

1 HAROUT MESSRELIAN (SBN: 272020)

2 MESSRELIAN LAW INC.

3 500 N. Central Ave., Suite 840

4 Glendale, CA 91203

5 Telephone: (818) 484-6531

6 Facsimile: (818) 956-1983

7 Attorneys for Plaintiff

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **FOR THE COUNTY OF LOS ANGELES**

10 ONISHA ANTHONY,

11 Plaintiff,

12 vs.

13 AG ARCADIA, LLC and DOES 1 to 25,
14 inclusive,

15 Defendants.

Case No.: 22STCV36624

**DECLARATION OF HAROUT
MESSRELIAN IN SUPPORT OF
UNOPPOSED MOTION FOR APPROVAL
OF PAGA SETTLEMENT**

Action filed:
11/21/2022

Date: 3/26/25
Time: 9:00am
Dept: 51

Reservation ID:
104376960263

Department: 51, Hon. Upinder S.
Kalra

Submitted Herewith Under Separate Cover:

1. Plaintiff's Notice of Unopposed Motion for Approval of PAGA Settlement; Memorandum of Points and Authorities in Support Thereof;
2. [Proposed] Order

DECLARATION OF HAROUT MESSRELIAN IN SUPPORT OF
UNOPPOSED MOTION FOR APPROVAL OF PAGA SETTLEMENT AND RELEASE

I, HAROUT MESSRELIAN, declare and state as follows:

1. I am an attorney duly licensed to practice before all the Courts of the State of California. I am the managing attorney of Messrelian Law Inc. and the attorney of record for Plaintiff Onisha Anthony (“Plaintiff”) in her lawsuit against Defendant AG ARCADIA, LLC (hereinafter “AG ARCADIA” or “Defendant(s)").

2. I am experienced in handling employment law matters and specifically wage and hour representative and individual actions. My qualifications are as follows: I received my JD from Loyola Law School in 2010. I started my own law firm in 2011 – the Law Offices of Harout Messrelian. Since 2016, I have been the founder and principal attorney at Messrelian Law, Inc. Since 2011, I have filed and handled over 350 civil actions and/or claims involving representative actions under the Private Attorneys General Act (“PAGA”) and/or wage and hour claims on behalf of my clients and have been appointed Class Counsel in three class action cases – *Zohrab Mekhitarian v. Triple Play Motors dba Bob Smith Toyota*, Los Angeles Superior Court Case No. 19STCV22411 (ADR Services, Inc., Case Number 20-2668-RWT), *Carina Camberos, on behalf of herself and others similarly situated, v. Great American Chicken Corp, Inc.*, Los Angeles Superior Court Case No. 21STCV32015, and *Robert Garcia, on behalf of himself and others similarly situated v. HD Supply Management Inc.*, San Bernardino Superior Court Case No. CIVSB2028067. I have a practice that encompasses cases in the Los Angeles Superior Courts, the Orange County Superior Courts, the Riverside County Superior Courts, the San Bernardino County Superior Courts, the Alameda County Superior Courts, Santa Clara County Superior Courts, San Mateo County Superior Courts, and the Monterey County Superior Courts.

3. Except as otherwise indicated, I have personal knowledge of all matters set forth herein and, if called as a witness, could and would competently testify thereto under oath.

Factual and Procedural Background

4. Defendant is in the business of owning and operating a skilled nursing facility called Huntington Drive Health and Rehabilitation Center. Plaintiff Onisha Anthony was

1 classified as an hourly, non-exempt employee and worked for Defendant as CNA (certified
2 nursing assistant) from approximately June 2021 through November 2021.

3 5. Plaintiff complied with the procedures of Labor Code § 2699.3 for bringing suit
4 under the Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698, et seq.
5 (“PAGA”). On January 14, 2022, Plaintiff Onisha Anthony on behalf of herself and Defendant’s
6 other California non-exempt employees (hereafter collectively the “Aggrieved Employees”)
7 gave written notice by electronic service to the California Labor and Workforce Development
8 Agency (“LWDA”) and via certified mail to Defendant of their claims against Defendant. In her
9 notice to the LWDA, Plaintiff asserted on behalf of herself and the Aggrieved Employees that
10 Defendant (1) failed to compensate for all hours worked and to pay minimum wages (Labor
11 Code Sections 1194, 1197, 1197.1); (2) failed to pay overtime compensation (Labor Code
12 Section 510); (3) failed to provide rest breaks (Labor Code Section 226.7); (4) failed to provide
13 meal breaks (Labor Code Sections 512, 226.7); (5) failed to timely pay wages due during
14 employment (Labor Code Section 204); (6) failed to provide accurate itemized wage statements
15 (Labor Code Section 226); (7) failed to keep accurate and complete payroll records (Labor Code
16 Section 1174/1174.5); (8) failed to pay wages at the end of employment (Labor Code section
17 203); (9) failed to reimbursement business expenses (Labor Code section 2802); and claims
18 under Industrial Welfare Commission Wage Orders 5-2001. Plaintiff filed her initial lawsuit on
19 November 21, 2022, in the Superior Court for the State of California, County of Los Angeles,
20 Case No. 22STCV36624, with one cause of action for PAGA penalties based on the theories as
21 outlined in the PAGA letter.

22 6. Through informal discovery, Defendant produced records and represented that it
23 employed approximately 387 employees falling within Plaintiff’s Aggrieved Employees
24 definition for the period from November 21, 2021 (one year before Plaintiff’s PAGA complaint
25 filing) through March 13, 2024, and that there are paychecks issued for a total of approximately
26 5,575 pay periods worked for that same time period.

27 7. The Settlement Agreement covers PAGA Members, which are Aggrieved
28 Employees employed on or after November 21, 2021 through May 30, 2024 [60 days after

1 March 31, 2024 per the settlement agreement].

2 8. Defendant denies any liability or wrongdoing of any kind whatsoever associated
3 with the lawsuit and the Representative PAGA Claim. It is the desire of the Parties to fully,
4 finally, and forever compromise, and discharge all claims known or unknown related to those
5 alleged in Plaintiff's lawsuit.

6 9. The parties attended a full-day mediation with experienced mediator Kevin
7 Barnes on March 22, 2024, and settled the matter. Before agreeing to the terms of the Settlement,
8 the Parties engaged in informal discovery regarding Defendant's policies, practices, operations,
9 time and payroll information and other topics. Prior to negotiation, Defendant produced
10 Plaintiff's personnel file, time and payroll data for Plaintiff, and time records and payroll records
11 for 84 aggrieved employees falling within Plaintiff's Aggrieved Employees definition and
12 during the applicable PAGA period. Through extensive arm's length negotiations and only after
13 discovery and investigation were performed, the Parties agreed to settlement terms. Attached
14 as **Exhibit 1** is a true and accurate copy of the "PAGA Settlement Agreement" (hereinafter
15 "Settlement Agreement") which has attached the initial PAGA notice sent to the LWDA as well
16 as the notice that will be sent, with payment, to the PAGA Members covered by the Settlement
17 Agreement. As alluded to above, the Parties negotiated the PAGA claims through arms-length
18 negotiation during a private mediation, and only after sufficient discovery was completed,
19 including data being sent to Plaintiff's data expert for analysis/review.

20 10. The Parties conducted investigation of the facts and law both before and after the
21 lawsuit was filed. Counsel for the Parties have further investigated the applicable law as applied
22 to the facts discovered regarding Plaintiff's claims, the defenses thereto, and the Labor Code
23 violations claimed by Plaintiff. Based on their own independent investigations and evaluations,
24 the Parties and their respective counsel are of the opinion that the Settlement for the
25 consideration and on the terms set forth in this Motion are fair, reasonable and adequate and are
26 in the best interests of Plaintiff, the PAGA Members, and Defendant in light of all known facts
27 and circumstances and the risks inherent in litigation, especially in this post-pandemic era when
28 most California businesses are still struggling to remain afloat, much less prosper and make a

1 large profit.

