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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

JEANNIE LEFEVRE, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

AG ARCADIA, LLC, a California limited
liability company DBA HUNTINGTON
DRIVE HEALTH AND REHABILITATION
CENTER; and DOES 1 through 100,
inclusive,

Defendants.

Case No.: 20STCV05550

*[Assigned for all purposes to the Hon. Michael L.
Stern, Dept. 62]*

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR SETTLEMENT APPROVAL OF
CLAIMS BROUGHT UNDER THE PRIVATE
ATTORNEYS GENERAL ACT AND
REASONABLE ATTORNEYS' FEES, COSTS,
AND ENHANCEMENT AWARD**

Reservation ID: 712266163113

Date: March 2, 2021
Time: 8:30 a.m.
Dept.: 62

*[Filed concurrently with:
Declaration of Elizabeth Nguyen;
Declaration of Scott M. Lidman;
Declaration Milan Moore;
Declaration of Paul K. Haines;
Declaration of Plaintiff Jeannie Lefevre;
Declaration of Jodey Lawrence of Phoenix Class
Action Administration Solutions;
[Proposed] Order and Judgment; and
Proof of Service]*

Action Filed: April 20, 2020
Trial Date: None Set

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Attorneys for Plaintiff JEANNIE LEFEVRE

1 **TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:**

2 PLEASE TAKE NOTICE that on March 2, 2021 at 8:30 a.m., or as soon thereafter as the matter
3 may be heard in Department 62 of the above entitled Court, located at 111 N. Hill Street, Los Angeles,
4 California 90012, Plaintiff Jeannie Lefevre (“Plaintiff”), on behalf of herself and all other aggrieved
5 employees, will and hereby does move this Court for entry of an Order as follows:

- 6 1. Granting approval, pursuant to California Labor Code section 2698 *et seq.*, and specifically
7 Labor Code section 2699(1)(2), of the proposed Settlement of claims brought pursuant to the
8 Private Attorneys General Act of 2004 (Cal. Lab. Code § 2698 *et seq.*) and set forth in the
9 Settlement;
- 10 2. Appointing Phoenix Class Action Administrators as the Settlement Administrator, and
11 approving an award of \$2,500.00 in anticipated costs to Phoenix Class Action Administrators
12 for its settlement administration services;
- 13 3. Approving the proposed Notice of PAGA Settlement and Release of Claims as to form and
14 content, and directing that it be distributed to the Aggrieved Employees pursuant to the terms
15 of the Settlement;
- 16 4. Directing the distribution of the Gross Settlement Amount pursuant to the terms of the
17 Settlement;
- 18 5. Approving an award of one-third of the Gross Settlement Amount (currently estimated to be
19 \$75,000.00) in attorneys’ fees to Plaintiff’s Counsel;
- 20 6. Approving an award of \$17,397.41 in verified litigation costs reimbursement to Plaintiff’s
21 Counsel;
- 22 7. Approving an enhancement award of \$5,000.00 to Plaintiff for her service to the Aggrieved
23 Employees and the State of California; and
- 24 8. Approving the payment of \$93,826.94 to the California Labor & Workforce Development
25 Agency for its share of PAGA civil penalties.
- 26 9. Approving the payment of \$31,275.65 to the Aggrieved Employees on a pro rata basis based
27 on number of pay periods worked during the relevant time period.

28 This Motion is based on this Notice, the attached Memorandum of Points and Authorities; the
declarations of Scott M. Lidman, Elizabeth Nguyen, Paul K. Haines, Milan Moore, Plaintiff Jeannie
Lefevre, and Jodey Lawrence on behalf of Phoenix Settlement Administrators and the exhibits attached

1 thereto, the pleadings and other papers filed in this action, and on any further oral or documentary
2 evidence or argument presented at the time of hearing.

3
4 Dated: February 3, 2021

Respectfully Submitted,
LIDMAN LAW, APC

5
6 By:



Elizabeth Nguyen
Attorneys for Plaintiff
JEANNIE LEFEVRE

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1 **I. INTRODUCTION**

2 Plaintiff Jeannie Lefevre (“Plaintiff”), an “Aggrieved Employee” under the California Labor
3 Code § 2698 *et seq.* (“PAGA”), respectfully requests this Court grant approval of the Settlement¹ with
4 AG Arcadia, LLC, dba Huntington Drive Health and Rehabilitation Center (“AG Arcadia” or
5 “Defendant”) pursuant to Labor Code section 2699(1)(2). This PAGA action is based on AG Arcadia’s
6 alleged: (1) failure to provide all legally required meal periods; (2) failure to authorize and permit all
7 legally required rest periods; (3) failure to provide accurate, itemized wage statements; and (4) failure to
8 timely pay all wages upon termination. This PAGA action seeks civil penalties on behalf of the California
9 Labor & Workforce Development Agency (“LWDA”) and all “Aggrieved Employees,” defined in the
10 Settlement as: all current and former hourly, non-exempt employees of AG Arcadia who worked in
11 California at any time from February 13, 2019 through date the Court grants approval of the settlement.²

12 As set forth herein, the proposed Settlement³ should be approved because it is fair, reasonable,
13 and adequate, as it (1) is the product of arm’s-length negotiations, (2) was negotiated by attorneys
14 experienced in wage-and-hour issues, (3) was negotiated subsequent to undertaking sufficient
15 investigation to evaluate the relative strength and value of the PAGA-based claims, and (4) reflects a
16 reasoned compromise based directly on the relative strength and value of the PAGA-based claims, as
17 well as the risks, expense, complexity and likely duration of further litigation.

