Entirely On A Contingency Basis

Plaintiff's counsel worked on a complete contingency and advanced all expenses and costs. The contingent risk included liability issues, damage issues, and evolving changes under PAGA. Decl. Shanberg ¶ 39. According to the California Supreme Court:

> A contingent fee must be higher than a fee for the same legal services paid as they are performed. The contingent fee compensates the lawyer not only for the legal services he renders but for the loan of those services. The implicit interest rate on such a loan is higher because the risk of default (the loss of the case, which cancels the debt of the client to the lawyer) is much higher than that of conventional loans.

(*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132-1133, quoting Posner, Economic Analysis of Law (4th ed. 1992) pp. 534, 567.)

6. Plaintiff's Counsel Achieved An Excellent Result

Plaintiff's counsel obtained a settlement of $250,000, which would not have been achieved but for Plaintiff's and her attorneys' ability to efficiently prosecute the case to a successful conclusion. This amounts to a gross recovery of approximately $50 per pay period, despite Defendants assertion that they could not fund a settlement. Decl. Shanberg ¶ 21.

7. The Costs Are Documented and Reasonable

Plaintiff's counsel is also entitled to its reasonable out-of-pocket costs incurred in prosecuting this action, in the amount of $16,308.35, which includes mediation and expert witness fees, and other costs necessary to the prosecution of this case. Decl. Shanberg ¶ 40 Exh 5. Also, ILYM Group has agreed to provide settlement administration services in the amount of $4,350, including preparing and mailing the notices to the aggrieved employees, distributing the payments, and performing other administration duties as needed. Decl. Shanberg ¶ 41, Exh 6.

VIII. NOTICE OF SETTLEMENT TO LWDA

Plaintiff provided notice of the settlement to the LWDA concurrently with the filing of this Motion. Decl. Shanberg ¶ 43, Exh 7.

IX. CONCLUSION

Based on the foregoing, Plaintiff respectfully requests that this Court grant her Motion to Approve the PAGA Settlement.

Dated: October 24, 2025

SHANBERG STAFFORD LLP

By: /s/Ross E. Shanberg/s/
ROSS E. SHANBERG
SHANE C. STAFFORD
Attorneys for Plaintiff
KAYLE HARDMAN, on behalf of herself and all others similarly situated

PROOF OF SERVICE - C.C.P. §§ 1013A, 2015.5
STATE OF CALIFORNIA, COUNTY OF ORANGE

I, the undersigned, am employed in the County of Orange, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 4100 Newport Place, Suite 820, Newport Beach, California 92660.

On October 24, 2025, I served true copies of the foregoing documents described as: **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR APPROVAL OF PRIVATE ATTORNEYS GENERAL ACT SETTLEMENT, FOR ATTORNEYS' FEES AND COSTS AND ADMINISTRATIVE FEES; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** on the interested parties in this action, addressed as follows:

Greg A. Garbacz KLINEDINST PC 2 Park Plaza, Suite 1250 Irvine, California 92614 ggarbacz@klinedinstlaw.com	*Attorneys for Defendants Ojai Valley Assisted Living, LLC dba The Artesian of Ojai, Michael Weyrick, Amber Winterstein, Mike O'Neill, W&J Investments, LLC, and W&J Management Group, LLC*
Imbar Sagi-Lebowitz KLINEDINST PC 777 S. Figueroa St., Suite 4000 Los Angeles, California 90017 isagi-lebowitz@klinedinstlaw.com	
LWDA Via online submission https://dir.govfa.net/315	*Labor and Workforce Development Agency*

(X) BY ELECTRONIC TRANSMISSION: I transmitted a PDF version of this document by electronic mail to the party(s) identified on the above service list using the e-mail address(es) indicated.

(X) (State) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on October 24, 2025, at Newport Beach, California.

Jordan Carter

Jordan Carter