2 11. The Parties further recognize that the issues presented in the Action are likely
3 only to be resolved with extensive and costly pretrial and trial proceedings, and that further
4 litigation will cause inconvenience, distraction, disruption, delay, and expense disproportionate
5 to the maximum potential benefits, especially in light of the post- pandemic era and the business
6 climate.

7 12. Plaintiff alleges that the strongest claims are that Plaintiff and other PAGA
8 Members were not provided meal and rest breaks under the law.

9 13. Plaintiff contends that the civil penalty statutes applicable to the Action arise
10 from violations of the California Labor Code, including, but not limited to, Labor Code §§ 226.7,
11 512, 558, and 2699(f)(2). Under these civil penalty statutes, an employee who suffers a Labor
12 Code violation may be awarded a sum of money for each pay period in which he or she was
13 underpaid. However, under Labor Code § 2699(e)(2), the Court can reduce an award of civil
14 penalties if the award is unjust, arbitrary, oppressive, or confiscatory.

15 14. As it relates to Plaintiff's argument for meal break violations, Plaintiff's data
16 analysis revealed a shift violation rate of 4.2% for short, late, or no meal breaks for shifts that
17 were 5 hours or greater. The data revealed that 88.8% of shifts in the sample were 5 hours or
18 greater. As such, we are dealing with violations covering 4,950 pay periods [5,575 pay periods
19 x 88.8%]. If you extrapolate the 4.2% shift violation rate, it amounts to 27.8% of pay periods
20 having at least one meal period violation. As such, the maximum exposure for meal period
21 violations in the PAGA period would be **\$68,800**, which is calculated as follows: 4,950 pay
22 periods x 27.8% equals 1,376 affected pay periods; 1,376 pay periods x \$50/pay period (civil
23 penalty) amounts to \$68,800 in exposure. The latter exposure calculation does not take into
24 account the fact that Defendant had strong, written meal period policies and that the sampling
25 revealed that Defendant paid \$2,093.50 in meal period premiums. Moreover, Defendant
26 indicated that their payroll system automatically paid premium wages for all apparent meal
27 break violations.

28 15. As it relates to Plaintiff's argument for rest break violations, Plaintiff

1 extrapolated the meal break violation and used it for the rest break analysis. The data revealed
2 that 97.5% of shifts in the sample were 3.5 hours or greater. As such, we are dealing with
3 violations covering 5,435 pay periods [5,575 pay periods x 97.5%]. If you extrapolate the 4.2%
4 shift violation rate, it amounts to 27.8% of pay periods having at least one rest period violation.
5 As such, the maximum exposure for rest period violations in the PAGA period would be
6 **\$151,000**, which is calculated as follows: 5,435 pay periods x 27.8% equals 1,510 affected pay
7 periods; 1,510 pay periods x \$100/pay period (civil penalty) amounts to \$151,000 in exposure.
8 The latter exposure calculation does not take into account the fact that Defendant had strong,
9 written rest period policies and that there was no evidence on paper of rest period violations
10 since rest periods were not tracked by Defendant's timekeeping system, as is common for most
11 businesses in California.

12 16. As it relates to Plaintiff's other claims, and unlike the arguments for meal period
13 violations, there would be issues with proof. As it relates to Plaintiff's claims for rounding,
14 Plaintiff's expert found no evidence of rounding in the sample, with hours being paid to the
15 second decimal point. In terms of any potential regular rate issue as it relates to overtime or
16 meal/rest period premiums based on bonuses made, it would not be a significant issue because
17 there were only 33 bonus payments seen in the sample covering 1,560 pay periods and the
18 average hours worked per day was 7.75 hours per Plaintiff's data expert, which is less than 8
19 hours per day for triggering overtime. In addition, Defendant was sued in a prior class action
20 case and fixed any wage and hour issues that were problematic as of September 2021. This
21 included making sure that any bonus payments were factored into meal and rest period premium
22 payments. As it relates to straight overtime issues, the data showed that overtime hours were
23 paid correctly when employees did in fact work overtime. Moreover, and as mentioned before,
24 Defendant provided overall strong written policies as it related to wage and hour practices. As
25 it relates to Plaintiff's claim of business expense reimbursement, Defendant argued that they did
26 not require Plaintiff or other employees to wear scrubs or to utilize their personal cell phones
27 for work purposes. Plaintiff's other claims are derivative claims for violations of Labor Code
28 sections 203, 204, and 226 for not being paid all wages owed every pay period or at the end of

1 employment as well as not receiving accurate, itemized wage statements would not be triggered
2 since meal and rest period violations do not trigger these derivative claims.

3 17. Based on the above calculations, Plaintiff's aggregate exposure for the strongest
4 disputed claims would be **\$219,800**. Assuming that Plaintiff's calculations and analysis are
5 accurate, the maximum exposure presumes that the Court will not reduce the penalty award as
6 unjust, arbitrary, oppressive, or confiscatory. Based on the above analysis, a gross settlement in
7 the amount of \$110,000 is a very strong result, especially in light of the risk factors as discussed
8 above.

9 18. Moreover, Plaintiff is aware of no California state courts awarding Plaintiff
10 multiple PAGA penalties for the same violation for the same pay period under different Labor
11 Code provisions. As such, one of the risks Plaintiff faces is that the Court would refuse to "stack"
12 civil penalties arising under the various Labor Code statutes. Furthermore, judges have awarded
13 extremely small sums to PAGA claimants in the past. Defendant also adamantly disputes all of
14 Plaintiff's allegations in the operative Complaint.

15 19. PAGA states a court has discretion to award a lesser amount than the maximum
16 penalty. *See Lab. Code* § 2699(e)(2) ("...a court may award a lesser amount than the maximum
17 civil penalty amount specified by this part if, based on the facts and circumstances of the
18 particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive,
19 or confiscatory."); *see also Thurman v. Bayshore Transit Management, Inc.* (2012) 203
20 Cal.App.4th 1112, 1135 (reducing PAGA award). There is a substantial risk that the Court could
21 reduce civil penalties to an insignificant amount if it is unpersuaded by Plaintiff's evidence of
22 willful and intentional conduct. *Carrington v. Starbucks* (2018) 30 Cal.App.5th 504
23 ("*Carrington*") illustrates this. In that case, the Court of Appeal affirmed a trial court's heavily
24 discounted award of only \$5 per violation because it was within the Court's discretion to
25 significantly reduce PAGA penalties even when there is a finding that a violation of the
26 California Labor Code occurred. The plaintiff in *Carrington* had requested penalties in excess of
27 \$70 million and was successful in proving the PAGA claim during a bench trial. However, the
28 trial court reduced the total award after trial to only \$150,000 (30,000 violations x \$5) and stated

1 that this reduction was warranted because imposing the maximum penalty would be “unjust,
2 arbitrary, and oppressive”, based on Starbucks’s “good faith attempts” to comply with meal break
3 obligations and because the Court found the violations were minimal. Applying the same formula
4 here and assuming there was one violation during each pay period, the award of civil penalties
5 could not exceed \$27,875.00 in PAGA penalties (5,575 violations x \$5). As such, this Settlement
6 is a great result based solely on the risk the Court chooses to apply the *Carrington* formula.
7 Defendant has also posed formidable defenses to the Labor Code claims underlying Plaintiff’s
8 allegations. Thus, the chance of Plaintiff recovering a higher amount than the Gross Settlement
9 Amount is uncertain.