18 This proposed PAGA Settlement that AG Arcadia will pay a **non-reversionary** Gross Settlement
19 Amount (“GSA”) of \$225,000.00. After deducting amounts for requested attorneys’ fees (one-third of
20 the GSA, currently estimated at \$75,000.00), requested costs incurred by Plaintiff’s counsel (\$17,397.41),
21 an enhancement award for Plaintiff (\$5,000.00), and settlement administration costs (\$2,500.00) to
22 Phoenix Settlement Administrators (“PSA”), the Settlement provides for distribution of approximately
23 \$125,102.59 in civil penalties allocated as follows: (i) 75% (or \$93,826.94) to the LWDA; and (ii) 25%
24 (or \$31,275.65) to the Aggrieved Employees. The amounts requested for attorneys’ fees and costs,
25 Plaintiff’s enhancement awards, and settlement administration costs are fair, adequate, and reasonable,

26 ¹ The Settlement Agreement (“Settlement”) is attached to the Declaration of Elizabeth Nguyen as Exhibit 2. The
27 Proposed Notice of PAGA Settlement and Release of Claims is attached to the Settlement as Exhibit A. All defined
28 terms in this Motion have the same definitions as used in the Settlement.

² The period of February 13, 2019 through the date the Court grants approval of the settlement is defined in the
Settlement as the “PAGA Period.” *See* Settlement, ¶ I.12.

³ Plaintiff will have the proposed Settlement and instant motion served on the LWDA via its website pursuant to
Labor Code § 2699(1)(2) after Plaintiff causes the instant motion to be filed. *See* Declaration of Elizabeth
Nguyen (“Nguyen Decl.”), ¶ 37.

1 particularly in light of the recovery obtained. Because there are approximately 203 Aggrieved
2 Employees, the average individual payment to each Aggrieved Employees is estimated to be
3 approximately \$154.07 (and will vary based on an employee's actual length of employment).

4 The GSA of \$225,000.00 represents a fair and reasonable recovery for the State of California and
5 Aggrieved Employees considering the limited scope and time period of the release. The release in the
6 Settlement does *not* impact any underlying Labor Code claims any of the Aggrieved Employees may
7 have. Further litigation may have resulted in a smaller recovery or even no recovery at all based on the
8 defenses asserted by AG Arcadia and given the significant litigation risks involved.

9 In light of the foregoing, this Court should enter the [Proposed] Order Granting Approval of
10 Settlement submitted concurrently herewith.

11 **II. SUMMARY OF THE LITIGATION**

12 **A. The Parties and Procedural History**

13 According to its website, AG Arcadia provides comprehensive rehabilitation and personal skilled
14 care 24 hours a day. *See* Nguyen Decl., ¶ 10. Plaintiff, a former non-exempt employee, was employed
15 by AG Arcadia as a Social Services Assistant from approximately September 4, 2018 through November
16 2019. *See* Declaration of Jeannie Lefevre ("Lefevre Decl."), ¶ 2.

17 On February 13, 2020, Plaintiff filed a class action complaint alleging a cause of action on behalf
18 of herself and a putative class for: (i) failure to provide all legally required meal periods; (ii) failure to
19 authorize and permit all legally required rest periods; (iii) failure to provide accurate, itemized wage
20 statements; (iv) failure to timely pay all wages upon termination; and (v) unfair and/or unlawful business
21 practices. On February 13, 2020, Plaintiff provided written notice to the LWDA and AG Arcadia
22 asserting claims for civil penalties pursuant to PAGA stemming from alleged Labor Code violations.
23 Nguyen Decl., ¶ 11; Exh. 1. On April 20, 2020, after Plaintiff exhausted her administrative requirements,
24 she filed a First Amended Class and Representative Action Complaint ("FAC") adding a cause of action
25 for civil penalties under PAGA. On June 19, 2020, pursuant to Plaintiff's request, the Court dismissed
26 Plaintiff's class claims and allegations without prejudice, leaving only Plaintiff's cause of action for civil
27 penalties under PAGA. On June 30, 2020, the case was transferred to Stanley Mosk and subsequently
28 assigned to this department. *Id.* Shortly thereafter, the Parties agreed to private mediation.

1 **B. Informal Discovery, Mediation, and Arms-Length Negotiations**

2 Prior to mediation, AG Arcadia produced substantial information and documents pertaining to
3 Plaintiff and other Aggrieved Employees, including sampling of timekeeping records and payroll data,
4 employee handbooks and other relevant documents and information for the underlying claims. Nguyen
5 Decl., ¶ 12. Plaintiff’s retained expert (who holds a Ph.D. in economics) then analyzed the payroll data
6 and time records produced by AG Arcadia. *Id.* After the detailed review of the payroll and time records
7 analysis and other documents and information produced by AG Arcadia, Plaintiff’s Counsel drew on their
8 extensive experience in similar cases to assess the strengths and weaknesses of Plaintiff’s case and
9 Defendant’s potential defenses. *Id.*

10 On November 9, 2020, the Parties participated in a full-day mediation with Steven G. Mehta,
11 Esq., a respected mediator. Nguyen Decl., ¶ 13. During mediation, the Parties vigorously debated their
12 opposing legal positions and the likelihood of Plaintiff’s ability to proceed on a representative basis. *Id.*
13 The Parties reached a settlement at mediation and executed a term sheet at mediation, with a long form
14 agreement finalized after mediation. *Id.* at ¶ 13, Exh. 2.

