

LIDMAN LAW, APC
Scott M. Lidman (SBN 199433)
slidman@lidmanlaw.com
Elizabeth Nguyen (SBN 238571)
enguyen@lidmanlaw.com
Milan Moore (SBN 308095)
mmoore@lidmanlaw.com
Romina Tamiry (SBN 328420)
rtamiry@lidmanlaw.com
2155 Campus Drive, Suite 150
El Segundo, California 90245
Tel: (424) 322-4772
Fax: (424) 322-4775

Attorneys for Plaintiff JEANNIE LEFEVRE

**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 purpose to the Hon. Michael L.
Stern, Dept. 62]*

**DECLARATION OF ELIZABETH NGUYEN IN
SUPPORT OF PLAINTIFF'S 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:
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;
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

1 **HAINES LAW GROUP, APC**

2 Paul K. Haines (SBN 248226)

3 phaines@haineslawgroup.com

4 2155 Campus Drive, Suite 180

5 El Segundo, California 90245

6 Tel: (424) 292-2350

7 Fax: (424) 292-2355

8 Attorneys for Plaintiff JEANNIE LEFEVRE

1 I, ELIZABETH NGUYEN, declare as follows:

2 1. I am a shareholder of the law firm Lidman Law, APC, and counsel for the named Plaintiff
3 Jeannie Lefevre (“Plaintiff”) in the above-captioned matter. I am a member in good standing of the bar
4 of the State of California and am admitted to practice in this Court. I have personal knowledge of the facts
5 stated in this declaration and could testify competently to them if called upon to do so.

6 2. I am a 2005 graduate of Loyola Law School. During law school, I worked as an extern for
7 the Honorable Erithe A. Smith, U.S. Bankruptcy Court for the Central District of California. Also while
8 in law school, I worked as a law clerk in the Enforcement Unit of the Office of the Chief Trial Counsel
9 for the State Bar of California.

10 3. Since graduating from law school, my practice has focused almost exclusively on
11 employment litigation. In October 2007, I began working as an associate attorney at the international law
12 firm of Littler Mendelson P.C., at its Los Angeles office, which according to its website is the “largest
13 law firm in the world exclusively devoted to representing management in employment, employee benefits
14 and labor law matters.”

15 4. In June 2012, I left Littler Mendelson to work at the Los Angeles office of Reed Smith
16 LLP. During my employment at Reed Smith, I worked exclusively in the labor and employment practice
17 group. In June 2013, I returned to Littler Mendelson as an associate attorney, was promoted to Shareholder
18 in 2015, and was elevated to participating Shareholder in 2017. Since October 2007, my practice has been
19 and continues to be exclusively labor and employment law, with a strong emphasis on wage and hour
20 class actions venued in both state and federal courts. During this time period and my legal career in
21 general, I also worked on a number of single and multi-plaintiff wage and hour matters as well. During
22 my employment at Littler Mendelson, I was a member of its Class Action Practice Group.

23 5. During my employment at Littler Mendelson, I played a significant role in the class actions
24 that I was staffed on, and was primarily responsible for managing the litigation both in my role as a Senior
25 Associate and as a Shareholder. In particular, I received a wide-array of wage and hour class action
26 experience performing the following types of tasks: drafting demurrers, motions to strike and/or dismiss;
27 removing actions from state court to federal court; drafting and responding to written discovery; drafting
28 and opposing discovery related motions; arguing discovery related motions; drafting motions to

consolidate related matters; interviewing putative class members and obtaining declarations in connection with class certification; drafting oppositions to motions for class certification; conducting exposure analyses to assess the strengths and weaknesses of asserted claims, the likelihood of prevailing at class certification and potential damages resulting from such claims; drafting mediation briefs; serving as the primary contact to in-house counsel; deposing named plaintiffs and putative class members; deposing retained expert witnesses; and defending the depositions of corporate witnesses. I also was involved in the negotiations and settlements of many large wage and hour class actions. In short, I played an integral role in all aspects of litigation from the inception of a matter through and beyond class certification. I also supervised the work of several associate attorneys who were staffed on the same wage and hour class actions.

6. Although not exhaustive, below is a list of many of the wage and hour class and PAGA actions that I performed substantial work on while I was an Associate and/or Shareholder at Littler Mendelson:

► *Branch v. PM Realty Group, Inc.* Case No. BC575759, Los Angeles Superior Court, County of Los Angeles, Honorable Ann Jones, presiding.

► *Herrera v. Pharmavite, LLC*, Case No. BC599201, Los Angeles Superior Court, County of Los Angeles, Honorable Judge Carolyn Kuhl, presiding.

► *Dugan v. Stoneledge Furniture, LLC*, Case No. 16-cv-01125-PA-FFMx, United States District Court, Central District of California, Honorable Judge Percy Anderson, presiding.

► *Klune v. Stoneledge Furniture, LLC*, Case No. 14-cv-03986-PA-FFMx, United States District Court, Central District of California, Honorable Judge Percy Anderson, presiding.

► *Diaz v. ABM Industries, Inc.; Ampco Parking*, Case No. BC362932, California Superior Court, County of Los Angeles, Honorable Judge Jane Johnson, presiding.¹

► *Adams v. Luxottica Retail North America, Inc.*, Case No. 07CC01346, California Superior Court, County of Orange, Honorable Judge Thierry Patrick Colaw, presiding.

► *Page v. Luxottica Retail North America, Inc.*, Case No. FCS041512, California Superior Court, County of Solano, Honorable Judge Paul Berman, presiding.

¹ This matter was consolidated and litigated collectively with Case Nos. BC380923, BC 381523 and BC 406663.

1 ▶ *Parker v. FedEx National LTL, Inc.*, Case No. 11-CV-006380-DSF-FFM, United States
2 District Court, Central District of California, Honorable Judge Dale Fischer, presiding.

3 ▶ *Cordova v. Comerica Bank, et al.*, Case No. 09-cv-08905-MMM-PLAx, United States
4 District Court, Central District of California, Honorable Judge Margaret Morrow, presiding.

5 ▶ *Bernal v. Comerica Bank, et al.*, Case No. 11-cv-01298-JAH-BGS, United States District
6 Court, Central District of California, Honorable Judge Margaret Morrow, presiding.

7 ▶ *Granata v. Comerica Bank, et al.*, Case No. 37-2011-00086316-CU-OE-CTL, California
8 Superior Court, County of San Diego, Honorable Judge Jeffrey B. Barton, presiding.

9 ▶ *Mathews v. Comerica Bank, et al.*, Case No. 111CV194781, California Superior Court,
10 County of Santa Clara.

11 ▶ *Gallegos v. Comerica Bank, et al.*, Case No. BC455515, California Superior Court,
12 County of Los Angeles, Honorable Judge Terry Green, presiding.

13 ▶ *Rumohr v. Comerica Bank, et al.*, Case No. CGC-11-508433, California Superior Court,
14 County of San Francisco.

15 ▶ *Robertson v. FedEx National LTL, Inc.*, Case No. 09-CV-05016-DSF-FFM, United States
16 District Court, Central District of California, Honorable Judge Dale Fischer, presiding.

17 ▶ *Wittman v. FedEx National LTL, Inc.*, Case No. 09-CV-03663-DSF-FFM, United States
18 District Court, Central District of California, Honorable Judge Dale Fischer, presiding.

19 7. In January 2018, I voluntarily resigned from Littler Mendelson in order to start a law firm
20 with another former Littler Mendelson Shareholder, Scott M. Lidman, to represent employees with work-
21 related claims, including primarily wage and hour claims and almost exclusively on a class-action basis.
22 I am currently a Shareholder of Lidman Law, APC. Currently, over ninety percent (90%) of my practice
23 is dedicated exclusively to the prosecution of wage and hour class actions, and I am currently responsible
24 for prosecuting over sixty-five (65) wage and hour class actions filed in State courts throughout
25 California, with several of them having been removed to Federal courts. I believe that my professional
26 experience renders me more than qualified to serve as class counsel in this lawsuit involving claims of
27 meal and rest period violations and derivative penalty claims. Not only have I litigated dozens of wage
28 and hour cases throughout my career involving similar claims, including the wage and hour class actions

1 identified above, I have litigated similar claims from both plaintiff and defense perspectives. As a result,
2 I am able to realistically assess and evaluate the facts and legal arguments that can be made in pursuit
3 and defense of similar wage and hour claims, as well as those facts and arguments in support and in
4 opposition to class certification. Consequently, I am able to appreciate the significant risks, uncertainties,
5 and delay involved in wage and hour class action litigation.

6 8. I have been appointed Class Counsel in *Guardado v. Wesley Allen, Inc.*, Case No.
7 BC683027, California Superior Court, County of Los Angeles, Honorable Judge Carolyn B. Kuhl
8 presiding; *Rodriguez v. Satco, Inc.*, Case No. BC682137, California Superior Court, County of Los
9 Angeles, Honorable Judge Ann I. Jones presiding; *Ong v. Howard's Appliances, Inc.*, Case No. 30-2017-
10 00964213-CU-OE-CXC, California Superior Court, County of Orange, Honorable Judge William Cluster
11 presiding; *Hanke v. C&W Facility Services, Inc.*, Case No. CIVDS1814412, California Superior Court,
12 County of San Bernardino, Honorable Judge David Cohn presiding; *Molina v. Mader News, Inc.*, Case
13 No. BC685960, California Superior Court, County of Los Angeles, Honorable Judge Yvette M.
14 Palazuelos presiding; *Alvarez v. Salamander Fire Protection, Inc.*, Case No. BC688326, California
15 Superior Court, County of Los Angeles, Honorable Judge William F. Highberger presiding; *Rodriguez*
16 *v. H.F. Cox, Inc.*, Case No. BC653164, California Superior Court, County of Los Angeles, Honorable
17 Judge Carolyn B. Kuhl presiding; *Fregoso v. Amerigas Propane, Inc.*, Case No. BC697973, California
18 Superior Court, County of Los Angeles, Honorable Judge Rafael A. Ongkeko presiding; *Teran v. Western*
19 *Plastics, Inc.*, Case No. RIC1722619, California Superior Court, County of Riverside, Honorable Judge
20 Sunshine Sykes presiding; *Villegas de Torres v. El Monte Superstore Inc.*, Case No. BC688477,
21 California Superior Court, County of Los Angeles, Honorable Judge Daniel J. Buckley presiding; *Huynh*
22 *v. Polypeptide Laboratories, Inc.*, Case No. BC680872, California Superior Court, County of Los
23 Angeles, Honorable Judge Rafael A. Ongkeko presiding; *Coffee and Cabral v. Flyers Transportation,*
24 *LLC.*, Case No. 34-2017-00222084, California Superior Court, County of Sacramento, Honorable Judge
25 Alan G. Perkins presiding; *Guzman v. Century Blinds, Inc.*, Case No. RIC1723654, California Superior
26 Court, County of Riverside, Honorable Judge Sunshine Sykes presiding; *Acuna v. Canton Food Co., Inc.*,
27 Case No. BC685001, California Superior Court, County of Los Angeles, Honorable Judge David S.
28 Cunningham presiding, and *Contreras v. Worldwide Flight Services, Inc.*, Case No. 2:18-cv-06036-PSG-

1 SS, United States District Court, Central District of California, Honorable Judge Philip S. Gutierrez
2 presiding.

3 9. As co-lead counsel for Plaintiff, I have been intimately involved in every aspect of this
4 case from its inception through the present, and I believe that the proposed Settlement is a reasonable
5 result for the Aggrieved Employees.