10 20. The Parties further recognize that the issues presented in the Action are likely
11 only to be resolved with extensive and costly pretrial and trial proceedings, and that further
12 litigation will cause inconvenience, distraction, disruption, delay, and expense disproportionate
13 to the maximum potential benefits to the PAGA Members and Plaintiff from continued
14 litigation.

15 21. The settlement of the Action involves monetary relief to all PAGA Members,
16 Plaintiff, her attorneys, and the State of California.

17 22. Furthermore, Plaintiff recognizes that continued litigation presents significant
18 risks that support a significant downward departure from Plaintiff’s estimated civil penalties
19 amount. In view of the risks, the Settlement represents a fair, adequate, and reasonable
20 compromise amount for these claims and is in the best interest of Plaintiff and PAGA Members
21 and thus, warrants approval. *See Laguna v. Coverall N. Am., Inc.*, Case No. 12-55479 (9th Cir.
22 June 3, 2014) 2014 WL 2465049, * 3. The PAGA settlement and its terms are fair, just,
23 reasonable, adequate, and equitable to Defendant, Plaintiff, and the State, especially in light of
24 the current economic climate, and are the product of good faith, and informed arms-length
25 negotiations between the Parties consistent with public policy and fully comply with applicable
26 provisions of law.

27 23. As such, the settlement of PAGA penalties in the gross sum of \$110,000.00, of
28 which 75% of the net amount after attorney’s fees [\$36,666.66], attorney costs [\$7,806.00], and

1 settlement administrator fees [\$5,000.00], which is \$45,395.50 will be paid to the LWDA, and
2 25%, which equates to \$15,131.84, will be distributed to the PAGA Members, is reasonable and
3 appropriate under the circumstances.

4 ***Plaintiff's Individual Settlement***

5 24. Plaintiff did have individual claims in arbitration for discrimination based on
6 race, failure to prevent discrimination, retaliation in violation of Labor Code Section 1102.5,
7 and wrongful termination in violation of public policy that were also settled by the parties. The
8 parties agreed that the consideration Plaintiff received pursuant to an individual settlement
9 agreement was to settle her individual claims that were pending in arbitration. As part of this
10 confidential agreement, Plaintiff also provided Defendant with a general release of all claims,
11 whether known or unknown, including unknown claims covered by Civil Code Section 1542.
12 Plaintiff has no conflict of interest with the absent Aggrieved Employees and is adequate to
13 represent the Aggrieved Employees.

14 ***Attorneys' Fees and Costs***

15 25. I represent Plaintiff on a straight contingency basis. My firm's request for
16 \$36,666.66 in attorney fees and \$7,806.00 in litigation costs is fair and reasonable. To date, I
17 have investigated and prosecuted this matter vigorously, including drafting the initial PAGA
18 notice as well as the original complaint; drafting informal discovery questions, reviewing
19 Defendant's informal data and document production, including wage and hour policies; sending
20 and receiving emails on the case with defense counsel; sending the PAGA data to Plaintiff's
21 expert for review/analysis and reviewing the expert's findings/conclusions; drafting a
22 comprehensive mediation brief and engaging in a private mediation; and drafting this PAGA
23 approval motion. I also expect to perform additional work on this case if the Court grants final
24 approval of the Settlement, including supervision of the Settlement Administrator's
25 disbursement of the settlement funds to the Aggrieved Employees. "Empirical studies show that,
26 regardless of whether the percentage method or the lodestar method is used, fee awards in class
27 actions average around one-third of the recovery. *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th
28 43, 47 fn. 11 (quoting *Shaw v. Toshiba America Information Systems, Inc.* (E.D. Tex. 2000) 91
F.Supp.2d 942, 972; *See also Lafitte v. Robert Half Int'l Inc.* (Cal. Aug. 11, 2016) 1 Cal.5th 480,

1 503, 376 P.3d 672, 686 (holding that courts can use the percentage method for the calculation
2 of attorneys' fees). This is also consistent with my experience in cases involving PAGA claims.
3 This award is justified here because I achieved a strong result for the PAGA Members and the
4 State while bearing the substantial burdens of contingency representation.

5 26. My previous experience in litigating wage and hour actions also supports the
6 reasonableness of the fee request, as does the caliber of opposing counsel. My previous
7 experience in similar matters was integral in evaluating the strengths and weaknesses of the
8 case against Defendant and the reasonableness of the Settlement. Because it is reasonable to
9 compensate me commensurate with my skill, reputation, and experience, attorney's fees of
10 approximately one-third of the Gross Settlement Amount is reasonable. Likewise, the caliber
11 and experience of opposing counsel in labor and employment litigation supports the fairness and
12 reasonableness of the requested fee award.

13 27. The litigation costs expended to aid in the representation of the PAGA Members
14 include the following: lawsuit filing fee of \$454.22; lawsuit service fee of \$105.00; PAGA initial
15 filing fees of \$75.00; expert data analysis fee of \$900.00; mediation fee of \$6,250.00; and
16 miscellaneous filing fees of \$21.78 for a total of \$7,806.00. All of these costs are documented
17 and reasonably incurred.

18 ***Settlement Administration Costs***

19 28. With regard to the settlement administration costs provision, it is reasonable.
20 Before agreeing to Phoenix Settlement Administrators ("Phoenix"), the parties sought and
21 reviewed bids from other reputable third-party administrators, including CPT Group, and Apex,
22 and Phoenix's bid was comparable. Phoenix's bid has been attached as **Exhibit 2** to this
23 declaration.

24 ***Notice of Settlement to the LWDA***

25 29. Pursuant to Lab. Code § 2699(1)(2), my firm submitted a copy of the Settlement
26 with the LWDA at the same time the Settlement is being filed with the Court. True and correct
27 copies of this submission with the LWDA and the confirmation email are collectively attached
28 as **Exhibit 3** to this declaration. My firm will further provide a copy of the Court's Order and

1 Judgment to the LWDA within ten (10) calendar days after entry of said judgment or order as
2 required by Labor Code sections 2699(1)(2)-(3).

3 I declare under the penalty of perjury of the laws of the State of California that the
4 foregoing is true and correct to the best of my knowledge.

5
6 Executed on December 20, 2024, at Glendale, California.

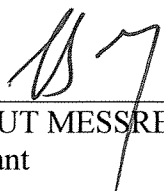
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10 HAROUT MESSRELIAN,
11 Declarant
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EXHIBIT 1

Harout A. Messrelian, Esq. [SBN 272020]

MESSRELIAN LAW INC.

500 N. Central Ave., Suite 840

Glendale, CA 91203

Telephone: (818) 484-6531

Facsimile: (818) 956-1983

Email: hm@messrelianlaw.com

pleadings@messrelianlaw.com

Attorneys for Plaintiff Onisha Anthony,
as an individual and on behalf of all employees
similarly situated

James S. Cooper, Esq. [SBN 162469]

LEVINSON ARSHONSKY

KURTZ & KOMSKY, LLP

15303 Ventura Blvd., Suite 1650

Sherman Oaks, California 91403

Telephone: (818) 382-3434

Facsimile: (818) 382-3433

Email: jcooper@lakklawyers.com

Attorneys for Defendant

AG ARCADIA, LLC dba Huntington Drive

Health and Rehabilitation Center

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES - CENTRAL DISTRICT

STANLEY MOSK COURTHOUSE

ONISHA ANTHONY,

Plaintiff,

vs.

AG ARCADIA, LLC dba Huntington Drive
Health and Rehabilitation Center, and DOES
1 to 25, inclusive,

Defendants.