15 **III. ARGUMENT**

16 **A. Standard For Approval Of A PAGA Settlement**

17 The settlement of a PAGA claim requires court approval pursuant to the operative PAGA statute,
18 which states that the “court shall review and approve any penalties sought as part of a proposed settlement
19 agreement pursuant to this part.” *See* Lab. Code § 2699(l). Notably, the PAGA statute does not set
20 expressly forth the criteria by which a PAGA settlement is to be judged.

21 In evaluating the adequacy of the settlement amount, the Court’s focus is not concerned with the
22 amount(s) that “aggrieved employees” are to receive, but rather, should focus on the total settlement
23 amount in achieving PAGA’s objective. Indeed, “[t]he remedy sought in a PAGA suit consists of civil
24 penalties, not individual or class damages.” *Mendez v. Tween Brands, Inc.*, 2010 WL 2650571 (E.D. Cal.
25 Jul. 1, 2010) at *4. “Unlike class actions, these civil penalties are not meant to compensate unnamed
26 employees because the action is fundamentally a law enforcement action.” *Ochoa-Hernandez v. Cjaders*
27 *Foods, Inc.*, 2010 WL 1340777 at *4 (N.D. Cal. Apr. 2, 2010). Moreover, while “[a PAGA] action is
28 ... designed to protect the public and penalize the employer for past illegal conduct” (*Mendez*, 2010 WL
2650571 at *4), a reviewing Court must take into account the fact that settlement of a PAGA claim – like
any settlement – involves a “compromise” that stops short of rendering findings of liability and damages.

1 The Court must not lose sight of the fact that “[u]nlike a class action seeking damages or injunctive relief
2 for injured employees, the purpose of PAGA is to incentivize private parties to recover civil penalties for
3 the government that otherwise may not have been assessed and collected by overburdened state
4 enforcement agencies.” *Ochoa-Hernandez*, at *4.

5 Second, consistent with the fact that unnamed employees have no property interest in a PAGA
6 claim,⁴ “[u]nnamed employees need not be given notice of the PAGA claim, nor do they have the ability
7 to opt-out of the representative PAGA claim.” *Ochoa-Hernandez* at *5.

8 **B. This Court Should Approve The Settlement Because It Is A Fair, Adequate, And**
Reasonable Compromise Of Disputed Claims

9 California courts have a strong policy in favor of settlement. *See Stambaugh v. Sup. Ct.*, 62
10 Cal.App.3d 231, 236 (1976). To be approved, a settlement must be “fair, reasonable and adequate to all
11 concerned.” *Reed v. United Teachers Los Angeles*, 208 Cal.App.4th 322, 337 (2012). The Court’s role
12 in evaluating a proposed settlement is limited to ensuring that the agreement taken as a whole is fair and
13 is not the product of fraud or collusion between the negotiating parties. *See Hanlon, supra*, 150 F.3d at
14 1027. There is an initial presumption of fairness when the settlement agreement was negotiated at arm’s
15 length by experienced counsel. *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 130 (2008).

16 Here, the GSA secured by Plaintiff is greater than other PAGA penalty awards approved as
17 reasonable within California state courts, which often range between \$7,500.00 and \$15,000.00 for
18 PAGA claims impacting hundreds or thousands of individuals, resulting in much lower PAGA penalty
19 payments on a per person basis. *See, e.g., Penaloza v. PPG Industries Inc.*, Case No. BC471369, 2013
20 WL 2917624 at *2 (Super. Ct. L.A. County, May 20, 2013) (approving PAGA penalties of \$5,000.00 to
21 class of 667 members); *Cabrera v. Advantage Sale & Marketing, LLC*, Case No. BC485259, 2013 WL
22 1182822 (Super. Ct. L.A. County, March 12, 2013) (approving PAGA penalties of \$10,000.00 for class
23 of approximately 3,000 members). Because this Settlement is fair, adequate, and reasonable, Plaintiff
24 respectfully requests that the Court approve the Settlement.

25 //

26
27 ⁴ As held by the California Supreme Court, “[t]he Labor Code Private Attorneys General Act of 2004 does not
28 create property rights or any other substantive rights” as “[i]t is simply a procedural statute allowing an aggrieved
employee to recover civil penalties—for Labor Code violations—that otherwise would be sought by state labor law
enforcement agencies.” *See Amalgamated Transit Union, Local 1756, AFL-CIO v. Sup. Ct.*, 46 Cal. 4th 993, 1003
(2009).

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[T]he strength of Plaintiff's 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, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.

Dunk, 48 Cal.App.4th at 1801.⁵

//

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1 a) **Overview of the Proposed Settlement**

2 **“Aggrieved Employees” Defined:** Aggrieved Employees are defined as, “all current and former
3 hourly, non-exempt employees of Defendant AG Arcadia, LLC, dba Huntington Drive Health and
4 Rehabilitation Center who worked in California at any time from February 13, 2019 through date the
5 Court grants approval of the settlement.” *See* Settlement, ¶ I.2.

6 **Essential Terms Of The Settlement:**⁶ This Settlement provides for AG Arcadia to pay a Gross
7 Settlement Amount of \$225,000.00. Settlement, ¶ III.2. After deducting amounts for requested attorneys’
8 fees, attorneys’ costs, Plaintiff’s requested enhancement award, and settlement administration costs, the
9 Settlement provides for distribution of the remaining Net Settlement Amount (“NSA”) to Aggrieved
10 Employees and the LWDA distributed as follows: 75% to the LWDA and 25% to Aggrieved Employees
11 pursuant to Labor Code 2699(i). Settlement, ¶ III.4.