6 10. According to its website, AG Arcadia, LLC, dba Huntington Drive Health and
7 Rehabilitation Center (“AG Arcadia” or “Defendant”) provides comprehensive rehabilitation and
8 personal skilled care 24 hours a day.

9 11. On February 13, 2020, Plaintiff filed a class action complaint alleging a cause of action
10 on behalf of herself and a putative class for: (i) failure to provide all legally required meal periods; (ii)
11 failure to authorize and permit all legally required rest periods; (iii) failure to provide accurate, itemized
12 wage statements; (iv) failure to timely pay all wages upon termination; and (v) unfair and/or unlawful
13 business practices. On February 13, 2020, Plaintiff provided written notice to the LWDA and AG
14 Arcadia asserting claims for civil penalties pursuant to PAGA stemming from alleged violations of the
15 California Labor Code. A true and correct copy of the LWDA letter is attached hereto as **Exhibit 1**. On
16 April 20, 2020, after Plaintiff exhausted her administrative requirements, she filed a First Amended Class
17 and Representative Action Complaint (“FAC”) adding a cause of action for civil penalties under PAGA.
18 On June 19, 2020, pursuant to Plaintiff’s request, the Court dismissed Plaintiff’s class claims and
19 allegations without prejudice, leaving only Plaintiff’s cause of action for civil penalties under PAGA.
20 On June 30, 2020, the case was transferred to Stanley Mosk and subsequently assigned to this department.

21 12. Prior to mediation, AG Arcadia produced substantial information and documents
22 pertaining to Plaintiff and other Aggrieved Employees, including sampling of timekeeping records and
23 payroll data, employee handbooks and information for the underlying claims. Plaintiff’s retained expert
24 (who holds a Ph.D. in economics) then analyzed the payroll data and time records produced by AG
25 Arcadia. After the detailed review of the payroll and time records analysis and other documents and
26 policies produced by AG Arcadia, Plaintiff’s Counsel drew on their extensive experience in similar cases
27 to assess the strengths and weaknesses of Plaintiff’s case. This discovery allowed the parties to assess
28 the merits and value of Plaintiff’s claims and defenses thereto, if a settlement could not be reached.

13. On November 9, 2020, the Parties participated in a full-day mediation with Steven G. Mehta, Esq., a respected mediator. During mediation, the Parties vigorously debated their opposing legal positions and the likelihood of Plaintiff's ability to proceed on a representative basis. Ultimately, the Parties reached a settlement, the terms of which were subsequently finalized in writing after mediation. A true and correct copy of the Settlement Agreement is attached hereto as **Exhibit 2**. The Proposed Notice of PAGA Settlement and Release of Claims is attached as Exhibit A to the Settlement.

14. The monetary terms of the Settlement are summarized below:

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

The payment of the GSA shall be made within thirty (30) calendar days of Court approval of the settlement. *See* Exh. 1, Settlement, ¶ III.2. Within twenty (20) business days of the court signing the approval order, Defendant shall provide the Settlement Administrator with information for Aggrieved Employees in order to calculate and distribute checks to Aggrieved Employees. *See* Exh. 1, at ¶ IV.2. Within seven (7) business days of receiving this information from Defendant, the Settlement Administrator will prepare and circulate an anonymized spreadsheet containing the estimated individual settlement payments to each Aggrieved Employee for the Parties' approval. The Settlement Administrator shall also determine whether the Reduction in Close Period in Section III.3 has been triggered.² *Id.* Within two (2) business days of receiving the Parties' approval, the Settlement

² Defendant represents that there are an estimated 3,500 pay periods worked by the aggrieved employees during the PAGA Period. If the number of pay periods worked by aggrieved employees during the PAGA Period is more

1 Administrator shall mail copies of the explanatory letter, which has been mutually approved by the
2 Parties, along with Individual PAGA Payments to all Aggrieved Employees via First-Class U.S. Mail.
3 *See* Exh. 1, at ¶ IV.3. Any checks remaining uncashed for more than 180 days will be tendered to the
4 State Controller’s Office under the unclaimed property fund laws in the names of the Aggrieved
5 Employees to whom the checks were issued. *See* Exh. 1, at ¶ IV.4.

6 15. According to AG Arcadia, there are approximately 203 Aggrieved Employees defined as
7 “all current and former hourly, non-exempt employees of Defendant AG Arcadia, LLC, dba Huntington
8 Drive Health and Rehabilitation Center who worked in California at any time from February 13, 2019
9 through date the Court grants approval of the settlement.” The Aggrieved Employees, including Plaintiff,
10 worked a total of approximately 3,500 pay periods between February 13, 2019 through the date the Court
11 grants approval of the settlement. The average payment to an Aggrieved Employee is estimated to be
12 \$154.07.

13 16. As described in the accompanying Motion for Approval, Plaintiff alleges that throughout
14 her employment with AG Arcadia, AG Arcadia failed to provide Plaintiff and other Aggrieved
15 Employees with all legally required meal periods. Specifically, Plaintiff generally began her shifts at
16 8:00 a.m. or 9:00 a.m. As a result of the work demands imposed by Defendant, Plaintiff would often be
17 unable to start her lunch until after 1:00 p.m. or 2:00 p.m., which often resulted in late or otherwise
18 unlawful meal periods. Indeed, upon information and belief, AG Arcadia would manually edit the time
19 punch records of Plaintiff and other non-exempt employees to reflect timely and compliant meal periods
20 when in fact the meal periods, if taken, were not timely and compliant. Specifically, AG Arcadia would
21 post the names of non-exempt employees and then require them to go to payroll and complete a time
22 clock correction form. Additionally, when Plaintiff and other non-exempt employees worked in excess
23 of 10.0 hours in a shift, they were not provided with a second 30-minute meal period due to AG Arcadia’s
24 meal period policies and practices that fail to provide for a second meal period for shifts over 10.0 hours.
25 Plaintiff is not aware of any evidence that AG Arcadia ever paid any meal period premiums. Based on
26 the timekeeping and payroll data produced in connection with mediation, Plaintiff contends there was at

27
28 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.

1 least one meal period violation for each of the 3,405 pay periods at issue. Accordingly, pursuant to Labor
2 Code section 558, Plaintiff calculated AG Arcadia's maximum exposure at \$330,350 ((203 x \$50 initial
3 violation) + (3,202 x \$100 subsequent violation)).

4 17. AG Arcadia counters that it has always provided non-exempt employees with an
5 opportunity to take legally compliant meal periods, and any non-compliant meal periods reflected in
6 employee timekeeping records were solely the result of employee choice, rather than any policy or
7 practice of AG Arcadia. AG Arcadia also points out that it is only required to "provide" the opportunity
8 to take meal periods, not "ensure" meal periods are taken, and it has always done so. AG Arcadia also
9 contends that Plaintiff could not recover the \$100 civil penalty for "subsequent violations" because it did
10 not have notice of any initial violation. Lastly, AG Arcadia contends that the Court would use its
11 discretion provided for in the PAGA to reduce the maximum penalty exposure due to its good faith efforts
12 to comply with applicable law. In light of these defenses, Plaintiff discounted the maximum recovery on
13 this claim by 70% to account for the risk that AG Arcadia could prevail in its defenses, to arrive at a
14 projected total of \$99,105.00.

15 18. Plaintiff also alleges that she and other Aggrieved Employees were not authorized and
16 permitted to take all legally compliant rest periods. Specifically, due to the work demands imposed by
17 AG Arcadia, Plaintiff and other Aggrieved Employees were not authorized and permitted paid rest
18 periods for every four hours worked or *major fraction thereof*. when she worked shifts in excess of 3.5
19 hours. In addition, AG Arcadia's written rest period policy requires employees to remain on the premises
20 for rest periods in violation of California law. This policy results in employees not being relieved of all
21 duty and not being to use their rest break time as they see fit, in violation of rest period law pursuant to
22 *Augustus v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 263 (2016). As a result, Plaintiff contends that
23 she and other Aggrieved Employees experienced at least one rest period violation during every shift in
24 excess of 3.5 hours. Accordingly, Plaintiff estimates the exposure at \$330,350 ((203 x \$50 initial
25 violation) + (3,202 x \$100 subsequent violation)).

26 19. AG Arcadia contends it has always maintained and enforced lawful rest period policies
27 and practices. AG Arcadia further contends that and Aggrieved Employees were provided with all off-
28 duty and paid rest periods, that AG Arcadia's 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 AG Arcadia could prevail on its arguments, to arrive at a projected total of \$99,105.00.

20. 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. Based on the data provided by AG Arcadia in connection with mediation, 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).

21. AG Arcadia argues that Plaintiff's underlying claims will fail and, as a result, the wholly derivative wage statement claim will also fail. AG Arcadia also vehemently argues that meal and rest period claims cannot support a claim for wage statement penalties. Also, AG Arcadia argues that since the primary allegations in this case are that AG Arcadia 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 unfair. 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.

22. Plaintiff further alleges that AG Arcadia 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. Based on the data provided by Defendant, there are 96 Aggrieved Employees who separated their employment with AG Arcadia during the relevant time period who could be entitled to waiting time penalties. Therefore, Plaintiff calculated Defendant's maximum exposure for waiting time penalties at approximately \$9,600 (96 former employees x \$100).

23. AG Arcadia 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. As such, Plaintiff discounted the maximum recovery on this claim by 75% to account for the risk that AG Arcadia could prevail in its arguments, to arrive at a projected total of \$2,400.

1 24. Based on the sum of the foregoing estimated figures, Plaintiff predicts the realistic total
2 recovery for the Aggrieved Employees to be approximately \$413,422.50. The proposed settlement of
3 \$225,000.00 therefore represents approximately 54.4% of the realistic total recovery for Aggrieved
4 Employees and avoids the risks of proceeding through trial.

5 25. My firm and co-counsel's firms request one-third of the GSA (currently estimated at
6 \$75,000.00 in attorneys' fees, and a total of \$17,397.41 (including approximately \$125 in anticipated
7 future costs for filing fees, service and messenger fees, courtesy copy deliveries, postage fees, and/or
8 costs for future court appearances) in litigation costs. This fee request is consistent with my firm and co-
9 counsel's experience in similar wage-and-hour class and PAGA matters. My firm and/or co-counsel's
10 firms conducted extensive legal research regarding the merits of Plaintiff's claims, Plaintiff's ability to
11 recover penalties under the PAGA, and Defendant's potential defenses. My firm and co-counsel's firms
12 also conducted significant research and analysis of data and information produced informally prior to
13 mediation and used this data and analysis to complete an exposure analysis for PAGA penalties. My firm
14 and co-counsel's firms Counsel also expended significant additional effort in preparing subsequent
15 settlement documents, this Motion for settlement approval, and supporting declarations, and will oversee
16 the settlement administration process.