Case No. 22STCV36624

Assigned to Hon. Upinder S. Kalra, Dept. 51

PAGA SETTLEMENT AGREEMENT

Complaint Filed: November 21, 2022

Trial Date: None

1 **PAGA SETTLEMENT AGREEMENT**

2 This PAGA Settlement Agreement ("Agreement" or "Settlement") is made by and
3 between Plaintiff ONISHA ANTHONY ("Plaintiff") and Defendant AG ARCADIA, LLC dba
4 Huntington Drive Health and Rehabilitation Center ("Defendant"). The Agreement refers to
5 Plaintiff and Defendant collectively as "Parties," or individually as "Party."

6 **1. DEFINITIONS.**

7 1.1. "Action" means the Plaintiff's PAGA lawsuit alleging wage and hour violations
8 against Defendant captioned *Onisha Anthony v AG Arcadia LLC*, Case Number 22STCV36624,
9 initiated on November 21, 2022 and pending in Superior Court of the State of California, County
10 of Los Angeles.

11 1.2. "Administrator" means Phoenix Settlement Administrators, the neutral entity the
12 Parties have agreed to appoint to administer the Settlement.

13 1.3. "Administration Expenses Payment" means the amount the Administrator will be paid
14 from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance
15 with the Administrator's "not to exceed" bid submitted to the Court in connection with approval
16 of this Settlement.

17 1.4. "Aggrieved Employee" means a non-exempt or hourly employee of Defendant who
18 worked for Defendant during the PAGA Period.

19 1.5. "Aggrieved Employee Data" means Aggrieved Employee identifying information in
20 Defendant's possession including the Aggrieved Employee's name, last-known mailing address,
21 Social Security number, and number of PAGA Pay Periods.

22 1.6. "Aggrieved Employee Address Search" means the Administrator's investigation and
23 search for current Aggrieved Employee mailing addresses using all reasonably available sources,
24 methods and means including, but not limited to, the National Change of Address database, skip
25 traces, and direct contact by the Administrator with Aggrieved Employees.

26 1.7. "Court" means the Superior Court of California, County of Los Angeles.

27 1.8. "Defense Counsel" means Levinson Arshonsky Kurtz & Komsky, LLP.
28

1 1.9. "Effective Date" means the date by when both of the following have occurred: (a) the
2 Court enters a Judgment on its Order Approving the PAGA Settlement and (b) the Judgment is
3 final. The Judgment is final as of the latest of the following occurrences: (a) the day the Court
4 enters Judgment if no objections are filed to this settlement or if all objections are withdrawn prior
5 to the Court ruling on them; or (b) sixty-one (61) days after the date of entry of the settlement
6 approval order if objections are filed and overruled and no appeal is taken from the order
7 approving the settlement; or (c) if a timely appeal is made, ten (10) business days after the final
8 resolution of that appeal if the appeal is rejected, the settlement is upheld, and the settlement
9 approval order is no longer subject to further judicial review..

10 1.10. "Gross Settlement Amount" means \$110,000.00 which is the total amount
11 Defendant agrees to pay under the Settlement except as provided in Paragraph 8 below. The Gross
12 Settlement Amount will be used to pay Individual PAGA Payments, the LWDA PAGA Payment,
13 PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, and the
14 Administrator's Expenses Payment. In addition to Gross Settlement Amount Defendant will pay
15 \$15,000 to Plaintiff in lieu of arbitrating Plaintiff's individual claims and in consideration for
16 representing Aggrieved Employees and for general release of Plaintiff's all claims beyond PAGA
17 claims released in this action in accordance with a separate individual settlement and release
18 agreement entered between the Parties.

19 1.11. "Individual PAGA Payment" means the Aggrieved Employee's pro rata share of
20 25% of the PAGA Penalties calculated according to the number of Pay Periods the Aggrieved
21 Employee worked during the PAGA Period.

22 1.12. "Judgment" means the judgment entered by the Court based upon the Final
23 Approval.

24 1.13. "LWDA" means the California Labor and Workforce Development Agency, the
25 agency entitled, under Labor Code section 2699, subd. (i).

26 1.14. "LWDA PAGA Payment" means the 75% of the PAGA Penalties paid to the LWDA
27 under Labor Code section 2699, subd. (i).

28

1 1.15. "Net Settlement Amount" means the Gross Settlement Amount, less the following
2 payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA
3 Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, and the
4 Administration Expenses Payment. The remainder is to be paid to Aggrieved Employees as
5 Individual PAGA Payments.

6 1.16. "PAGA Counsel" means Messrelian Law Inc.

7 1.17. "PAGA Counsel Fees Payment" and "PAGA Counsel Litigation Expenses
8 Payment" mean the amounts allocated to PAGA Counsel for reimbursement of reasonable
9 attorneys' fees and expenses, respectively, incurred to prosecute the Action.

10 1.18. "PAGA Pay Period" means any Pay Period during which an Aggrieved Employee
11 worked for Defendant for at least one day during the PAGA Period.

12 1.19. "PAGA Period" means the period from November 21, 2021, to the date of entry of
13 order for approval of the Settlement by the Court or 60 days after March 31, 2024, whichever is
14 earlier.

15 1.20. "PAGA" means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).

16 1.21. "PAGA Notice" means Plaintiff's January 14, 2022, letter to Defendant and the
17 LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a). attached to this
18 Agreement as **Exhibit A**.

19 1.22. "PAGA Penalties" means the total amount of PAGA civil penalties to be paid from
20 the Gross Settlement Amount, allocated 25% to the Aggrieved Employees and the 75% to LWDA
21 in settlement of PAGA claims.

22 1.23. "Plaintiff" means Onisha Anthony, the named plaintiff in the Action.

23 1.24. "Approval Order" means the proposed Court Order Granting Approval of PAGA
24 Settlement.

25 1.25. "Released PAGA Claims" means the claims being released by the Plaintiff and
26 PAGA Counsel and as described in Paragraph 5 below.

1 1.26. "Released Parties" means: Defendant and each of their former and present directors,
2 officers, shareholders, owners, members, attorneys, insurers, predecessors, successors, assigns,
3 subsidiaries, and affiliates.

4 1.27. "Settlement" means the disposition of the Action effected by this Agreement and the
5 Judgment.

6 1.28. "Defendant" means named Defendant AG Arcadia LLC.

7 **2. RECITALS.**

8 2.1. On November 21, 2022, Plaintiff commenced this Action by filing a PAGA action
9 Complaint alleging a single cause of action against the Defendant. Plaintiff's Complaint sought
10 penalties, on her behalf and on behalf of a class of all non-exempt or hourly employees, for the
11 following alleged violations of the California Labor Code: Sections 203, 204, 204.6, 210, 226,
12 226.3, 226.7, 510, 512, 558, 1174(d), 1194, 1197, 1197.1, 2800, 2802, 2698, 2699, and violation
13 of Wage Order No. 5-2001.

14 2.2. Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave timely written notice
15 to Defendant and the LWDA by sending the PAGA Notice.

16 2.3. On March 22, 2024, the Parties participated in an all-day mediation presided over by
17 Kevin T. Barnes, Esq., which led to this Agreement to settle the Action.

18 2.4. Prior to mediation, Plaintiff obtained, through informal discovery, employee and
19 payroll data, policy documents, and additional information regarding Defendant's non-exempt,
20 hourly employees in California, which Plaintiff's Counsel reviewed and analyzed.

21 2.5. The Parties, PAGA Counsel and Defense Counsel represent that they are not aware
22 of any other pending matter or action asserting claims that will be extinguished or affected by the
23 Settlement.