Gross Settlement Amount:	\$225,000.00
Minus Court-approved attorneys’ fees (1/3):	\$75,000.00
Minus Court-approved attorneys’ costs:	\$17,397.41
Minus Court-approved enhancement award:	\$5,000.00
Minus settlement administrator costs:	\$2,500.00
Net Settlement Amount:	\$125,102.59
Net Settlement Amount:	\$125,102.59
75% to LWDA	\$93,826.94
25% to Aggrieved Employees	\$31,275.65

17 The payment of the GSA shall be made within thirty (30) calendar days of Court approval of the
18 settlement. *See* Settlement, ¶ III.2. Within twenty (20) business days of the court signing the approval
19 order, Defendant shall provide PSA with information for Aggrieved Employees in order to calculate and
20 distribute checks to Aggrieved Employees. *Id.* at ¶ IV.2. Within seven (7) business days of receiving
21 this information from Defendant, PSA will prepare and circulate an anonymized spreadsheet containing
22 the estimated individual settlement payments to each Aggrieved Employee for the Parties’ approval. PSA
23 shall also determine whether the Reduction in Close Period in Section III.3 has been triggered. *Id.*
24 Within two business days of receiving the Parties’ approval, PSA shall mail copies of the explanatory
25 letter, which has been mutually approved by the Parties, along with Individual PAGA Payments to all
26

27 ⁶ Defendant represents that there are an estimated 3,500 pay periods worked by the aggrieved employees during
28 the PAGA Period. If the number of pay periods worked by aggrieved employees during the PAGA Period is more
than 15% greater than this figure (i.e., 4,025 or more pay periods), the Parties agree that the close date of the
PAGA Period and PAGA Release Period shall be the date on which the number of pay periods is 4,025 instead of
the date on which the Court grants approval. *See* Settlement, ¶ III.3.

Aggrieved Employees via U.S. Mail. If the checks are not cashed within 180 days, the funds will be transferred to the State Controller's Office under the unclaimed property fund laws in the name of the Aggrieved Employee to whom the checks were issued. *Id.* at ¶ IV.3-4.

Payment to the LWDA and Aggrieved Employees: The entire NSA shall be designated as PAGA civil penalties. Of the NSA, 75% of the NSA will be distributed to the LWDA and 25% will be distributed to the Aggrieved Employees pursuant to Labor Code § 2699(i). *See* Settlement, ¶ III.5. Based on these distributions, the amount to be paid to the LWDA will be \$93,826.94 and the amount paid to Aggrieved Employees is estimated to be \$31,275.65. Nguyen Decl., ¶ 14. This portion of the NSA shall be paid to all Aggrieved Employees pro rata based on the proportional number of pay periods worked by each Aggrieved Employee during the PAGA Period and will be reported on an IRS Form 1099. Settlement, ¶ IV.3. The average payment to an Aggrieved Employee is estimated to be \$154.07.

b) Risk, Expense, Complexity, and Duration of Further Litigation

The Parties conducted an extensive informal exchange of documents/information for mediation which allowed Plaintiff to thoroughly evaluate the claims. *See* Nguyen Decl., ¶¶ 12-13. Had the Parties not settled, they would need to engage in formal discovery, potential cross-summary judgment motions, preparation for trial, appeals in the wake of a summary judgment ruling for either party, and/or post trial-motions. As such, the Parties would incur considerably more attorneys' fees and costs through trial. This settlement avoids those risks, the accompanying expense, and protracted litigation.

c) Strength of Plaintiff's Case and Realistic Value of Claims

Here, the claims arise from Defendant's meal and rest period policies, which Plaintiff alleges failed to provide Aggrieved Employees with all legally required meal and rest periods. As a result, Plaintiff also alleges Defendant failed to issue accurate, itemized wage statements and failed to pay all wages owed upon termination of employment to Aggrieved Employees. Although she maintains that the PAGA action is meritorious, Plaintiff acknowledges that her position includes real risks and uncertainty, especially in the face of Defendant's defenses on the merits discussed below. While Plaintiff maintains she could rebut these defenses, Plaintiff nonetheless faced several substantial challenges in prevailing in this matter, and this risk factor weigh in favor of approving the Settlement. Plaintiff estimates Defendant's realistic exposure, based on these defenses and risks, as follows:

Civil Penalties Owed for Failing to Provide Legally Compliant Meal Periods: Plaintiff alleges that throughout her employment with Defendant, she was not provided all legally required meal periods due