17 26. My experience in matters similar to this one was integral in evaluating the strengths and
18 weaknesses of this case and the reasonableness of the Settlement. Practice in the narrow field of wage
19 and hour litigation requires skill and knowledge concerning the rapidly evolving substantive state and
20 federal law, as well as the procedural law of class action litigation. This case involved nuanced legal
21 issues regarding both substantive and procedural law, including complex issues with respect to providing
22 meal and rest periods and the propriety of statutory penalties.

23 27. My law firm and co-counsel's firm maintain records of our hours worked on this case by
24 billing our time in increments of one-tenth (1/10) of an hour into a timekeeping system. I access the
25 timekeeping system regularly for purposes of assessing the number of attorney and paralegal hours
26 worked for each case that my law firm handles. I relied on the timekeeping records for this case to
27 prepare this declaration.
28

28. Plaintiff's Counsel have a lodestar of \$118,812.50 without the use of any multiplier, which is approximately 1.58 times more than the \$75,000.00 fee request. The following is a general summary showing the number of hours of work performed by each attorney and paralegal in my firm and co-counsel's firm on this case:

Name	Rate	Hours	Pre-Multiplier Lodestar
Scott M. Lidman (22nd Year Attorney)	\$750	41.3	\$30,975
Elizabeth Nguyen (15th Year Attorney)	\$650	85.6	\$55,640
Paul K. Haines (14th Year Attorney)	\$650	16.4	\$ 10,660
Milan Moore (5th Year Attorney)	\$400	4.7	\$ 1,800
Romina Tamiry (1st Year Attorney)	\$295	54	\$15,930.00
Paralegals	\$175	21.3	\$ 3,727.50
Total Lodestar			\$118,812.50

29. My proposed hourly rate of \$650, Mr. Lidman's proposed hourly rate of \$750, Mr. Haines' proposed hourly rate of \$650, Ms. Moore's proposed hourly rate of \$400, and Ms. Tamiry's proposed hourly rate of \$295 are reasonable in light of our respective skills, wage and hour class action litigation experience, reputation, and fee awards to other attorneys of similar experience in California. Moreover, our requested hourly rates are in line with the *Laffey* Matrix, a true and correct copy of which is attached hereto as **Exhibit 3**.

30. The attorneys' fee award requested is consistent with those routinely awarded by California superior courts. California superior courts frequently grant common fund awards of 33%. *See, e.g., Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66, fn. 11 (2008); *see also, In re Pacific Enterprises Securities Litig.*, 47 F.3d 373, 379 (9th Cir. 1995) (affirming 33% fee award); *Chavez v. Saticoy Lemon*

1 *Ass'n*, Case No. 56-2015-00468600-CU-OE-VTA, 2015 WL 5561118 (Ventura Cty. Super. Ct., Aug. 29,
2 2015) (approving attorneys' fees of one-third of settlement fund in representative PAGA settlement).

3 31. Indeed, numerous courts have awarded attorneys' fees of up to, or in excess of 40% of the
4 common fund. *Ammari Electronics, et al. v. Pacific Bell Directory*, Alameda County Sup. Ct.,
5 Case No. RG05198014 (awarded 43.8%) (2015); *In re California Indirect Purchaser X Ray Film*
6 *Antitrust Litigation*, San Francisco Sup. Ct. 1998 (citing *Abzug v. Kerkorian*, Los Angeles Sup. Ct.,
7 Nov. 19, 1990, Case No. CA-00981 (45%) and *Haitz v. Meyer*, Alameda County Sup. Ct., August
8 20, 1990, Case No. 5729683 (45%)); *Hall v. Cinema 7, Inc.*, San Francisco Sup. Ct., July 16, 2008, Case
9 No. CGC-01-409105 (53%); and *Rundberg v. Inrawest Napa Dev. Co.*, Napa County Sup. Ct., January
10 15, 2014, Case No. 26-56886 (40%).

11 32. Being a private law practice my firm can only properly litigate a limited number of cases
12 at one time. The professional demands of this case were significant, including a significant number of
13 hours of attorney and paralegal time. This litigation precluded my firm from other employment due to
14 the time and financial commitments required by the case. Indeed, because my firm takes on cases on a
15 purely contingency fee, we are only compensated for our time if we successfully settle a case or prevail
16 at trial. Accordingly, I believe the requested fees are reasonable.

17 33. Plaintiff has provided written approval of the split of attorneys' fees in this action: 46.5%
18 to Haines Law Group, APC, 31% to Lidman Law, APC, 22.5% to Michael Burgis & Associates, PC.
19 Michael Burgis & Associates, PC is the referring attorney.

20 34. Since undertaking representation of Plaintiff, my firm and/or co-counsel's firm dedicated
21 substantial resources to this litigation, including expending a total of \$17,397.41 (including
22 approximately \$125 in future costs for filing fees, service and messenger fees, courtesy copy deliveries,
23 postage fees, and/or costs for future court appearances) in litigation costs, without receiving any
24 compensation to date. A true and correct copy of my firm's and Haines Law Group's costs summary in
25 this matter is attached hereto as **Exhibit 4**. My office and co-counsel conducted legal research regarding
26 the merits of Plaintiff's claims, the ability to recover penalties under the PAGA, and AG Arcadia's
27 potential defenses. My office also analyzed the data and information produced informally prior to
28 mediation prepared an exposure analysis on the PAGA penalties. My office also expended significant

1 additional effort in preparing subsequent settlement documents, this Motion for settlement approval, and
2 supporting declarations, and will oversee the settlement administration process.

3 35. Plaintiff also seeks an enhancement award of \$5,000.00, which is reasonable given
4 Plaintiff's efforts in this case and the risks she undertook on behalf of the Aggrieved Employees, in
5 addition to her broader general release of all claims against Defendant, which other Aggrieved Employees
6 are not agreeing to. Plaintiff provided substantial factual information and documents to my firm and co-
7 counsel's firms. Plaintiff also made herself available on the entire day of the mediation, and responded
8 to all questions that I had as various issues arose. Further, Plaintiff put her future employment prospects
9 at risk by becoming a named Plaintiff in a representee action since the lawsuit is public record and may
10 become known to prospective employers when evaluating her for employment. Additionally, Plaintiff
11 agreed to a general release and a 1542 waiver.

12 36. Although the Parties had not yet engaged in substantial formal discovery, the parties did
13 commit to an extensive exchange of informal documents and information in association with mediation.
14 Preparation for trial remained for the parties as well as the prospect of appeals in the wake of a summary
15 judgment ruling for either party. As a result, the Parties would incur considerably more attorneys' fees
16 and costs through trial. This settlement avoids those risks and the accompanying expense.

17 37. I will have my office submit the proposed Settlement and instant motion seeking approval
18 of the settlement to the LWDA pursuant to Labor Code § 2699(1)(2) after the instant motion is filed and
19 will file a supplemental proof of service after the proposed Settlement has been submitted to the LWDA.

20 38. Attached hereto as **Exhibit 5** is a true and correct copy of the Order and Judgment entered
21 on or about August 22, 2018 approving the PAGA settlement in *Canul v. Basmat, Inc.*, Case No.
22 BC674940, a brought by my co-counsel, Haines Law Group in which the Court approved the \$5,000
23 enhancement to the named plaintiff. Attached hereto as **Exhibit 6** is a true and correct copy of Judge
24 Marmaro's June 13, 2016 tentative ruling approving a PAGA settlement and \$10,000 enhancement award
25 to plaintiff as reasonable in *Resendez v. Bridgestone Retail Operations, LLC*, Case No. BC596892, a case
26 brought by my co-counsel, Haines Law Group. I am informed and believe, and on that basis that, that
27 Judge Marmaro adopted his tentative ruling and approved the PAGA settlement.

28 //

1 I declare under penalty of perjury under the laws of the State of California that the foregoing
2 is true and correct. Executed on February 3, 2021, at El Segundo, California.

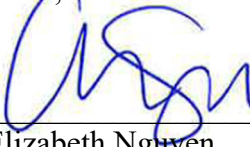
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EXHIBIT 1

EXHIBIT 1

LIDMAN LAW

222 N. SEPULVEDA BOULEVARD, SUITE 1550, EL SEGUNDO, CA 90245

OFFICE: (424) 322-4772

FAX: (424) 322-4775

February 13, 2020

VIA LWDA WEBSITE

Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, CA 94612

VIA U.S. CERTIFIED MAIL – RETURN

RECEIPT REQUESTED

AG Arcadia, LLC
6300 Wilshire Blvd. Suite 1800
Los Angeles, CA 90048

VIA U.S. CERTIFIED MAIL – RETURN

RECEIPT REQUESTED

Jacob Wintner
Agent for Service of Process
6300 Wilshire Blvd. Suite 1800
Los Angeles, CA 90048

Re: *Jeannie Lefevre v. AG Arcadia, LLC dba Huntington Drive Health and Rehabilitation Center*

To Whom It May Concern:

Please be advised that this law firm represents Jeannie Lefevre in claims arising from her employment with AG Arcadia, LLC, a California limited liability company dba Huntington Drive Health and Rehabilitation (“Defendant”). Ms. Lefevre is an “aggrieved employee” as defined by Labor Code sections 2699, *et seq.* due to Defendant’s numerous violations of the Labor Code as set forth below. The purpose of this letter is to comply with Labor Code section 2699.3, which requires aggrieved employees to notify their employer and the Labor and Workforce Development Agency (“LWDA”) of the specific provisions of the Labor Code allegedly violated. For purposes of this letter, an “aggrieved employee” should be considered to include all current and former non-exempt employees in California who worked, at least in part, during the one year immediately preceding the date of this letter through the present date.

Ms. Lefevre was employed by Defendant as a non-exempt employee from approximately September 14, 2018 through approximately November 2019.

Throughout Ms. Lefevre’s employment with Defendant, Ms. Lefevre was not provided all legally-compliant and required meal periods due to Defendants’ meal period policies and practices. Specifically, Ms. Lefevre generally began her shifts at 8:00 a.m. or 9:00 a.m. As a result of the work demands imposed by Defendant, Ms. Lefevre would take her lunch anywhere between 12:00 p.m. and 2:00 p.m., which often resulted in late or otherwise unlawful meal periods. Indeed, upon information and belief, Defendant would manually edit the time punch records of Ms. Lefevre and other non-exempt employees to reflect timely and compliant meal periods when in fact the meal periods, if taken, were not timely and compliant. Specifically, Defendant would post the names of non-exempt

employees and then require them to go to payroll and complete a time clock correction form. Additionally, when Ms. Lefevre and other non-exempt employees worked in excess of 10.0 hours in a shift, they were not provided with a second 30-minute meal period due to Defendant's meal period policies and practices that fail to provide for a second meal period for shifts over 10.0 hours.

Although Ms. Lefevre was not provided with all legally-compliant meal periods to which she was entitled, Defendant failed to compensate Ms. Lefevre with the required meal period premium for each workday in which she experienced a meal period violation as mandated by Labor Code § 226.7. Upon information and belief during at least a portion of the class period, Defendant maintained no payroll code or other mechanism for the payment of meal period premium payments under Labor Code § 226.7 in the event that a legally compliant meal period was not provided to their non-exempt employees.