24 **3. MONETARY TERMS.**

25 3.1. Gross Settlement Amount. Except as otherwise provided by Paragraphs 1.10 and 8,
26 Defendant promises to pay One Hundred Ten Thousand Dollars (\$110,000.00) and no more as
27 the Gross Settlement Amount. Defendant has no obligation to pay the Gross Settlement Amount
28 prior to the deadline stated in Paragraph 4.3 of this Agreement. The Administrator will disburse

1 the entire Gross Settlement Amount without asking or requiring Aggrieved Employees to submit
2 any claim as a condition of payment. None of the Gross Settlement Amount will revert to
3 Defendant.

4 3.2. Payments from the Gross Settlement Amount. The Administrator will make and
5 deduct the following payments from the Gross Settlement Amount, in the amounts specified by
6 the Court in the Final Approval:

7 3.2.1. To PAGA Counsel: A PAGA Counsel Fees Payment of not more than 33
8 1/3% which is currently estimated to be \$36,666.66 and PAGA Counsel Litigation Expenses
9 Payment of not more than \$10,000. Defendant will not oppose requests for Court approval of
10 these payments provided that they do not exceed these amounts. Plaintiff and/or PAGA Counsel
11 will file a motion for PAGA Counsel Fees Payment and PAGA Litigation Expenses Payment with
12 the motion for approval of the Settlement. If the Court approves a PAGA Counsel Fees Payment
13 and/or a PAGA Counsel Litigation Expenses Payment less than the amounts requested, the
14 Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall
15 have no liability to PAGA Counsel or any other Plaintiff's Counsel arising from any claim to any
16 portion any PAGA Counsel Fee Payment and/or PAGA Counsel Litigation Expenses Payment.
17 The Administrator will pay the PAGA Counsel Fees Payment and PAGA Counsel Expenses
18 Payment using one or more IRS 1099 Forms. PAGA Counsel assumes full responsibility and
19 liability for taxes owed on the PAGA Counsel Fees Payment and the PAGA Counsel Litigation
20 Expenses Payment and holds Defendant harmless, and indemnifies Defendant, from any dispute
21 or controversy regarding any division or sharing of any of these Payments.

22 3.2.2. To the Administrator: An Administrator Expenses Payment not to exceed
23 \$15,000 except for showing of good cause and as approved by the Court. To the extent the
24 Administration Expenses are less or the Court approves payment less than \$15,000, the
25 Administrator will retain the remainder in the Net Settlement Amount. Phoenix Settlement
26 Administrators has been selected as the Administrator, based upon its "not to exceed" bid of
27 \$5000.
28

3.2.3. To the LWDA and Aggrieved Employees: PAGA Penalties in the estimated amount of the net settlement sum of \$58,333.34 to be paid from the Gross Settlement Amount, with 75% allocated to the LWDA PAGA Payment and 25% allocated to the Individual PAGA Payments.

3.2.3.1. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

3.2.3.2. If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

4. SETTLEMENT FUNDING AND PAYMENTS.

4.1. Aggrieved Employee Pay Periods and Escalator Clause. Based on a review of its records, Defendant estimates there are 387 Aggrieved Employees who worked a total 5,575 of PAGA Pay Periods from November 21, 2022 through March 13, 2024. Defendant represents there are 387 Aggrieved Employees who have worked 5,575 pay periods from November 21, 2022 through March 13, 2024. If the number of pay periods worked by all Aggrieved Employees during the PAGA Period is ultimately determined to exceed 6,411, then the Gross Settlement Amount shall be increased by a pro rata amount for each additional pay period over 6,411, pay periods. However, Defendant has the right to shorten the PAGA Period in lieu of increasing the Gross Settlement Amount.

4.2. Aggrieved Employee Data. Within fourteen (14) days after the Effective Date, Defendant will deliver the Aggrieved Employee Data to the Administrator in the form of a Microsoft Excel spreadsheet. To protect Aggrieved Employee's privacy rights, the Administrator must maintain the Aggrieved Employee Data in confidence, use the Aggrieved Employee Data only for purposes of this Settlement and for no other purpose, and restrict access to the Aggrieved

1 Employee Data to Administrator employees who need access to the Aggrieved Employee Data to
2 effect and perform under this Agreement. Defendant has a continuing duty to immediately notify
3 PAGA Counsel if it discovers that the Aggrieved Employee Data omitted employee identifying
4 information and to provide corrected or updated Aggrieved Employee Data as soon as reasonably
5 feasible. Without any extension of the deadline by which Defendant must send the Aggrieved
6 Employee Data to the Administrator, the Parties and their counsel will expeditiously use best
7 efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted
8 Aggrieved Employee Data.

9 4.3. Funding of Gross Settlement Amount. Defendant shall fully fund the Gross
10 Settlement Amount by transmitting the funds to the Administrator no later than fourteen (14) days
11 after the Effective Date.

12 4.4. Payments from the Gross Settlement Amount. Within fourteen (14) days after
13 Defendant funds the Gross Settlement Amount, the Administrator will mail checks for all
14 Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment,
15 the PAGA Counsel Fees Payment, the PAGA Counsel Expenses Payment. Disbursement of the
16 PAGA Counsel Litigation Expenses Payment shall not precede disbursement of Individual PAGA
17 Payments.

18 4.4.1. The Administrator will issue checks for the Individual PAGA Payments and
19 send them to the Aggrieved Employees via First Class U.S. Mail, postage prepaid along with the
20 Notice of PAGA Representative Action Settlement (attached hereto as **Exhibit B**). The face of
21 each check shall prominently state the date (180 days after the date of mailing) when the check
22 will be voided. The Administrator will cancel all checks not cashed by the void date. Before
23 mailing any checks, the Settlement Administrator must update the recipients' mailing addresses
24 using the National Change of Address Database.

25 4.4.2. The Administrator must conduct an Aggrieved Employee Address Search
26 for all Aggrieved Employees whose checks are returned undelivered without USPS forwarding
27 address. Within 7 days of receiving a returned check the Administrator must re-mail checks to
28 the USPS forwarding address provided or to an address ascertained through the Aggrieved

1 Employee Address Search. The Administrator need not take further steps to deliver checks to
2 Aggrieved Employees whose re-mailed checks are returned as undelivered. The Administrator
3 shall promptly send a replacement check to any Aggrieved Employee whose original check was
4 lost or misplaced, requested by the Aggrieved Employee prior to the void date.

5 4.4.3. For any Aggrieved Employee whose Individual PAGA Payment check is
6 uncashed and cancelled after the void date, the Administrator shall transmit the funds represented
7 by such checks to the California Controller's Unclaimed Property Fund in the name of the
8 Aggrieved Employee.

9 4.4.4. The payment of Individual PAGA Payments shall not obligate Defendant
10 to confer any additional benefits or make any additional payments to the Aggrieved Employees
11 (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

12 **5. RELEASES OF CLAIMS.**

13 Effective on the date when Defendant fully funds the entire Gross Settlement Amount
14 and Plaintiff's general release payment pursuant of the separate agreement entered between the
15 Parties, Plaintiff and PAGA Counsel will release claims against all Released Parties as follows:

16 **5.1 Plaintiff's Release.**

17 5.1.1 Scope of Plaintiff's Release. Plaintiff and her respective former and present
18 spouses, representatives, agents, attorneys (including PAGA Counsel), heirs, administrators,
19 successors, and assigns generally, release and discharge Released Parties from all claims,
20 transactions, or occurrences that occurred during the PAGA Period, including, but not limited
21 to: (a) all claims that were, or reasonably could have been, alleged, based on the facts contained
22 in the Operative Complaint and the PAGA Notice ("Plaintiff's Release"). Pursuant to the
23 individual settlement and release agreement Plaintiff also provides a general release of all
24 claims as defined in a separate individual settlement and release agreement. Plaintiff's Release
25 does not does apply to: (i) claims or actions to enforce PAGA Settlement Agreement; (ii) claims
26 premised upon vested rights Plaintiff may have under Defendant's ERISA-covered employee
27 benefit plans; and (iii) claims that controlling law clearly states may not be released by private
28 settlement, such as claims for unemployment benefits, state-sponsored disability benefits, social

1 security benefits, or workers' compensation benefits. With the exception of Plaintiff, who will
2 execute an individual settlement agreement which includes a general release of all claims, this
3 settlement shall not impact Aggrieved Employees' ability to assert claims other than the PAGA
4 claims being released by this Settlement.