1 to Defendant's meal period policies and practices. Nguyen Decl., ¶ 16. Specifically, Plaintiff generally
2 began her shifts at 8:00 a.m. or 9:00 a.m. As a result of the work demands imposed by Defendant, Plaintiff
3 would often be unable to start her lunch until after 1:00 p.m. or 2:00 p.m., which often resulted in late or
4 otherwise unlawful meal periods. *Id.* Indeed, upon information and belief, Defendant would manually
5 edit the time punch records of Plaintiff and other non-exempt employees to reflect timely and compliant
6 meal periods when in fact the meal periods, if taken, were not timely and compliant. Specifically,
7 Defendant would post the names of non-exempt employees and then require them to go to payroll and
8 complete a time clock correction form. Additionally, when Plaintiff and other non-exempt employees
9 worked in excess of 10.0 hours in a shift, they were not provided with a second 30-minute meal period
10 due to Defendant's meal period policies and practices that fail to provide for a second meal period for
11 shifts over 10.0 hours. *Id.* Further, Plaintiff is not aware of any evidence that Defendant ever paid any
12 meal period premiums, resulting in the failure to pay all wages due. *Id.* Based on the timekeeping and
13 payroll data produced in connection with mediation, Plaintiff contends there was at least one meal period
14 violation for each of the 3,405 pay periods at issue. Labor Code section 558 provides that an initial
15 violation is assessed at \$50 for the initial violation for each underpaid employee for each pay period and
16 \$100 for each subsequent violation. Accordingly, pursuant to Labor Code section 558, Plaintiff calculated
17 Defendant's maximum exposure at \$330,350 ($\$330,350 = (203 \times \$50 \text{ initial violation}) + (3,202 \times \100
18 $\text{subsequent violation})$). *Id.*

19 Defendant counters that it has always provided non-exempt employees with an opportunity to take
20 legally compliant meal periods, and any non-compliant meal periods reflected in employee timekeeping
21 records were solely the result of employee choice, rather than any policy or practice of Defendant.
22 Nguyen Decl., ¶ 17. Defendant points out that under *Brinker Restaurant Corp. v. Superior Court* (2012)
23 53 Cal. 4th 1004, it is only required to "provide" the opportunity to take meal periods, not "ensure" meal
24 periods are taken, and that they have always done so. *Brinker, supra*, 53 Cal.4th at 1038 (rejecting
25 "ensure" standard). *Id.* Defendant also contends that Plaintiff could not recover the \$100 civil penalty
26 for "subsequent violations" because it did not have notice of any initial violation. *Amaral v. Cintas Corp.*
27 *No. 2*, 163 Cal. App. 4th 1157, 1209 (2008); *In re Taco Bell Wage and Hour Actions*, 2016 WL 2755938,
28 at *7 (E.D. Cal. April 8, 2016). Lastly, Defendant contends that the Court would use its discretion

provided for in the PAGA to reduce the maximum penalty exposure due to its good faith efforts to comply with applicable law. In light of these defenses, Plaintiff discounted the maximum recovery on this claim by 70% to account for the risk that Defendant could prevail on its defenses and that a Court would reduce penalties to arrive at a projected total of \$99,105. Nguyen Decl., ¶ 17.

Civil Penalties Owed for Failing to Authorize and Permit Legally Compliant Rest Periods:

Plaintiff also alleges she and other Aggrieved Employees were not authorized and permitted to take all legally complaint rest periods due to the work demands imposed by Defendant. In addition, Defendant's written rest period policy requires employees to remain on the premises for rest periods in violation of California law. This policy results in employees not being relieved of all duty and not being to use their rest break time as they see fit, in violation of rest period law pursuant to *Augustus v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 263 (2016). As a result, Plaintiff contends that she and other Aggrieved Employees experienced at least one rest period violation during every shift in excess of 3.5 hours. Accordingly, pursuant to Labor Code section 558, Plaintiff estimates the exposure at \$330,350 ((203 x \$50 initial violation) + (3,202 x \$100 subsequent violation)).

Defendant contends it has always maintained and enforced lawful rest period policies and practices. Nguyen Decl., ¶ 19. Defendant further contends that Aggrieved Employees were provided with all off-duty and paid rest periods, Defendant's actual practices did not require employees to remain on the premises for rest periods, and there is no binding caselaw holding that on premise rest periods are unlawful. As such, Plaintiff discounted the maximum recovery on this claim by 70% to account for the risk that Defendant could prevail on its arguments, to arrive at a projected total of \$99,105.00.

Civil Penalties for Derivative Wage Statement Violations: As Plaintiff's PAGA claim was based on the underlying failure to pay meal and rest period premiums and deficient wage statements, Plaintiff asserts PAGA penalties for each Aggrieved Employee for each pay period in the PAGA limitations period. Nguyen Decl., ¶ 20. Based on the data provided, there were a total of 3,405 pay periods in the relevant PAGA liability period. Therefore, pursuant to Labor Code § 226.3 and only applying the initial violation rate \$250, the estimated exposure is \$851,250 (3,405 x \$250 initial violation). *Id.*

Defendant argues that Plaintiff's underlying claims will fail and, as a result, the wholly derivative wage statement claim will also fail. Nguyen Decl., ¶ 21. *See Price v. Starbucks Corp.* (2011) 192

Cal.App.4th 1136, 1147 (“Because the underlying causes of action fail, the derivative UCL and PAGA claims also fail.”). Defendant also vehemently argues that meal and rest period claims cannot support a claim for wage statement penalties after *Naranjo v. Spectrum Security Services, Inc.* (2019) 40 Cal. App. 5th 444, review granted and *Kirby v. Immoos Fire Protection, Inc.* (2012) 53 Cal.4th 1244 (see, e.g., *Jones v. Spherion Staffing*, No. LA-CV-11-06462-JAK(JCx) (C.D. Cal. 2012) 2012 WL 3264081 at **8-9). Finally, Defendant argues that since the primary allegations in this case are that Defendant failed to provide all meal and rest periods, imposing multiple penalties based on different Labor Code section under derivative theories of liability for the same conduct would be inappropriate and unconstitutional. As such, Plaintiff discounted that figure by 75% to account for the risk of losing on the merits and for the risk of the Court reducing penalties, to arrive at a realistic recovery for Aggrieved Employees of \$212,812.50. See, e.g., *Thurman, supra*, 203 Cal.App.4th at 1136 (affirming reduction of PAGA penalties); *Fleming v. Covidien Inc.*, Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047 at *5 (C.D. Cal. Aug. 12, 2011) (reducing PAGA penalties by more than 82%); *Id.*