In addition, throughout Ms. Lefevre's employment with Defendant, she was not authorized and permitted to take all legally required and compliant rest periods due to Defendant's unlawful rest period policies and practices. Defendant's rest period policies and practices fail to authorize and permit paid rest periods for every four hours worked, *or major fraction thereof*. Specifically, due to the work demands imposed by Defendant, Ms. Lefevre was not authorized and permitted to take any rest periods when she worked shifts in excess of 3.5 hours.

On those occasions when Ms. Lefevre was not authorized and permitted to take all legally required rest periods to which she was entitled, Defendant failed to compensate Ms. Lefevre with the required rest period premium for each workday in which she experienced a rest period violation as mandated by Labor Code § 226.7. Further, upon information and belief, during at least a portion of the class period, Defendant maintained no payroll code or other mechanism for paying rest period premiums when Defendant failed to provide a legally compliant rest period.

As a result of Defendant's failure to pay all meal and rest period premium wages, Defendant maintained inaccurate payroll records and issued inaccurate wage statements to Ms. Lefevre.

As a further result of Defendant's failure to pay all meal and rest period premium wages, Defendant failed to pay all wages owed to Ms. Lefevre upon her separation of employment from Defendant.

As described above, Defendants committed the following violations of the Labor Code and Industrial Welfare Commission Wage Order No. 5 ("Wage Order 5").

Meal Period Violations

As alleged above, due to her job duties, Ms. Lefevre was often prevented from taking meal periods that commenced before the end of the fifth hour of work and/or a meal period altogether. Therefore, Defendants failed to provide Ms. Lefevre and other aggrieved

employees with all required and compliant meal periods. *See* Labor Code §§ 226.7 and 512; Wage Order 5, § 11. As a result, Ms. Lefevre and other aggrieved employees are owed an additional hour of wages at their regular rate of compensation for each workday they experienced a meal period violation. *See* Labor Code § 226.7 (“If an employer fails to provide an employee a meal or rest or recovery period in accordance with ... [an] order of the Industrial Welfare Commission ... the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal or rest or recovery period is not provided.”). Although Ms. Lefevre was not provided with all legally-compliant meal periods to which she was entitled, Defendant failed to compensate Ms. Lefevre and other aggrieved employees with the required meal period premium for each workday in which they experienced a meal period violation as mandated by Labor Code § 226.7.

Rest Period Violations

Defendant also failed to authorize and permit Ms. Lefevre and other aggrieved employees to take all required rest periods. *See* Labor Code §§ 226.7 and 516; Wage Order 5, § 12. As a result, Ms. Lefevre and other aggrieved employees are owed an additional hour of wages at their regular rate of compensation for each workday that they were not authorized and permitted to take all legally required rest periods. *See* Labor Code § 226.7 (“If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal or rest period is not provided.”)

Wage Statement Violations

Defendant knowingly and intentionally, as a matter of uniform practice and policy, failed to furnish Ms. Lefevre and other aggrieved employees with accurate and complete, itemized wage statements that included, among other requirements, meal and rest period premium wages, and total gross and net wages earned, in violation of Labor Code § 226 *et seq.* Defendant’s failure to furnish Ms. Lefevre and other aggrieved employees with complete and accurate, itemized wage statements resulted in actual injury, as said failures led to, among other things, the non-payment of all meal and rest period premium wages, and deprived them of the information necessary to identify discrepancies in Defendant’s reported data.

Waiting Time Penalties

Labor Code §§ 201 and 202 require that employees receive all of their final wages at the time of their separation of employment. Defendant failed to timely pay Ms. Lefevre and other aggrieved employees all of their final wages at the time of separation, which included, among other things, underpaid meal and rest period premium wages. Pursuant to Labor Code § 203, Defendant’s failure to pay all final wages due to Ms. Lefevre and other aggrieved employees was willful and, consequently, entitles Ms. Lefevre and other aggrieved employees to waiting time penalties equal to one day of wages at their standard

hourly rate for each day Defendant failed to pay their final wages after their separation, up to a maximum of thirty days.

As an “aggrieved employee,” Ms. Lefevre will initiate a civil action on behalf of herself and other aggrieved employees to recover damages, statutory penalties, and civil penalties resulting from the wage and hour violations alleged herein. Based on Ms. Lefevre own investigation, and on information and belief, Defendant committed the following Labor Code violations:

- a) Defendant violated Labor Code §§ 226.7, 512, and 558 by failing to provide all legally required meal periods and failing to pay meal period premiums to Ms. Lefevre and other aggrieved employees;
- b) Defendant violated Labor Code §§ 226.7, 516, and 558 by failing to provide all legally required rest periods and failing to pay rest period premiums to Ms. Lefevre and other aggrieved employees;
- c) Defendant violated Labor Code § 226 by failing to furnish Ms. Lefevre and other aggrieved employees with accurate and compliant itemized wage statements;
- d) Defendant violated Labor Code §§ 201, 202 and 203 by failing to timely pay all final wages due to Ms. Lefevre and other aggrieved employees;
- e) Defendant violated Labor Code § 1174 by failing to maintain accurate records on behalf of Ms. Lefevre and other aggrieved employees; and
- f) Defendant violated Labor Code § 204 by failing to pay Ms. Lefevre and other aggrieved employees all earned wages at least twice during each calendar month.

Pursuant to Labor Code section 2699.3(a)(2)(A), please notify us and Defendant if the LWDA intends to investigate these alleged violations of the Labor Code. Please contact me should you require additional information.

Very truly yours,
LIDMAN LAW, APC



Scott M. Lidman

EXHIBIT 2

EXHIBIT 2

PAGA SETTLEMENT AGREEMENT

This Settlement Agreement ("Settlement" or "Agreement") is made and entered into between Plaintiff Jeannie Lefevre ("Plaintiff"), acting in a Private Attorney General capacity, and Defendant AG Arcadia, LLC, dba Huntington Drive Health and Rehabilitation Center ("Defendant").

I. DEFINITIONS

The following terms, when used in this Settlement, shall have the following meanings:

1. "Action" means the Sixth Cause of Action under the Private Attorneys' General Act of 2004 ("PAGA") pursuant to California Labor Code section 2699, *et seq.* alleged in the case entitled *Jeannie Lefevre v. AG Arcadia, LLC, dba Huntington Drive Health and Rehabilitation Center*, Los Angeles County Superior Court, Case No. 20STCV05550.

2. "Aggrieved Employees" means all current and former hourly, non-exempt employees of Defendant AG Arcadia, LLC, dba Huntington Drive Health and Rehabilitation Center who worked in California at any time from February 13, 2019 through date the Court grants approval of this settlement.

3. "Defendant" means AG Arcadia, LLC, dba Huntington Drive Health and Rehabilitation Center.

4. "Complaint" means the First Amended Class and Representative Action Complaint entitled *Jeannie Lefevre v. AG Arcadia, LLC, dba Huntington Drive Health and Rehabilitation Center*, Los Angeles County Superior Court, Case No. 20STCV05550, filed on April 20, 2020.

5. "Court" means the Superior Court of California for the County of Los Angeles.

6. "Effective Date" means the date upon entry of an Order by the Court approving this Settlement Agreement.

7. "Individual PAGA Payment" means the amount to be paid to each Aggrieved Employee based on the formula described herein.

8. "LWDA" means the California Labor and Workforce Development Agency.

9. "Gross Settlement Amount" is the non-reversionary sum of Two Hundred Twenty-Five Thousand Dollars and Zero Cents (\$225,000.00), which represents the total amount payable under this Settlement by Defendant, including, without limitation, payments to all Aggrieved Employees, payment to the LWDA, payment of Plaintiff's Counsel's fees and costs, payment of Plaintiff's enhancement award and payment to the Settlement Administrator for administration costs.

10. "Net Settlement Amount" is the amount remaining to distribute to the LWDA and Aggrieved Employees after the following amounts (if approved by the Court) are subtracted from the Gross Settlement Amount: (a) Plaintiff's Counsel's fees up to one-third of the Gross Settlement

Amount (currently estimated at \$75,000.00); (b) Plaintiff's verified costs up to \$25,000.00; (c) Plaintiff's enhancement award in an amount not to exceed \$5,000.00; and (d) administration costs in an amount not to exceed \$2,500.00.

11. "PAGA" means the California Labor Code Private Attorneys General Act, California Labor Code § 2698, *et seq.*

12. "PAGA Period" means the time period from February 13, 2019 through the date the Court grants approval of this settlement.

13. "Released Parties" means Defendant and its former, present and future owners, parents, subsidiaries, and all of their current, former and future officers, directors, members, managers, employees, consultants, partners, shareholders, joint venturers, agents, successors, assigns, accountants, insurers, or legal representatives.

14. "PAGA Released Claims" means any and all claims, rights, demands, liabilities and causes of action for civil penalties under the Sixth Cause of Action for violations of the Labor Code Private Attorneys General Act ("PAGA"), Labor Code § 2698 *et seq.* pled in the First Amended Complaint in the Action, or civil penalties under the Sixth Cause of Action for PAGA that could be brought based on the factual allegations in First Amended Complaint in the Action, that arose during the PAGA Period, including any related claims for attorneys' fees, costs, or interest resulting therefrom ("Released Claims"). The Released Claims herein does not release the Released Parties from any underlying Labor Code violations upon which the Sixth Cause of Action for PAGA is based.

15. "Parties" mean Plaintiff and Defendant.

16. "Plaintiff" means Jeannie Lefevre.

17. "Plaintiff's Counsel" means Scott M. Lidman, Elizabeth Nguyen, Milan Moore, Romina Tamir of Lidman Law, APC; and Paul K. Haines of Haines Law Group, APC.

18. "Settlement Administrator" means Phoenix Class Action Administrators.

II. RECITALS

1. Plaintiff alleges that with regard to the Aggrieved Employees, Defendant failed to: (1) provide legally compliant meal periods; (2) permit and authorize compliant rest periods; (3) issue to accurate wage statements that included all information required by law; and (4) pay all wages due upon termination of employment; and (5) is liable for civil penalties under PAGA.

2. On February 13, 2020, Plaintiff provided written notice to the LWDA and Defendant asserting claims for civil penalties pursuant to PAGA stemming from alleged violations of the California Labor Code described above.

3. On February 13, 2020, Plaintiff filed a Complaint styled as a Class Action Complaint.

4. On April 20, 2020, Plaintiff filed a First Amended Class and Representative Action

Complaint adding a Sixth Cause of Action under the PAGA.

5. On July 19, 2020, pursuant to Plaintiff's request, the Court entered an order dismissing Plaintiff's class allegations without prejudice and the only remaining claim in the Action is Plaintiff's Sixth Cause of Action of the PAGA as set forth in the First Amended Complaint.

6. During the pendency of the Action, the Parties engaged in an informal discovery exchange prior to mediation. In response to Plaintiff's Counsel's informal discovery requests, Defendant provided Plaintiff's Counsel with information and documents pertaining to Plaintiff and other Aggrieved Employees and the claims in the Action in order for Plaintiff's Counsel to investigate Plaintiff's allegations and value the PAGA claim, including time punch data.