5 5.1.2 Plaintiff's Waiver of Rights Under California Civil Code § 1542. For
6 purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions,
7 rights, and benefits, if any, of Section 1542 of the California Civil Code, which reads:

8 **A general release does not extend to claims that the creditor**
9 **or releasing party does not know or suspect to exist in his**
10 **or her favor at the time of executing the release, and that if**
11 **known by him or her would have materially affected his or**
12 **her settlement with the debtor or Released Party.**

13 5.2 Release by Aggrieved Employees: All Aggrieved Employees are deemed to release,
14 on behalf of themselves and their respective former and present representatives, agents, attorneys,
15 heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA
16 penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period
17 facts stated in the Operative Complaint and the PAGA Notice ("Released Claims").

18 5.3 Release by PAGA Counsel: PAGA Counsel release on behalf of their present and
19 former attorneys, employees, agents, successors and assigns the Released Parties from all claims
20 for PAGA Counsel Fees incurred in connection with the Operative Complaint and the PAGA
21 Period facts stated in the Operative Complaint and the PAGA Notice.

22 6. MOTION OR APPLICATION FOR APPROVAL OF SETTLEMENT.

23 The Plaintiff's counsel agrees to prepare and file an application or motion for approval of this
24 Settlement.

25 6.1. Plaintiff's Responsibilities. Plaintiff will prepare and deliver to Defense Counsel all
26 documents necessary for obtaining approval of this Settlement under Labor Code Section 2699,
27 subd. (f)(2)) including (i) a draft proposed Order Granting Approval of PAGA Settlement; (ii) a
28 signed declaration from the Administrator attaching its "not to exceed" bid for administering the
Settlement and attesting to its willingness to serve; competency; operative procedures for
protecting the security of Aggrieved Employee Data; amounts of insurance coverage for any data

1 breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential
2 conflicts of interest with Aggrieved Employees or the LWDA; and the nature and extent of any
3 financial relationship with Plaintiff, PAGA Counsel or Defense Counsel; (iii) a signed declaration
4 from PAGA Counsel firm attesting to its timely transmission to the LWDA of all necessary
5 PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative
6 Complaint (Labor Code section 2699, subd. (1)(1)), this Agreement (Labor Code section 2699,
7 subd. (1)(2)); and (iv) all facts relevant to any actual or potential conflict of interest with Aggrieved
8 Employees and/or the Administrator. In their Declarations, Plaintiff and PAGA counsel shall aver
9 that they are not aware of any other pending matter or action asserting claims that will be
10 extinguished or adversely affected by the Settlement.

11 6.2. Responsibilities of PAGA Counsel. PAGA Counsel and Defense Counsel are jointly
12 responsible for expeditiously finalizing and filing the application or motion for approval of this
13 Settlement no later than thirty (30) days after the full execution of this Agreement and, if
14 necessary, obtaining a prompt hearing date for the motion and appearing in Court to advocate in
15 favor of the motion. PAGA Counsel is responsible for delivering the Court's Preliminary
16 Approval to the Administrator.

17 6.3. Duty to Cooperate. If the Parties disagree on any aspect of the proposed application
18 or motion for approval of this Settlement and/or the supporting declarations and documents,
19 PAGA Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by
20 meeting in person or by telephone, and in good faith, to resolve the disagreement. If the Court
21 does not grant the motion for approval of this Settlement or conditions its approval on any material
22 change to this Agreement, PAGA Counsel and Defense Counsel will expeditiously work together
23 on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the
24 Agreement and otherwise satisfy the Court's concerns.

25 **7. SETTLEMENT ADMINISTRATION.**

26 7.1. Selection of Administrator. The Parties have jointly selected Phoenix Settlement
27 Administrators to serve as the Administrator and verified that, as a condition of appointment,
28 Phoenix Settlement Administrators agrees to be bound by this Agreement and to perform, as a

1 fiduciary, all duties specified in this Agreement in exchange for payment of Administration
2 Expenses. The Parties and their Counsel represent that they have no interest or relationship,
3 financial or otherwise, with the Administrator other than a professional relationship arising out of
4 prior experiences administering settlements.

5 7.2. Employer Identification Number. The Administrator shall have and use its own
6 Employer Identification Number for purposes of calculating payroll tax withholdings and
7 providing reports state and federal tax authorities.

8 7.3. Qualified Settlement Fund. The Administrator shall establish a settlement fund that
9 meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation
10 section 468B-1.

11 7.4. Administrator Duties. The Administrator has a duty to perform or observe all tasks to
12 be performed or observed by the Administrator contained in this Agreement or otherwise.

13 **8. CONTINUING JURISDICTION OF THE COURT.**

14 The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the
15 Parties, Action, and the Settlement solely for purposes of (i) enforcing this Agreement and/or
16 Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-
17 Judgment matters as are permitted by law.

18 8.1. Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and
19 conditions of this Agreement, specifically including the PAGA Counsel Fees Payment and PAGA
20 Counsel Litigation Expenses Payment, the Parties, their respective counsel waive all rights to
21 appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the
22 right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals.
23 The waiver of appeal does not include any waiver of the right to oppose such motions, writs or
24 appeals. If another party appeals the Judgment, the Parties' obligations to perform under this
25 Agreement will be suspended until such time as the appeal is finally resolved and the Judgment
26 becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.

27 **9. ADDITIONAL PROVISIONS.**

28

1 9.1. No Admission of Liability or Representative Manageability for Other Purposes. This
2 Agreement represents a compromise and settlement of highly disputed claims. Nothing in this
3 Agreement is intended or should be construed as an admission by Defendant that any of the
4 allegations in the Operative Complaint have merit or that Defendant have any liability for any
5 claims asserted; nor should it be intended or construed as an admission by Plaintiff that
6 Defendant's defenses in the Action have merit. The Parties agree that representative treatment is
7 for purposes of this Settlement only. If, for any reason the Court does not approve this Settlement,
8 Defendant reserves all available defenses to the claims in the Action, and Plaintiff reserves the
9 right to contest Defendant's defenses. The Settlement, this Agreement and Parties' willingness to
10 settle the Action will have no bearing on, and will not be admissible in connection with, any
11 litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

12 9.2. Integrated Agreement. Upon execution by all Parties and their counsel, this
13 Agreement together with its attached exhibits shall constitute the entire agreement between the
14 Parties relating to the Settlement, superseding any and all oral representations, warranties,
15 covenants, or inducements made to or by any Party.

16 9.3. Attorney Authorization. PAGA Counsel and Defense Counsel separately warrant and
17 represent that they are authorized by Plaintiff and Defendant, respectively, to take all appropriate
18 action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate
19 its terms, and to execute any other documents reasonably required to effectuate the terms of this
20 Agreement including any amendments to this Agreement.