Civil Penalties for Failing to Timely Pay Wages Upon Termination: Plaintiff alleges that Defendant is liable for waiting time penalties under Labor Code section 203 as a result of its failure to pay all meal and rest period premium wages. Nguyen Decl., ¶ 22. Based on the data provided by Defendant, there are 96 Aggrieved Employees who separated their employment with Defendant during the relevant time period who could be entitled to waiting time penalties. *Id.* Therefore, Plaintiff calculated Defendant’s maximum exposure for waiting time penalties at approximately \$9,600 (96 former employees x \$100). *Id.*

Defendant asserts it has strong defenses to the waiting time claim because there exist good-faith disputes as to Plaintiff’s underlying claims, precluding imposition of penalties. Nguyen Decl., ¶ 23. See also 8 Cal. Code Regs. § 13520 (a “good faith dispute that any wages are due will preclude imposition of waiting time penalties”); *Kao v. Joy Holiday*, 12 Cal.App.5th 947, 963 (2017) (holding that “good faith dispute” over whether employee was exempt precluded imposition of waiting time penalties over contested wages owed). Defendant also argues that meal and rest period claims cannot support a claim for waiting time penalties after *Naranjo v. Spectrum Security Services, Inc.* (2019) 40 Cal. App. 5th 444, review granted and *Kirby v. Immoos Fire Protection, Inc.* (2012) 53 Cal.4th 1244 (see, e.g., *Jones v.*

1 *Spherion Staffing*, No. LA-CV-11-06462-JAK(JCx) (C.D. Cal. 2012) 2012 WL 3264081 at **8-9).
2 Therefore, Plaintiff discounted the maximum recovery on this claim by 75% to account for the risk that
3 Defendant could prevail in its arguments, to arrive at a projected total of \$2,400.00. Nguyen Decl., ¶ 23.

4 Based on the sum of the foregoing estimated figures, Plaintiff predicts the realistic total recovery
5 for the Aggrieved Employees to be approximately \$413,422.50. Nguyen Decl., ¶ 24. The proposed
6 settlement of \$225,000.00 therefore represents approximately 54.4% of the realistic total recovery for
7 Aggrieved Employees and avoids the risks of proceeding through trial. *Id.* “The fact that a proposed
8 settlement may only amount to a fraction of the potential recovery does not, in and of itself, mean that
9 the proposed settlement is grossly inadequate and should be disapproved.” *Linney v. Cellular Alaska*
10 *Partnership*, 151 F.3d 1234, 1242 (9th Cir. 1998) (internal quotations omitted). Plaintiff acknowledges
11 that there was substantial uncertainty and risk as to these claims. Approval is appropriate since this
12 settlement will provide tangible, monetary relief to Aggrieved Employees and the State of California.

13 **d) The Experience and Views of Counsel**

14 “Parties represented by competent counsel are better positioned than courts to produce a
15 settlement that fairly reflects each party’s expected outcome in litigation.” *In re Pacific Enterprises*
16 *Securities Litigation*, 47 F.3d 373, 378 (9th Cir. 1995). Here, Plaintiff’s Counsel collectively brings over
17 four decades of wage-and-hour class and representative action experience. *See* Nguyen Decl., ¶¶ 2-8;
18 Declaration of Paul K. Haines (“Haines Decl.”), ¶¶ 2-7; and Declaration of Scott M. Lidman (“Lidman
19 Decl.”), ¶¶ 2-8. They have been certified as class counsel in numerous cases alleging wage and hour
20 claims. *Id.* Their experience in similar matters was integral in evaluating the strengths and weaknesses
21 of the case against AG Arcadia and the reasonableness of the Settlement. Practice in the narrow field of
22 wage-and-hour litigation requires skill and knowledge concerning the rapidly evolving substantive state
23 and federal law, as well as the procedural law of class and representative action litigation. Because it is
24 reasonable to compensate Plaintiff’s Counsel commensurate with their skill, reputation, and experience,
25 a fee award of one-third of the GSA is reasonable. Other factors show that the amount of fees requested
26 is reasonable. This case involved legal issues regarding the propriety of civil PAGA penalties, an
27 unsettled area of law. AG Arcadia was also represented by respected counsel with extensive wage-and-
28 hour litigation experience, a factor that strongly supports approval. *See, Kullar*, at 168 Cal.App.4th at
130 (“The court undoubtedly should give considerable weight to the competency and integrity of counsel

1 and the involvement of a neutral mediator in assuring itself that a settlement agreement represents an
2 arm's length transaction entered without self-dealing or other potential misconduct.”).

3 **C. Requested Award of Attorneys’ Fees/Costs Are Fair and Reasonable**

4 Plaintiff, as the prevailing party in settlement, is entitled to recover attorneys’ fees and costs for
5 these claims. *See* Cal. Labor Code § 2699(g) (“Any employee who prevails in any action shall be entitled
6 to an award of reasonable attorney’s fees and costs.”); Cal. Code of Civil Procedure § 1021.5(a). A fee
7 award is justified where the legal action has produced its benefits by way of a voluntary settlement. *See*,
8 *e.g.*, *Maria P. v. Riles*, 43 Cal.3d 1281, 1290-91 (1987); *Serrano v. Priest*, 20 Cal.3d 25, 34 (1977) (when
9 a group are entitled in share in a common fund, “and an action brought by a plaintiff...for the benefit of
10 all results in the creation...of that fund, such plaintiff...may be awarded attorney’s fees out of the fund.”)