7. On November 9, 2020, the Parties participated in a full-day mediation before mediator Steven G. Mehta, Esq. With the assistance of Mr. Mehta, the Parties agreed to fully and finally resolve, subject to Court approval, the PAGA Released Claims as to Plaintiff and the Aggrieved Employees.

III. OPERATIVE TERMS OF SETTLEMENT AGREEMENT

The Parties agree as follows:

1. **Non-Admission.** Nothing in this Settlement shall be construed to be an admission by Plaintiff that her claims do not have merit or by Defendant of any liability or wrongdoing as to Plaintiff, Aggrieved Employees, or any other person, and Defendant specifically disclaims any such liability or wrongdoing. The Parties have entered into this Settlement with the intention to avoid further disputes and litigation with the attendant inconvenience, expenses, and risks. This Settlement and any related court documents or orders are not and may not be cited or admitted as evidence of liability.

2. **Gross Settlement Amount.** Defendant shall pay the maximum settlement Two Hundred Twenty-Five Thousand Dollars and Zero Cents (\$225,000.00). The Gross Settlement Amount is non-reversionary. Defendant shall deposit the Gross Settlement Amount with the Settlement Administrator by no later than thirty (30) calendar days of Court approval of the settlement. Defendant shall make the payment to the Settlement Administrator. The releases identified herein shall be null and void if Defendant fails to fully fund the Gross Settlement Amount.

3. **Reduction in Close Period.** There are an estimated 3,500 pay periods worked by the Aggrieved Employees during the PAGA Period of February 13, 2019 through the date the Court grants approval of this settlement. Defendant agrees to the effective period covered by the release herein. If the number of pay periods worked by aggrieved employees during the PAGA Period is more than 15% greater than this figure (*i.e.* greater than 4,025 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.

4. **Net Settlement Amount.** The Parties agree that the following amounts should be subtracted from the Gross Settlement Amount, subject to Court approval, resulting in a Net Settlement Amount to distribute to the LWDA and Aggrieved Employees:

a. **Plaintiff's Attorneys' Fees and Costs.** Defendant will not oppose Plaintiff's request for attorneys' fees in the amount up to one-third (1/3) of the Gross Settlement Amount (currently estimated to be \$75,000.00). Defendant will not oppose Plaintiff's request for costs incurred in prosecuting this Action in amount not to exceed \$25,000.00. In the event the Court approves a payment of less than these amounts, the difference will be added to the Net Settlement Amount (although Plaintiff may appeal an order granting less than the full amount sought for attorneys' fees and costs). If the Court believes the attorneys' fees and/or costs should be reduced, the other terms of this Settlement will remain in effect and enforceable, and any such reduction will not affect the remaining terms, other than adjusting the Net Settlement Amount. The Settlement Administrator, will report these payments on IRS Form 1099 issued to Plaintiff's Counsel.

b. **Plaintiff's Enhancement Award.** Defendant will not oppose Plaintiff's request for an enhancement award in the amount of \$5,000.00 for her service to the LWDA and the Aggrieved Employees, and the risk she undertook by attaching her name to the Action. In the event the Court approves a payment of less than the requested amount, the difference will be added to the Net Settlement Amount (although Plaintiff may appeal an order granting less than the full amount sought for Plaintiff's enhancement award). If the Court believes the enhancement award should be reduced, the other terms of the Settlement will remain in effect and enforceable, and any such reduction will not affect the remaining terms, other than adjusting the Net Settlement Amount. The Settlement Administrator will report this payment on IRS Form 1099 issued to Plaintiff.

c. **Administration Costs.** The Parties agree that the Administration Costs shall be paid from the Gross Settlement Amount, currently estimated to be \$2,500.00, for administering the Settlement. The Settlement Administrator will report this payment on IRS Form 1099 issued to the Settlement Administrator.

5. **Allocation of Net Settlement Amount.** The Net Settlement Amount shall be distributed pursuant to Labor Code § 2699(i) as follows:

- a. 75% of the Net Settlement Amount shall be distributed to the LWDA;
- b. 25% of the Net Settlement Amount shall be paid to Aggrieved Employees. This portion of the Net Settlement Amount 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.

This paragraph regarding allocation is based on the Parties' collective understanding that all payments will be considered "penalties" and that there will no employer-side tax consequence to Defendant as a result of an allocation of the penalty amount being wages. If the Parties later determine otherwise, they will meet and confer regarding changes to this allocation provision. The Parties agree that should the Court deny approval of the settlement based on the allocation of the

Net Settlement Amount, the Parties agree to re-negotiate in good faith in an effort to obtain approval of the settlement.

6. **Representative PAGA Release.** Notwithstanding the above nor anything else in this Agreement, this waiver and release does not apply to: (i) those rights as a matter of law that cannot be waived, including, but not limited to, workers' compensation claims; and (ii) rights or obligations arising out of this Agreement after Court approval of the Settlement. The Agreement in no way affects Plaintiff's entitlement and/or benefits to be received by Plaintiff in workers' compensation pursuant to the jurisdiction of workers' compensation.

In her capacity as a Private Attorney General or "aggrieved employee" acting on behalf of herself, the State of California and Aggrieved Employees, and in consideration of the enhancement award awarded to her, Plaintiff hereby releases Defendant and Released Parties, from any and all of the PAGA Released Claims that arose during the PAGA Period.

7. **Plaintiff's General Release.** In light of her enhancement award described above, Plaintiff personally agrees to release, in addition to the PAGA Released Claims, all claims, whether known or unknown, under federal law or state law, to the fullest extent permitted by law, against the Released Parties. Plaintiff further understands that this release includes unknown claims and that she is, as a result, waiving all rights and benefits afforded by Section 1542 of the California Civil Code, which provides:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party

8. **No Right to Opt-Out.** The Parties agree that there is no statutory right for any Aggrieved Employee to opt-out or otherwise exclude himself or herself from the Settlement.

9. **Covenants and Representations by Plaintiff and Plaintiff's Counsel.**

a. Plaintiff represents and warrants that she has not assigned or transferred or purported to assign or transfer, to any person or entity, any claim or portion thereof, or interest therein, which is or may be subject to this Settlement.

b. Plaintiff acknowledges that she has read this Settlement, that she fully understands her rights, privileges and duties under the Settlement, and enters into this Settlement freely and voluntarily, and without duress. Plaintiff further acknowledges that she had the opportunity to consult with her attorneys to explain the terms of this Settlement and the consequences of signing this Settlement.

10. **Termination of Settlement.** If the Court does not approve the Settlement, if the Court does not enter judgment, as provided for in this Settlement, or if appellate review is sought and, on such review, the Court's decision is materially modified or reversed, or, except as otherwise set forth herein, if one or more of the terms of the Settlement is not approved or is materially modified or reversed or found to be invalid, then either of the Parties shall have the right within ten (10) days of written notice thereof to elect to terminate the Settlement, in which case the Settlement shall have no force or effect, and the Parties shall be deemed to have reverted to

their respective status as of the date and time immediately prior to the execution of the Settlement and prior to the execution of the Memorandum of Understanding PAGA Settlement.

11. **Judgment.** As part of the Motion to approve the Settlement, Plaintiff shall submit a proposed order and judgment which enters judgment in the Action in accordance with the terms of the Settlement and retains jurisdiction over the Action for the purpose of enforcing the terms of the Settlement following approval of the Settlement. This Settlement is expressly conditioned upon the Court entering judgment as set forth herein. The judgment will not release or bar any claims other than the PAGA Released Claims as to Plaintiff and Aggrieved Employees and Plaintiff's claims released pursuant to Paragraph 7 herein.

IV. **ADMINISTRATION OF SETTLEMENT**

1. **Settlement Administrator.** The Parties agree to use Phoenix Class Action Administration Solutions to handle the administration of this Settlement.

2. **Provision of Information for Aggrieved Employees.** Within twenty (20) business days of the court signing the approval order, Defendant shall provide the Settlement Administrator with information for Aggrieved Employees. Defendant will in good faith compile from its records a list of Aggrieved Employees that will be in a computer-readable format, such as a Microsoft Excel spreadsheet, and shall include each Aggrieved Employee's full name, last known mailing address, total number of pay periods worked during the PAGA Period or dates of employment, and Social Security number. The list shall also include the sum total of all pay periods worked by Aggrieved Employees during the PAGA Period. Because Social Security numbers are included in the list, the Settlement Administrator will maintain the list in the highest of confidence, and access shall be limited to those with a need to use the list as part of the administration of the Settlement and none of the information contained in the list shall be disclosed to third Parties or to Plaintiff's Counsel without the express written consent of counsel for Defendant.

Within seven (7) business days of receiving the Aggrieved Employees' information from Defendant, the Settlement Administrator will circulate to counsel for both Parties an anonymized spreadsheet containing the estimated individual settlement payments to each Aggrieved Employee and the data used to calculate said payments. The Settlement Administrator shall also determine whether the Reduction in Close Period in Section III.3 has been triggered. The Settlement Administrator shall obtain approval from all counsel of the calculations before mailing Individual PAGA Payments.

3. **Explanatory Letter and Individual PAGA Payments.** Upon receipt of the information for Aggrieved Employees, the Settlement Administrator will perform a search on the National Change of Address database to update the Aggrieved Employees' addresses.

Within two (2) business days of receiving approval from counsel of the payment calculations as provided above, the Settlement Administrator shall mail copies of the explanatory letter, which has been mutually approved by the Parties and is attached hereto as **Exhibit A**, in English, along with Individual PAGA Payments to all Aggrieved Employees via regular First-Class U.S. Mail.

The Settlement Administrator will calculate the amount to be received by each Aggrieved Employee, which will be based on the formula set forth in Section III.5., *supra*. The Settlement

Administrator will send each Aggrieved Employee a check for her or his Individual PAGA Payment along with the explanatory letter. Checks will remain negotiable for 180 days. Each Individual PAGA Payment shall be deemed penalties/interest and reported using IRS Form 1099.

4. **Undeliverable Notices.** The Settlement Administrator shall exercise its best judgment to determine the current mailing address for each Aggrieved Employee. The address identified by the Settlement Administrator as the current mailing address shall be presumed to be the best mailing address for each Aggrieved Employee.

Any checks returned as non-deliverable on or before the check cashing deadline will be re-sent promptly via regular First-Class U.S. Mail to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator will promptly attempt to determine the correct address using a skip-trace or other search using the name, address or Social Security number of the Aggrieved Employee involved and will perform a single re-mailing after which any returned checks will be deemed undeliverable.

The Settlement Administrator shall maintain a list of the postmark date for the original mailing of the Individual Settlement Payment(s) to the Aggrieved Employees, the postmark date of any subsequent mailing to any the Aggrieved Employees, and a list of Aggrieved Employees who did not receive the Individual Settlement Payment due to the inability to locate a valid address using the procedures described herein or who otherwise could not be located within two attempts at mailing.