21 9.4. Cooperation. The Parties and their counsel will cooperate with each other and use
22 their best efforts, in good faith, to implement the Settlement by, among other things, modifying
23 the Settlement Agreement, submitting supplemental evidence and supplementing points and
24 authorities as requested by the Court. In the event the Parties are unable to agree upon the form
25 or content of any document necessary to implement the Settlement, or on any modification of the
26 Agreement that may become necessary to implement the Settlement, the Parties will seek the
27 assistance of a mediator and/or the Court for resolution.
28

1 9.5. No Prior Assignments. The Parties separately represent and warrant that they have
2 not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or
3 encumber to any person or entity and portion of any liability, claim, demand, action, cause of
4 action, or right released and discharged by the Party in this Settlement.

5 9.6. No Tax Advice. Neither Plaintiff, PAGA Counsel, Defendant nor Defense Counsel
6 are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be
7 relied upon as such within the meaning of United States Treasury Department Circular 230 (31
8 CFR Part 10, as amended) or otherwise.

9 9.7. Modification of Agreement. This Agreement, and all parts of it, may be amended,
10 modified, changed, or waived only by an express written instrument signed by all Parties or their
11 representatives, and approved by the Court.

12 9.8. Agreement Binding on Successors. This Agreement will be binding upon, and inure
13 to the benefit of, the successors of each of the Parties.

14 9.9. Applicable Law. All terms and conditions of this Agreement and its exhibits will be
15 governed by and interpreted according to the internal laws of the state of California, without
16 regard to conflict of law principles.

17 9.10. Cooperation in Drafting. The Parties have cooperated in the drafting and preparation
18 of this Agreement. This Agreement will not be construed against any Party on the basis that the
19 Party was the drafter or participated in the drafting.

20 9.11. Confidentiality. To the extent permitted by law, all agreements made, and orders
21 entered during Action and in this Agreement relating to the confidentiality of information shall
22 survive the execution of this Agreement.

23 9.12. Use and Return of Aggrieved Employee Data. Information provided to PAGA
24 Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the PAGA Data
25 provided to PAGA Counsel by Defendant in connection with the mediation, other settlement
26 negotiations, or in connection with the Settlement, may be used only with respect to this
27 Settlement, and no other purpose, and may not be used in any way that violates any existing
28 contractual agreement, statute, or rule of court. Not later than 90 days after the Administrator

1 discharges its obligation to pay out of all Settlement funds, Plaintiff shall destroy all paper and
2 electronic versions of Aggrieved Employee Data received from Defendant unless, prior to the
3 Administrator's payment of all Settlement Funds, Defendant make a written request to PAGA
4 Counsel for the return, rather than the destructions, of Aggrieved Employee Data.

5 9.13. Headings. The descriptive heading of any section or paragraph of this Agreement is
6 inserted for convenience of reference only and does not constitute a part of this Agreement.

7 9.14. Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement
8 shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a
9 weekend or federal legal holiday, such date or deadline shall be on the first business day
10 thereafter.

11 9.15. Notice. All notices, demands or other communications between the Parties in
12 connection with this Agreement will be in writing and deemed to have been duly given as of the
13 third business day after mailing by United States mail, or the day sent by email or messenger,
14 addressed as follows:

15 To Plaintiff:
16 Harout A. Messrelian, Esq. [SBN 272020]
17 **MESSRELIAN LAW INC.**
18 500 N. Central Ave., Suite 840
19 Glendale, CA 91203
Telephone: (818) 484-6531
Facsimile: (818) 956-1983
Email: hm@messrelianlaw.com
pleadings@messrelianlaw.com

20 To Defendant:
21 James S. Cooper, Esq. [SBN 162469]
22 **LEVINSON ARSHONSKY**
23 **KURTZ & KOMSKY, LLP**
24 15303 Ventura Blvd., Suite 1650
Sherman Oaks, California 91403
Telephone: (818) 382-3434
Facsimile: (818) 382-3433
Email: jcooper@lakklawyers.com

25
26 9.16. Execution in Counterparts. This Agreement may be executed in one or more
27 counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this
28 Agreement shall be accepted as an original. All executed counterparts and each of them will be

deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

9.17. Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.

The Parties hereby execute this Agreement.

Dated: **ONISHA ANTHONY**

10/15/24

By: 
Onisha Anthony (Oct 15, 2024 20:42 PDT)

Onisha Anthony

Dated: 10/28/24

AG ARCADIA, LLC dba Huntington Drive Health and Rehabilitation Center

By: Raymund Villaluz

[NAME] Raymund Villaluz

[TITLE] Administrator

APPROVED AS TO FORM:

Dated: 10/15/24 **MESSRELIAN LAW INC.**

By: 
Harout A. Messrelian, Esq.
Attorneys for Plaintiff Onisha Anthony

Dated: **LEVINSON ARSHONSKY KURTZ & KOMSKY, LLP**

By: _____
James S. Cooper, Esq.
Attorneys for Defendant AG Arcadia, LLC
dba Huntington Drive Health and
Rehabilitation Center

1 deemed to be one and the same instrument if counsel for the Parties will exchange between
2 themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove
3 the existence and contents of this Agreement.

4 9.17. Stay of Litigation. The Parties agree that upon the execution of this Agreement the
5 litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further
6 agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the
7 date to bring a case to trial under CCP section 583.310 for the entire period of this settlement
8 process.

9 The Parties hereby execute this Agreement.

10 Dated: ONISHA ANTHONY

11 10/15/24

12 By: 
C:\Users\anthony\OneDrive\Documents\101515_2024 20 42 PM1

13 Onisha Anthony

14 Dated: 10/28/24

15 AG ARCADIA, LLC dba Huntington Drive Health
16 and Rehabilitation Center

17 By: 

18 [NAME] Raymund Villaluz

19 [TITLE] Administrator

20 APPROVED AS TO FORM:

21 Dated: 10/15/24

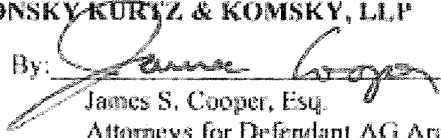
22 MESSRELIAN LAW INC.

23 By: 

24 Harout A. Messrelian, Esq.

25 Attorneys for Plaintiff Onisha Anthony

26 Dated: 12-10-24 LEVINSON ARSHONSKY KURTZ & KOMSKY, LLP

27 By: 

28 James S. Cooper, Esq.

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

EXHIBIT A



500 N. Central Avenue, Suite 840
Glendale, California 91203
Tel: (818) 484-6531
Fax: (818) 956-1983

VIA ELECTRONIC FILING

January 14, 2022

California Labor & Workforce Development Agency (LWDA)
Attn. PAGA Administrator
800 Capitol Mall, MIC-55
Sacramento, California 95814

VIA U.S. CERTIFIED MAIL (RETURN RECEIPT REQUESTED)

AG ARCADIA, LLC
c/o JACOB WINTNER
6300 WILSHIRE BLVD., SUITE 1800
LOS ANGELES, CA 90048

ONISHA ANTHONY v. AG ARCADIA, LLC

RE: PRIVATE ATTORNEYS GENERAL ACT

To Whom It May Concern:

Please be informed that our client, Ms. Onisha Anthony (hereinafter "our client" or "Ms. Anthony") seeks penalties on behalf of the State of California and all current and former non-exempt or hourly paid California employees ("aggrieved employees") who worked for AG ARCADIA, LLC dba Huntington Drive Health and Rehabilitation Center as well as any and all other rehabilitation/nursing facilities owned by AG ARCADIA in the State of California (hereinafter referred to as "AG ARCADIA") during the relevant time period pursuant to California Labor Code section 2698, et. seq., the Labor Code Private Attorneys General Act of 2004 ("PAGA"). The purpose of this letter is to comply with the statutory requirements of California Labor Code section 2699.3 and shall constitute notice of the same.