11 Fee awards of one-third of the settlement fund are routinely awarded in California state and
12 federal courts in class and representative PAGA actions.⁷ Indeed, the California Supreme Court approved
13 the use of the “percentage of fund” method in California. *See Laffitte v. Robert Half Int’l, Inc.*, 1 Cal.5th
14 480, 506 (2016) (“the percentage of fund method survives in California class action cases...”). This is
15 also consistent with Counsel’s experience in similar wage-and-hour class/PAGA matters. *See* Nguyen
16 Decl., ¶ 25. Here, Plaintiff’s Counsel’s fee request of \$75,000.00 (one-third of the GSA) is the same
17 percentage sought in *Laffitte*, and is fair and reasonable based on the percentage of the recovery method.

18 The California Supreme Court in *Laffitte* also held that trial courts have discretion to assess the
19 reasonableness of fee awards with tools such as the “lodestar cross-check,” whereby the trial court
20 calculates counsel’s lodestar and determines whether the “lodestar multiplier” needed to bring the lodestar
21 on par with the percentage of recovery is reasonable. *Laffitte*, 1 Cal.5th at 503-06. Under the lodestar
22 method, the court multiplies the number of hours reasonably expended by each attorney or legal staff
23 member by their reasonable hourly rates, then enhances this lodestar figure by a “multiplier” to account
24 for a range of factors. *See Serrano v. Priest* 20 Cal.3d 25, 48-49 (1977).

25 Lodestar multipliers can range from 2 to 4 or even higher. *See, e.g., Chavez, supra*, 162 Cal. App.
26 4th at 49-50 (approving multiplier of approximately 2.5); *Coalition for L. County Planning etc. Interest*
v. Bd. of Supervisors, 76 Cal. App. 3d 241, 251 (1977) (approving multiplier of approximately 12.8).

27 ⁷ *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66, fn. 11 (2008); *see also, In re Pacific Enterprises Securities Litig.*,
28 47 F.3d 373, 379 (9th Cir. 1995) (affirming 33% fee award); *Chavez v. Saticoy Lemon Ass’n*, Case No. 56-2015-
00468600-CU-OE-VTA, 2015 WL 5561118 (Ventura Cty. Super. Ct., Aug. 29, 2015) (approving attorneys’ fees
of one-third of settlement fund in representative PAGA settlement).

1 Here, Counsel have a lodestar of \$118,812.50 without the use of any multiplier, which is about 1.58 times
2 more than the \$75,000.00 fee request. *See* Nguyen Decl., ¶ 28. A general summary showing the number
3 of hours of work performed by each attorney and paralegals is set forth in the Nguyen Declaration filed
4 concurrently herewith. *Id.* at ¶ 28. The billing rates used are reasonable given the hourly rates identified
5 based on years of experience in the *Laffey* Matrix, submitted concurrently herewith. *Id.*, at ¶ 29, Exh. 3.

6 The fee award requested here is justified because it is **lower** than the lodestar. *Id.* Further, the
7 fee award requested here is justified because Plaintiff's Counsel achieved a fair civil penalty recovery for
8 the State and the Aggrieved Employees in an uncertain and risky case, while bearing the substantial
9 burdens of representation on a contingency basis, and the fees requested are in line with the market rate.
10 *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048-51 (9th Cir. 2002) (finding that exceptional results in
11 a contingency case, significant risk and the absence of supporting precedents, are proper considerations
12 in awarding attorneys' fees). Additionally, Plaintiff's recovery for the State of California and Aggrieved
13 Employees exceeds other PAGA awards approved by courts in California. *See, e.g., Boyd v. Bank of Am.*
14 *Corp.*, 2014 WL 6473804 (C.D. Cal. Nov. 18, 2014) (approving \$18,750 PAGA payment); *Penaloza*,
15 *supra*, 2013 WL 2917624 (average PAGA penalties of \$7.49); *Cabrera, supra*, 2013 WL 1182822
16 (average PAGA penalties of \$3.33). That Plaintiff's Counsel achieved these results without engaging in
17 a protracted legal battle, in the face of serious defense challenges and an uncertain legal landscape,
18 confirms the strength of the results achieved.

19 As discussed above, this case carried substantial risks on the merits and with respect to the
20 propriety of "stacking penalties" based on a single primary allegation and the Court's authority to reduce
21 an award of PAGA penalties. It is fair and reasonable to account for these risks in compensating
22 Plaintiff's Counsel, as well as the risks involved in undertaking this litigation and expending considerable
23 effort while working on a pure contingency basis.

24 Indeed, since undertaking representation of Plaintiff, Plaintiff's Counsel dedicated substantial
25 resources to this litigation, including expending a total of \$17,397.41 (including approximately \$125 in
26 future costs) in litigation costs, without receiving any compensation to date.⁸ Nguyen Decl., ¶ 34, Exh.
27 4. Plaintiff's Counsel conducted legal research regarding the merits of Plaintiff's claims, the ability to
28

⁸ This includes total costs incurred by both law firms.