Defendant fully discharges its obligations to those Aggrieved Employees to whom they will pay an Individual PAGA Payment through the mailing of a check, regardless of whether such checks are actually received and/or negotiated by Aggrieved Employees. Funds represented by checks returned as undeliverable after a re-mailing, and funds represented by checks remaining un-cashed for more than 180 days after issuance, will be tendered to the State Controller's Office pursuant to the Unclaimed Property Law, California Civil Code § 1500, *et. seq.* for the benefit of and in the name(s) of the Aggrieved Employees to whom the checks were issued but whom did not cash the checks. The unclaimed checks shall remain in the unclaimed property fund in the name of the Aggrieved Employee until such time that they claim their property (the Individual Settlement Payment), or the property is otherwise disposed of pursuant the Unclaimed Property Laws.

5. **Payment of Remainder.** Within two (2) business days of receiving approval from counsel of the payment calculations, the Settlement Administrator will distribute the following additional payments: (1) the 75% share of the Net Settlement Amount to the LWDA; (2) Court-approved attorneys' fees and costs to Plaintiff's Counsel; (3) Court-approved enhancement award to Plaintiff; and (4) Court-approved administration costs to the Settlement Administrator.

6. **Accounting.** Within fifteen (15) business days of receiving approval from counsel of the payment calculations, the Settlement Administrator will provide an accounting under oath to the Parties of the amounts paid from the Settlement. The Settlement Administrator shall provide a further such accounting under oath, upon request, after the conclusion of the 180-day check cashing period.

7. **Tax Consequences.** Individual PAGA Payments made under this Settlement will be attributed 100% as penalties and interest and paid via IRS Form 1099 issued to each Aggrieved Employee. No later than January 31 of the year following payment of their individual portion of the PAGA Payment, the Settlement Administrator will prepare and issue IRS Form 1099 to Aggrieved Employees who received a payment. Neither Plaintiff nor Defendant, nor counsel for either of the Parties, makes any representations or warranties with respect to tax consequences of any payment under this Settlement.

V. **MISCELLANEOUS PROVISIONS**

1. **Mutual Preparation and Drafting.** The Parties have had a full opportunity to negotiate the terms and conditions of this Settlement. The Parties agree that the terms and conditions of this Settlement are the result of lengthy, intensive, arm's-length negotiations between the Parties and that neither Plaintiff nor Defendant shall be considered the "drafter" of this Settlement for purposes of having terms construed against that Party. This Settlement will not be construed more strictly against one Party merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, it being recognized that, because of the arm's-length negotiations between the Parties, all Parties have contributed to the preparation of this Settlement.

2. **Successors.** This Settlement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, assigns, administrators and successors.

3. **Costs and Fees.** The Parties shall each bear their own costs, attorneys' fees, expert fees, mediator fees, and other fees incurred in connection with this Settlement, the Action and Plaintiff's claims, except as otherwise set forth specifically herein.

4. **Governing Law.** This Settlement shall be construed under and governed by the laws of the State of California. This Settlement shall be deemed to have been entered into in the County of Los Angeles, California, and all questions of validity, interpretation or performance of any of its terms or of any rights or obligations of the Parties to this Settlement shall be governed by California law. If any legal or equitable action is necessary to enforce the terms of this Settlement, it shall be brought in the State of California, County of Los Angeles.

5. **Complete Agreement.** The Parties each acknowledge and represent that no promise or representation not contained in this Settlement has been made to them and acknowledge and represent that this Settlement contains the entire understanding between them and contains all terms and conditions pertaining to the compromise and settlement of the PAGA Released Claims in the Action. This Settlement cannot be amended or modified except by a writing signed by the Parties hereto.

6. **Nullification of Settlement.** In the event that: (i) after good faith efforts to amend or modify the Agreement for Court approval the Court does not approve the Settlement as provided herein; or (ii) the Settlement does not become final for any other reason, then this Settlement and any documents generated to bring it into effect, will be null and void, and the Parties will be returned to their original respective positions unless otherwise required under this Agreement.

7. **Judgment and Continued Jurisdiction.** After approval of this Settlement, the Court will have continuing jurisdiction solely for purposes of addressing: (i) the interpretation and

enforcement of the terms of the Settlement, (ii) settlement administration matters, and (iii) such post-Judgment matters as may be appropriate under court rules or as set forth in this Settlement. Plaintiff will submit a proposed judgment in conformity with this Agreement to be entered by the Court, which shall constitute a final and binding resolution of the claims in the Action.

8. **Authorization to Enter into Settlement.** The signatories hereto represent that they are fully authorized to enter into this Settlement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement. If the Parties are unable to reach agreement on the form or content of any document needed to implement the Settlement, or on any supplemental provisions that may become necessary to effectuate the terms of this Settlement, the Parties may seek the assistance of the Court to resolve such disagreement.

9. **Execution and Counterparts.** This Settlement is subject only to the execution of all Parties. However, the Settlement may be executed in one or more counterparts. All executed counterparts, and each of them, including facsimile, electronic signatures, and scanned copies of the signature page, will be deemed to be one and the same instrument provided that counsel for the Parties will exchange a fully executed Agreement. The Parties also agree that a facsimile, electronic, or scanned copy of the fully executed Agreement shall have the same force and effect as an original signed Agreement.

10. **Acknowledgement that the Settlement is Fair and Reasonable.** The Parties believe this Settlement is a fair, adequate and reasonable settlement of the Action, and have arrived at this Settlement after arm's-length negotiations by experienced counsel and with the assistance of an experienced mediator. The Parties further acknowledge that they are each represented by competent counsel and that they have had an opportunity to consult with their counsel regarding the fairness and reasonableness of this Settlement.

11. **Invalidity of Any Provision.** Before declaring any provision of this Settlement invalid, the Court will first attempt to construe the provision as valid to the fullest extent possible consistent with applicable precedents, so as to define all provisions of this Settlement valid and enforceable.

12. **Severability.** If any term or provision of this Settlement is held to be invalid or unenforceable, the remaining portions of this Settlement will continue to be valid and will be performed, construed and enforced to the fullest extent permitted by law, and the invalid or unenforceable term will be deemed amended and limited in accordance with the intent of the Parties, as determined from the face of the Agreement, to the extent necessary to permit the maximum enforceability or validation of the term or provision.

13. **Waiver.** No waiver of any condition or covenant contained in this Settlement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or constitute a further waiver by such Party of the same or any other condition, covenant, right or remedy.

14. **Representation by Counsel.** The Parties acknowledge that they have been represented by counsel throughout all negotiations that preceded the execution of this Settlement, and this Settlement has been executed with the consent and advice of counsel and reviewed in full.

15. **Enforcement Action.** The Parties hereby agree this Agreement is enforceable under Code of Civil Procedure section 664.6, so as to allow the Parties to enforce the terms of their settlement until performance has been made in full. In the event that one more of the Parties institutes any legal action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement Agreement or to declare rights and/or obligations under this Settlement Agreement, the successful Party or Parties will be entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including expert witness fees incurred in connection with any enforcement actions

IN WITNESS THEREOF, the Parties each acknowledge that they have read the foregoing Settlement, accept and agree to the provisions contained in this Settlement and hereby execute it voluntarily and with full understanding of its consequences.

APPROVED AS TO FORM AND CONTENT:

Dated: Jan 28, 2021

Jeannie Lefevre

Jeannie Lefevre, Plaintiff

Dated: 2/2/21

Jose Antonio Agoncillo

By: Jose Antonio Agoncillo

Its: Administrator

AG Arcadia, LLC, dba Huntington Drive Health
and Rehabilitation Center, Defendant

APPROVED AS TO FORM:

Dated: January 29, 2021

LIDMAN LAW, APC

By: Scott M. Lidman

Scott M. Lidman

Attorneys for Plaintiff, Jeannie Lefevre

Dated: January 29, 2021

HAINES LAW GROUP, APC

By: Paul K. Haines

Paul K. Haines

Attorneys for Plaintiff, Jeannie Lefevre

Dated: February 3, 2021

LEVINSON ARSHONSKY & KURTZLLP

DocuSigned by:

James Cooper

By:

5649F86D37FA454...

James S. Cooper

Attorneys for Defendant, AG Arcadia, LLC, dba
Huntington Drive Health and Rehabilitation
Center

EXHIBIT A

EXHIBIT A

NOTICE OF PAGA SETTLEMENT AND RELEASE OF CLAIMS

Jeannie Lefevre v. AG Arcadia, LLC, dba Huntington Drive Health and Rehabilitation Center
Los Angeles County Superior Court Case No. 20STCV05550

<<Name>>

<<Address>>

<<City>>, <<State>> <<Zip Code>>

XX - XX -

I. NOTICE OF PAGA SETTLEMENT

The Los Angeles County Superior Court (the “Court”) has approved a settlement in the above-captioned action filed by Jeannie Lefevre (“Plaintiff”) on behalf of herself and all other aggrieved employees.

In this lawsuit, Plaintiff is seeking to recover civil penalties for alleged violations of the California Labor Code on behalf of the California Labor and Workforce Development Agency (“LWDA”) and other aggrieved employees under the California Private Attorneys General Act (the “PAGA”). These civil penalties are based on Plaintiff’s allegations that AG Arcadia, LLC, dba Huntington Drive Health and Rehabilitation Center (“AG Arcadia”) failed to: provide legally compliant meal periods, permit and authorize legally compliant rest periods, issue accurate wage statements that included all information required by law, and failed to pay all wages upon termination of employment; and as a result is liable for civil penalties under the PAGA.

The Court has ***not*** made a determination about the merits of Plaintiff’s claims. This Notice is not to be understood as an expression of any opinion by the Court as to the merits of Plaintiff’s claims.

AG Arcadia denies Plaintiff’s allegations. It maintains that it was in compliance with the California Labor Code at all times and enters into this Settlement with no admission of liability and solely for the purposes of compromising and settling the action to avoid the cost and operational burden of continued litigation.

You are receiving this Notice because you are in the group of employees referred to as “Aggrieved Employees,” which is defined as: “all current and former hourly, non-exempt employees of that AG Arcadia, LLC, who worked in California at any time from February 13, 2019 through [the earlier of (i) the date the Court grants approval of this settlement] (“PAGA Period”).”

II. INDIVIDUAL PAGA PAYMENT

Each individual PAGA payment was calculated on a pro rata basis (*i.e.*, proportional) based on the number of pay periods worked by each Aggrieved Employee in the PAGA Period. Your individual PAGA payment has been calculated at \$[AMOUNT PAID TO THIS EMPLOYEE]. The individual PAGA payment is for penalties and will be reported on an IRS Form 1099. Your payment is enclosed with this Notice.

III. RELEASE

The Court has approved the Parties’ Settlement Agreement (“Settlement”). By operation of the Settlement terms, all Aggrieved Employees including you will release AG Arcadia and its former, present and future owners, parents, subsidiaries, and all of their current, former and future officers, directors, members, managers,

employees, consultants, partners, shareholders, joint venturers, agents, successors, assigns, accountants, insurers, or legal representatives ("Released Parties") from any and all claims, rights, demands, liabilities and causes of action for civil penalties under the Sixth Cause of Action for violations of the Labor Code Private Attorneys General Act ("PAGA"), Labor Code § 2698 *et seq.* pled in the First Amended Complaint in the Action, or civil penalties under the Sixth Cause of Action for PAGA that could be brought based on the factual allegations in First Amended Complaint in the Action, that arose during the PAGA Period, including any related claims for attorneys' fees, costs, or interest resulting therefrom ("PAGA Released Claims"). The Released Claims herein does not release the Released Parties from any underlying Labor Code violations upon which the Sixth Cause of Action for PAGA is based.