1 recover penalties under the PAGA, and AG Arcadia's potential defenses. *Id.* Plaintiff's Counsel also
2 analyzed the data/information produced informally prior to mediation and prepared an exposure analysis
3 on the PAGA penalties. *Id.* Plaintiff's Counsel also expended significant additional effort in preparing
4 subsequent settlement documents, this Motion for settlement approval, and supporting declarations, and
5 will oversee the settlement administration process. *Id.* Given the considerable potential for adverse
6 outcomes in this case, the contingent risk borne by Plaintiff's Counsel was great. The quality of Plaintiff's
7 Counsel's work, and the efficacy and dedication with which it was performed, should be compensated.

8 Thus, Plaintiff's Counsel submit that the requested fee award is fair, reasonable and adequate and
9 should be approved. Plaintiff's request for reimbursement of litigation costs of \$17,397.41 is also fair
10 and reasonable. As the evidence submitted herewith shows, all of Plaintiff's litigation costs are
11 documented and reasonably incurred. *See* Nguyen Decl., ¶ 34, Exh. 4.

12 **D. Notice and Requested Settlement Administration Costs Are Fair and Reasonable**

13 The parties agreed to engage PSA as the settlement administrator. *See* Settlement, ¶ I.18. Under
14 the Settlement, Parties have agreed to have the proposed Notice of PAGA Settlement and Release of
15 Claims ("Notice"), subject to Court approval, be sent with the settlement checks to inform the Aggrieved
16 Employees about the scope of the released claims and their responsibility for any taxes payable on the
17 amount received. The PAGA does not require notice and the Aggrieved Employees do not have the right
18 to opt-out. The Notice which is attached as Exhibit A to the Settlement and Exhibit A to the [Proposed]
19 Order is only being provided as a courtesy.

20 PSA shall be responsible for mailing the Notice, calculating and distributing the settlement
21 checks, among other duties. \$2,500.00 are designated as settlement administration costs. Settlement, ¶
22 III.4.c. PSA's quote is attached as Exhibit B to the Declaration of Jodey Lawrence on behalf of PSA in
23 support of Motion for Approval of PAGA Settlement filed concurrently herewith ("Lawrence Decl.").

24 **E. Plaintiff's Requested Enhancement Award is Fair, Adequate, and Reasonable**

25 Courts routinely approve enhancement awards to compensate named Plaintiff for the services
26 they provide and the risks they incur during class and representative litigation. *Cellphone Termination*
27 *Fee Cases*, 186 Cal. App. 5th 1380, 1393-94 (2010) ("These awards 'are discretionary, [citation], and are
28 intended to compensate class representatives for work done on behalf of the class, to make up for financial
or reputational risk undertaken in bringing the action, and, sometimes, to *recognize their willingness to*
act as a private attorney general.'"); *see Clark v. American Residential Services LLC*, 175 Cal. App. 4th

785 (2009).⁹

Here, pursuant to the Settlement, Plaintiff seeks an enhancement award of \$5,000.00. *See* Settlement, ¶ III.4.b. Plaintiff will request this amount in recognition of her unique contributions to the prosecution of this case and her efforts in bringing this case to a successful and significant resolution. *See* Nguyen Decl., ¶ 35; Lefevre Decl., ¶¶ 3-9. Also, in recognition of this requested enhancement award, Plaintiff will release all claims (whether known or unknown) against AG Arcadia – a general release which extends significantly beyond the PAGA-based claims released by Aggrieved Employees in this Settlement. Settlement, ¶ III.6. Plaintiff has also agreed to a waiver of section 1542 of the Civil Code. *Id.* at ¶ III.7. This request is reasonable given Plaintiff’s efforts in this case and the risks she undertook on behalf of the Aggrieved Employees, and is in consideration for a general release of all claims against her former employer. Lefevre Decl., ¶ 8. Plaintiff worked closely with counsel on this case and spent approximately 15 to 20 hours on activities related on this case. Lefevre Decl., ¶¶ 5 and 7. Plaintiff knew there was a risk that she could be liable for Defendant’s costs, she lost the case and accepted these risks to benefit the other current and former employees. Even though she understood that the lawsuit is public record and could stigmatize her further employment as employer’s do not like to hire employees who have filed lawsuits, she accepted those risks to benefit other employees. Lefevre Decl., ¶ 6. Accordingly, Plaintiff’s request is appropriate and justified as part of the Settlement.

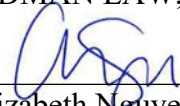
IV. CONCLUSION

For the reasons stated herein, this Court should grant Plaintiff’s Motion in its entirety and adopt the [Proposed] Order and Judgment Granting Plaintiff’s Motion for Settlement Approval of Claims Brought Under the Private Attorneys General Act and Reasonable Attorneys’ Fees, Costs, and Enhancement Award submitted concurrently herewith.

Dated: February 3, 2021

Respectfully submitted,
LIDMAN LAW, APC

By:


Elizabeth Nguyen
Attorneys for Plaintiff
JEANNIE LEFEVRE

⁹ California courts, including many judges in Los Angeles Superior Court, routinely award enhancement payments in PAGA-only, non-class actions. *See Canul v. Basmat, Inc.*, Case No. BC674940, Judge Beudet of this Court (Dept. 50) approved a PAGA-only settlement including a \$5,000 enhancement award to the named plaintiff. *See* Nguyen Decl., ¶ 32, Exh. 5; *see also Resendez v. Bridgestone Retail Operations, LLC*, Case No. BC596892, which the Court approved a \$10,000 enhancement payment to named plaintiff in a PAGA only settlement. *See* Nguyen Decl., ¶ 32, Exh. 6.