Upon entry of the Order approving the Settlement, any Aggrieved Employee covered by this Agreement (including you) will be barred from proceeding with any of the PAGA Released Claims released by this Settlement.

IV. SETTLEMENT ADMINISTRATOR

PLEASE DO NOT CALL THE COURT ABOUT THIS NOTICE.

You may call the Settlement Administrator, Phoenix Class Action Administration Solutions at [ADMINISTRATOR INFO] with any questions.

Settlement checks will be void 180 days after issuance if not deposited or cashed. In such event, the Settlement Administrator shall direct all unclaimed funds to the California State Controller's Office under the unclaimed property laws in the name of the Aggrieved Employee to whom the check was issued. If your check is lost or misplaced, you should contact the Settlement Administrator immediately to request a replacement.

EXHIBIT 3

EXHIBIT 3

LAFFEY MATRIX

[History](#)
[Case Law](#)
[Expert Opinions](#)
[See the Matrix](#)
[Contact us](#)
[Home](#)
[Links](#)

			Years Out of Law School *				
Year	Adjustmt Factor**	Paralegal/ Law Clerk	1-3	4-7	8-10	11-19	20 +
6/01/20- 5/31/21	1.015894	\$206	\$378	\$465	\$672	\$759	\$914
6/01/19- 5/31/20	1.0049	\$203	\$372	\$458	\$661	\$747	\$899
6/01/18- 5/31/19	1.0350	\$202	\$371	\$455	\$658	\$742	\$894
6/01/17- 5/31/18	1.0463	\$196	\$359	\$440	\$636	\$717	\$864
6/01/16- 5/31/17	1.0369	\$187	\$343	\$421	\$608	\$685	\$826
6/01/15- 5/31/16	1.0089	\$180	\$331	\$406	\$586	\$661	\$796
6/01/14- 5/31/15	1.0235	\$179	\$328	\$402	\$581	\$655	\$789
6/01/13- 5/31/14	1.0244	\$175	\$320	\$393	\$567	\$640	\$771
6/01/12- 5/31/13	1.0258	\$170	\$312	\$383	\$554	\$625	\$753
6/01/11- 5/31/12	1.0352	\$166	\$305	\$374	\$540	\$609	\$734
6/01/10- 5/31/11	1.0337	\$161	\$294	\$361	\$522	\$589	\$709
6/01/09- 5/31/10	1.0220	\$155	\$285	\$349	\$505	\$569	\$686
6/01/08- 5/31/09	1.0399	\$152	\$279	\$342	\$494	\$557	\$671
6/01/07-5/31/08	1.0516	\$146	\$268	\$329	\$475	\$536	\$645
6/01/06-5/31/07	1.0256	\$139	\$255	\$313	\$452	\$509	\$614
6/1/05-5/31/06	1.0427	\$136	\$249	\$305	\$441	\$497	\$598
6/1/04-5/31/05	1.0455	\$130	\$239	\$293	\$423	\$476	\$574
6/1/03-6/1/04	1.0507	\$124	\$228	\$280	\$405	\$456	\$549
6/1/02-5/31/03	1.0727	\$118	\$217	\$267	\$385	\$434	\$522
6/1/01-5/31/02	1.0407	\$110	\$203	\$249	\$359	\$404	\$487
6/1/00-5/31/01	1.0529	\$106	\$195	\$239	\$345	\$388	\$468
6/1/99-5/31/00	1.0491	\$101	\$185	\$227	\$328	\$369	\$444
6/1/98-5/31/99	1.0439	\$96	\$176	\$216	\$312	\$352	\$424
6/1/97-5/31/98	1.0419	\$92	\$169	\$207	\$299	\$337	\$406

6/1/96-5/31/97	1.0396	\$88	\$162	\$198	\$287	\$323	\$389
6/1/95-5/31/96	1.032	\$85	\$155	\$191	\$276	\$311	\$375
6/1/94-5/31/95	1.0237	\$82	\$151	\$185	\$267	\$301	\$363

The methodology of calculation and benchmarking for this Updated Laffey Matrix has been approved in a number of cases. See, e.g., *McDowell v. District of Columbia*, Civ. A. No. 00-594 (RCL), LEXSEE 2001 U.S. Dist. LEXIS 8114 (D.D.C. June 4, 2001); *Salazar v. Dist. of Col.*, 123 F.Supp.2d 8 (D.D.C. 2000).

* "Years Out of Law School" is calculated from June 1 of each year, when most law students graduate. "1-3" includes an attorney in his 1st, 2nd and 3rd years of practice, measured from date of graduation (June 1). "4-7" applies to attorneys in their 4th, 5th, 6th and 7th years of practice. An attorney who graduated in May 1996 would be in tier "1-3" from June 1, 1996 until May 31, 1999, would move into tier "4-7" on June 1, 1999, and tier "8-10" on June 1, 2003.

** The Adjustment Factor refers to the nation-wide Legal Services Component of the Consumer Price Index produced by the Bureau of Labor Statistics of the United States Department of Labor.

EXHIBIT 4

EXHIBIT 4

Lidman Law, APC and Haines Law Group, APC

Expense Summary

Jeannie Lefevre v. AG Arcadia, LLC, dba Huntington Drive Health and Rehabilitation Center

EXPENSE	AMOUNT
Mediation Costs	\$6,750.00
Filing, Service, and Messenger Fees	\$2,012.18
Copying Costs	\$25.25
Postage Costs	\$23.20
Expert Fees	\$8,460.50
Legal Research	\$1.28
Anticipated costs for filing fees, service and messenger fees, courtesy copy deliveries, postage fees, and/or LACourtConnect costs for future court appearances	\$125.00
TOTAL:	\$17,397.41

EXHIBIT 5

EXHIBIT 5

1 **HAINES LAW GROUP, APC**
Paul K. Haines (SBN 248226)
2 phaines@haineslawgroup.com
Tuvia Korobkin (SBN 268066)
3 tkorobkin@haineslawgroup.com
Stacey M. Shim (SBN 305911)
4 sshim@haineslawgroup.com
222 N. Sepulveda Blvd., Suite 1550
5 El Segundo, California 90245
Tel: (424) 292-2350
6 Fax: (424) 292-2355

7 Attorneys for Plaintiff
and Aggrieved Employees
8
9

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF LOS ANGELES**

12 JOSE CANUL, as an individual and on behalf
13 of all others similarly situated,

14 Plaintiff,

15 vs.
16

17 BASMAT, INC., d/b/a MCSTARLITE, a
California corporation; and DOES 1 through
18 100,

19 Defendants.
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CONFORMED COPY
ORIGINAL FILED
Superior Court of California
Los Angeles

AUG 22 2018

Executive Officer/Clerk
By Sally Fletcher, Deputy

Case No. BC674940

Assigned to Hon. Teresa A. Beaudet, Dept. 50

**[PROPOSED] ORDER AND JUDGMENT
GRANTING PLAINTIFF'S MOTION
FOR SETTLEMENT APPROVAL OF
CLAIMS BROUGHT UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT, REASONABLE ATTORNEYS'
FEES, COSTS, AND INCENTIVE
PAYMENT**

Date: August 22, 2018

Time: 8:30 a.m.

Dept.: 50

Reservation ID: 180601319394

Complaint Filed: September 6, 2017

Trial Date: None

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 This matter came on regularly for hearing before this Court on August 22, 2018.

3 Having considered the parties' Settlement Agreement;¹ the documents and evidence presented
4 in support thereof; and recognizing the disputed factual and legal issues involved in this case,
5 the risks of further prosecution, the substantial benefits to be received by the Aggrieved
6 Employees pursuant to the Settlement Agreement; and the fair, reasonable, and adequate nature
7 of the settlement obtained as a result of good faith arm's-length negotiations between the
8 parties, the Court hereby makes a final ruling that the settlement is approved pursuant to
9 California Labor Code section 2699(l). Good cause appearing therefor, the Court hereby
10 GRANTS Plaintiff's Motion for Settlement Approval ("Motion") and ORDERS as follows:

11 1. The "Aggrieved Employees" shall be defined as:

12 All current and former non-exempt employees who worked at least one
13 pay period for Basmat, Inc. d/b/a McStarlite ("McStarlite") in California
 at any time during the PAGA Period

14 2. The "PAGA Period" means the period from June 19, 2016 through the date that this
15 Final Order and Judgment is entered.

16 3. The Court hereby approves the settlement as set forth in the Settlement Agreement as
17 fair, reasonable, and adequate, and directs the parties to effectuate the Settlement according to
18 the terms of the Settlement Agreement.

19 4. The Court orders that within ten (10) business days of this Order, McStarlite shall pay
20 the Gross Settlement Amount of \$460,000.00² to the Settlement Administrator, as provided for
21 in the Settlement Agreement. As soon as practicable, but no later than five (5) business days
22 after this Order, McStarlite shall provide to the Settlement Administrator information
23 maintained by McStarlite in the normal course of its business operations containing the

24

25 ¹ All terms used in this Order shall have the same meaning as that assigned to them in the
26 Settlement Agreement, attached as Exhibit 2 to the Declaration of Paul K. Haines filed
 concurrently with the Motion.

27 ² Pursuant to the Settlement Agreement, the \$460,000.00 Gross Settlement Amount is subject to
28 an "Escalator Clause" should the number of Aggrieved Employees exceed 201. Should the
 Escalator Clause be triggered, McStarlite shall increase the amount of the Gross Settlement
 Amount accordingly pursuant to the Settlement Agreement.

1 Aggrieved Employees' names, last known addresses, last known telephone numbers, start
2 date(s) of employment, end date(s) of employment, total pay periods worked during the PAGA
3 Period, and social security numbers.

4 5. The Court hereby approves, as to form and content, the Explanatory Letter submitted by
5 the parties as Exhibit A to the Settlement Agreement.

6 6. The Court hereby appoints CPT Group, Inc. as Settlement Administrator. CPT Group,
7 Inc. is directed to mail the individual settlement payments and the Explanatory Letter to the
8 Aggrieved Employees within thirty (30) days of the date of this Order, as set forth in the
9 Settlement Agreement.

10 7. The Court finds that attorneys' fees in the amount of one-third of the Gross Settlement
11 Amount (currently estimated at \$153,333.33³) for Plaintiff's counsel, and reimbursement of
12 litigation costs of \$15,716.20 to Plaintiff's counsel, are fair, reasonable, and adequate, and
13 orders that the Settlement Administrator distribute these payments to Plaintiff's Counsel as
14 provided for in the Settlement Agreement.

15 8. The Court orders that the Settlement Administrator shall be paid \$6,250.00 for all of its
16 work done and to be done until the completion of this matter, and finds that sum appropriate.

17 9. The Court finds that an Incentive Payment to Plaintiff Jose Canul in the amount of
18 \$5,000.00 is fair and reasonable in recognition of the unique contributions he has made and the
19 risks he undertook, on behalf of the Aggrieved Employees and the State of California, and
20 orders that the Settlement Administrator distribute this payment to Plaintiff as provided for in
21 the Settlement Agreement.

22 10. The Court finds that the distribution of the Net Settlement Amount to the Labor
23 Workforce Development Agency ("LWDA") and to Aggrieved Employees as provided for in
24 the Settlement Agreement is fair, adequate, and reasonable, and orders that payment be made to
25 the LWDA and Aggrieved Employees in accordance with the terms of the Settlement
26 Agreement.

27
28 ³ If the Gross Settlement Amount increases above \$460,000.00 due to the Escalator Clause, the
amount of attorneys' fees awarded to Plaintiff's counsel shall increase commensurately.

1 11. The court approves the limited scope of the release set forth in the Settlement
2 Agreement. Following entry of this Order and Final Judgment, Plaintiff and Aggrieved
3 Employees will have released all PAGA Released Claims against the Released Parties, as those
4 terms are defined in the Settlement Agreement.

5 12. Upon entry of this Final Order and Judgment, the Court permanently enjoins and
6 forever bars the Plaintiff, Aggrieved Employees' Counsel, or the Aggrieved Employees from
7 instituting or prosecuting any action against the Released Parties which was resolved as part of
8 the Settlement Agreement. Without affecting the finality of this Final Order and Judgment in
9 any way, the Court retains jurisdiction to enforce the terms of the Settlement Agreement.
10 Plaintiff shall file a declaration confirming the final distribution of funds on or before

11 _____
12 **IT IS SO ORDERED, ADJUDGED AND DECREED.** 

13
14 Dated: 8/22, 2018

By: Teresa A. Beaudet
Honorable Teresa A. Beaudet
Judge of the Superior Court

EXHIBIT 6

EXHIBIT 6

CASE NAME: Resendez v. Bridgestone Retail Operations, LLC
CASE NO.: BC596892
HEARING DATE: 6/13/16
DEPARTMENT: 37
CALENDAR NO.: 9
TRIAL DATE: 2/14/17
NOTICE: OK
SUBJECT: Motion for Approval of Settlement of Claims Brought Under the Private Attorneys General Act
MOVING PARTY: Plaintiff Sophia P. Resendez, on behalf of herself and all others similarly situated
OPPOSING PARTY: None

FILED
Superior Court of California
County of Los Angeles

JUN 13 2016

Shérri A. Carter, Executive Officer/Clerk
By K. Mason Deputy

COURT'S TENTATIVE RULING

The unopposed motion is granted. Counsel for Plaintiff to give notice.

STATEMENT OF THE CASE

This is an action for civil penalties under the Private Attorneys General Act of 2004 (PAGA), which is codified in the Labor Code (Lab. Code, § 2698 et seq.). Defendant Bridgestone Retail Operations, LLC operates a chain of auto care and tire stores and employed Plaintiff Sophia P. Resendez from August 18, 2013 until May 14, 2015. Plaintiff alleges that Defendant failed to include its address on employee wage statements in violation of Labor Code section 226, subdivision (a)(8), and that Defendant paid meal period premiums to non-exempt employees pursuant to Labor Code section 226.7, thereby acknowledging that it had violated Labor Code section 512 regarding the provision of meal periods. Plaintiff filed suit on October 5, 2015, and the parties settled the matter during mediation with the Honorable Ronald M. Sabraw (Ret.) on February 25, 2016.

DISCUSSION

I. General Legal Principles Applicable to PAGA Settlements

A. The PAGA

Plaintiff moves the court to review and approve the civil penalties sought as part of the settlement of her PAGA claims. (Lab. Code, § 2699, subd. (f).) The PAGA is "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." (*Amalgamated Transit Union, Local 1756, AFL-CIO v. Superior Court* (2009) 46 Cal.4th 993, 1003.) The statute provides a mechanism for private enforcement of Labor Code violations for the public benefit. (See *Arias v. Superior Court* (2009) 46 Cal.4th 969, 986; *Ochoa-Hernandez v. Cjaders Foods, Inc.* (N.D.Cal. 2010) 2010 WL 1340777, at p. *4.) To incentivize employees to bring PAGA actions, the statute

06/15/2016

provides aggrieved employees 25 percent of the recovered civil penalties. (Lab. Code, § 2699, subd. (i).) The remaining 75 percent is distributed to the Labor and Workforce Development Agency (LWDA) "for enforcement of labor laws and education of employers and employees about their rights and responsibilities under [the Labor Code]." (*Ibid.*)

B. Settlement Generally

In reviewing the terms of a settlement agreement, the court determines whether the settlement is fair, reasonable, and adequate to all concerned, and not the product of fraud, collusion, or overreaching. (*Reed v. United Teachers Los Angeles* (2012) 208 Cal.App.4th 322, 337; *Nordstrom Commission Cases* (2010) 186 Cal.App.4th 576, 581.) In the context of a class action settlement, the court considers various factors including whether (1) the settlement is the result of arm's length bargaining, (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently, (3) counsel is experienced in similar litigation, and (4) the percentage of objectors is small. (*Nordstrom*, at p. 581; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245.) In considering the amount of settlement, the court is mindful that compromise is inherent and necessary in the settlement process. (*Wershba*, at p. 250.)¹

II. Application of General Principles

A. Terms of the Settlement

The settlement provides for Defendant to pay a Gross Settlement Amount (GSA) of \$950,000. After deducting one-third of the GSA (\$316,666.66) for attorney fees, attorney costs (\$7,005.82), an enhancement award for Plaintiff (\$10,000), and settlement administration costs (\$30,000), the settlement provides for distribution of a PAGA penalty fund of no less than \$585,833.34, with no less than \$439,375 to be paid to the LWDA, and no less than \$146,458.34 to be paid to the aggrieved employees. The parties have agreed to use CPT Group, Inc. (CPT) as the third-party settlement administrator. In that capacity, CPT will attempt to notify the aggrieved employees based on information provided by Defendant and distribute payments to the

¹ As Plaintiff points out, a PAGA settlement is different from a class action settlement in at least two respects. First, in considering a PAGA settlement, the court considers whether the total settlement amount achieves the PAGA's objective. Civil penalties are not meant to compensate employees but to serve law enforcement purposes by deterring unlawful conduct. Second, because the PAGA does not create property or substantive rights, aggrieved employees represented by the PAGA representative need not be given notice of the PAGA claim and cannot "opt out" of such a claim. Notwithstanding these difference, the general principles applicable to class action settlements apply equally in this context.

employees.² Aggrieved employees will not be required to submit claim forms to participate, will automatically receive the share of the settlement, and will have 180 days to cash their settlement checks. The amount of any checks that are returned as undeliverable or not cashed within 180 days shall be tendered to a fund benefitting Defendant's employees with personal or family emergencies.

B. Analysis of the Civil Penalties

The settlement represents a compromise with respect to the strength of Plaintiff's claims and Defendant's defenses to those claims. For instance, while Plaintiff contends that Defendant violated Labor Code section 226 by failing to include its address on wage statements, she acknowledges that Labor Code section was amended shortly before she filed suit to permit employers to "cure" such a violation by providing compliant wage statements to affected employees. The parties dispute whether Defendant timely cured the defective wage statements. Similarly, while Plaintiff contends that Defendant violated Labor Code section 512, which obligates employers to provide meal periods, Defendant maintains that it provided employees an extra hour of pay as a "meal period premium" pursuant to Labor Code section 226.7. Although Plaintiff disagrees, it is Defendant's position that it should not be penalized twice for the same violation. After considering the parties' respective positions before and during mediation, Plaintiff calculated civil penalties of \$842,511 for the failure to include an address on wage statements and \$178,145 for the failure to provide meal periods. The GSA represents about 93 percent of Plaintiff's projected total recovery of \$1,020,656.

The parties arrived at the settlement amount with the benefit of informal discovery and experienced counsel. For instance, Defendant provided Plaintiff with payroll data and calculations for aggrieved employees, including the number of deficient wage statements and the number of pay periods in which meal period premiums were paid. Plaintiff's counsel is experienced in wage-and-hour class actions, who believes the settlement to be fair and adequate for all involved. In addition, the parties reached their agreement with the benefit of a neutral mediator. These circumstances demonstrate that the agreement represents an arm's length transaction untainted by fraud, collusion, or self-dealing. (See *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130.) Accordingly, for these reasons, the court determines that the settlement is fair, adequate, and reasonable.

C. Attorney Fees and Costs

The PAGA contains a fee-shifting provision providing the prevailing party recovery of attorney fees and costs. (Lab. Code, § 2699, subd. (g).) Here, the one-third fee award is reasonable and consistent with fee awards in class action cases. (See *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66, fn. 11 ["Empirical studies show

² Plaintiff represents that based on the latest information, there are 3,002 persons who fall into the definition of "aggrieved employees" in this case. The estimated average payment for each aggrieved employee is \$48.23.

that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery' "). In addition, the GSA exceeds other PAGA awards that have been approved by courts in this state. (E.g., *Aguirre v. DSW, Inc.* (C.D.Cal. 2012) 2012 WL 11875296, at p. *3 [approving \$10,000 PAGA payment]; *Boyd v. Bank of America Corp.* (C.D.Cal. 2014) 2014 WL 6473804, at p. *8 [approving \$18,750 PAGA payment].) The success of the litigation and the experience of counsel in handling similar matters also favors an award of one-third of the recovery.

The reimbursement of costs of \$7,005.82 is also warranted. Plaintiff presents an itemization of costs, which consists of (1) copying, postage, and research costs; (2) mediation fees; (3) filing and jury fees; (4) CourtCall fees; and (5) parking and mileage. (Declaration of Paul K. Haines, Exh. F.) Similarly, Plaintiff demonstrates that the \$30,000 of administrative costs for CPT is reasonable and warranted. CPT is experienced as a settlement administrator (Declaration of Julie Green ¶¶ 4-7), and Plaintiff represents that the bid of \$30,000 was low and discounted. Accordingly, the attorney and administrative costs are approved as well.

D. Enhancement Award

Finally, Plaintiff's enhancement award of \$10,000 is reasonable. The purpose of such an award is to incentive aggrieved employees to undertake the risks associated with serving in a representative capacity. (See *Bell v. Farmers Ins. Exchange* (2004) 115 Cal.App.4th 715, 726 ["service payments" compensate named plaintiff "for their efforts in bringing the action"]; *Ingram v. The Coca-Cola Co.* (N.D.Ga. 2001) 200 F.R.D. 685, 694 ["Courts routinely approve incentive awards to compensate named plaintiffs for the services they provided and the risks they incurred during the course of the class action litigation' ").) Here, Plaintiff provided factual information and documentation to Plaintiff's counsel, assisted in identifying potential witnesses, and attended meetings with counsel. She estimates that she has spent at least 15 hours on these activities to help move the case forward. (Declaration of Sophia Resendez ¶ 5.) In addition, Plaintiff has agreed to a broader release of all known and unknown claims, including those that are not wage and hour related, subject to a waiver of Civil Code section 1542. Given Plaintiff's participation in the case and the broader waiver she has agreed to, the enhancement award is reasonable.

In sum, the settlement is fair, reasonable, and adequate for those concerned. The unopposed motion is granted.

06/15/2016