Ms. Anthony started working for AG ARCADIA on or around May 2021 through an agency and then June 2021 through the company itself as a Certified Nursing Assistant (CNA). Her employment ended in November 2021. Ms. Anthony was considered an hourly, non-exempt employee. Ms. Anthony did work the overnight shift as part of her employment.

It is our position that AG ARCADIA has violated the following Labor Code Sections against Ms. Anthony and other similarly situated aggrieved employees:

AG ARCADIA did not provide Ms. Anthony and other similarly situated aggrieved employees with the minimum wages to which they were entitled for work performed and as such did not compensate Ms. Anthony and others for all hours worked at the minimum wage rate pursuant to California Labor Code sections 1194, 1197 and 1197.1. This is so because Ms. Anthony and

others would often have to work through their meal periods, or their meal periods would be interrupted due to patient needs. There were also instances wherein Ms. Anthony would be clocked-out or not clocked-in, but has had to help a patient (go to the bathroom and other similar occurrences). Moreover, AG ARCADIA had a policy and practice of rounding down employee hours to the detriment of employees, resulting in minimum wage violations in that all employees were not paid for all actual hours worked.

Due to the "off the clock" work as alleged above, AG ARCADIA violated Labor Code §510 because it failed to pay our client and other similarly situated aggrieved employees overtime, even though they worked more than 8 hours per day, 12 hours per day and/or 40 hours per week throughout their employment. Ms. Anthony and others' actual work hours entitled them to overtime compensation, especially due to the "off the clock" as described above, however, they were not paid accurately and fully for their overtime hours worked. In addition, AG ARCADIA did not include bonus payments or incentive payments in calculating the correct regular rate of pay for the purposes of calculating the correct overtime rate of pay.

AG ARCADIA also violated Labor Code § 226.7 and the applicable Industrial Welfare Commission Wage Order no. 5 because it failed to provide our client and others with 10-minute rest periods for every four hours of work, or majority portion thereof, throughout their employment. AG ARCADIA did not completely relieve our client and others of all duty during said rest periods. AG ARCADIA did not pay to our client and others one additional hour of pay at our client's regular rate of compensation for each workday that one or more statutory rest periods was not provided. It was not company policy and not part of the company culture for employees such as Ms. Anthony and others to take rest breaks, especially in the type of environment in which she worked. They were understaffed and were responsible for taking care of too many patients. Moreover, Ms. Anthony and others are not able to walk away from patients in the middle of their care as they can't leave patients alone. As such, the culture at AG ARCADIA did not lend itself to the employees receiving statutory breaks wherein they were relieved of all work duties. It was the normal practice and custom of AG ARCADIA not to authorize, permit, and enforce statutory rest periods. As such, the work environment and culture at AG ARCADIA was not conducive to receiving statutory rest breaks under California law. In fact, Ms. Anthony did not receive a single rest break during her employment tenure at AG ARCADIA.

AG ARCADIA violated Labor Code §§ 512 and 226.7 along with the applicable Industrial Welfare Commission Wage Order no. 5 because it failed to provide our client and others the requisite 30-minute, uninterrupted meal periods for every five (5) hours of work throughout their employment. AG ARCADIA did not completely relieve our client and others of all duty during said meal periods. AG ARCADIA did not pay to our client and others one additional hour of pay at our client's regular rate of compensation for each workday that one or more statutory meal periods was not provided. When Ms. Anthony did receive meal breaks, it would often be after the 5th hour or 10th hour worked due to being too busy and understaffed. Furthermore, it was more than common for meal periods to be interrupted or for Ms. Anthony and others to work through their meal periods, including have to do charting. As such, and much like rest breaks, it was the normal practice and custom of AG ARCADIA not to authorize, permit, and enforce timely, uninterrupted statutory meal periods.

Furthermore, to the extent that AG ARCADIA paid meal and rest break premiums to employees, it did not include the “weighted average” regular rate of pay for employees (including bonus/incentive payments). Moreover, and as alluded to above, the fact that there was 1 CNA 35 patients made statutory breaks very difficult.

Furthermore, during the relevant time period, and due to the above labor code violations, AG ARCADIA failed to pay Ms. Anthony and others all wages due to them within any time period specified by California Labor Code section 204. AG ARCADIA was also in violation of California Labor Code section 226(a), by failing to include pertinent information on the wage statements, including but not limited to, all hours worked (minimum wages and overtime due to the “off the clock” work), gross wages earned, net wages earned, all applicable hourly rates, the correct start and end of the pay period, the correct name and address of the legal employer, all identifying employee information that is required, premium pay for the missed meal and rest breaks, among others. As such, AG ARCADIA did not provide our client and other similarly situated aggrieved employees with complete, accurate itemized wage statements. In fact, Ms. Anthony was not given access to paystubs during her entire tenure.

During the relevant time period, AG ARCADIA also failed to keep accurate and complete payroll records showing the actual hours worked per day and the wages paid to Ms. Anthony and others pursuant to California Labor Code sections 1174(d).

AG ARCADIA also violated Labor Code § 203 because it willfully failed to pay other similarly situated aggrieved employees earned and due wages upon separation of employment, either immediately upon involuntary termination, or within 72 hours of resignation. After our client’s employment with AG ARCADIA ended, AG ARCADIA failed and refused to pay all wages earned and due upon separation. These earned but unpaid wages include minimum wages, overtime compensation, and premium pay for missed meal and rest breaks.

Additionally, during the relevant time period, Ms. Anthony and others incurred necessary, business-related expenses and costs that were not reimbursed by AG ARCADIA. These costs include, but are not limited to, personal cell phone for business purposes and soap (in order to bathe the patients) as well as uniforms. Accordingly, AG ARCADIA was in violation of California Labor Code sections 2800 and 2802.

In addition, AG ARCADIA did not provide suitable rest break area per the applicable Industrial Welfare Commission Wage Order.

Furthermore, we believe your company has also violated Labor Code Section 558 and has engaged in business practices which violate Business and Professions Code Section 17200.

In addition, Ms. Anthony would have individual claims against AG ARCADIA for discrimination based on race, retaliation in violation of Labor Code Section 1102.5, and wrongful termination in violation of public policy. Ms. Anthony was the only African American employee at the location at which she worked and was clearly treated differently from the other



500 N. Central Avenue, Suite 840
Glendale, California 91203

Tel: (818) 484-6531

Fax: (818) 956-1983

employees, especially as it relates to discipline. Other employees who would provide the wrong medications to patients or would abuse patients, would only get a very short suspension, however, Ms. Anthony was terminated from her employment. In addition, Ms. Anthony was retaliated against for refusing to undertake certain assignments (like a unit she should not have been in charge of) because it would put the patient and her license at risk and was illegal in nature (i.e. cross-contamination due to covid-19 rules). The company did not like the fact that Ms. Anthony spoke out about illegal conduct in the workplace and terminated her employment as a result.

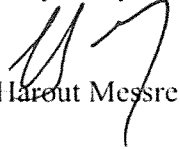
Each of the aforementioned violations, except the violations for inaccurate pay statements under Labor Code section 226(a), is among the enumerated serious violations set forth in Labor Code § 2699.5, for which there is no statutory right to cure.

Please take notice that, based upon the above-mentioned violations, and in addition to the penalties provided by those specific sections themselves, Ms. Anthony also intends to seek penalties under the following Labor Code sections which themselves are inviolable but provide for recovery of penalties for violating one or more of the above-mentioned Labor Code sections: Labor Code §§ 558, 226.3, 1197.1.

Should your agency choose not to pursue this matter, this law office intends to vigorously prosecute the aforementioned Labor Code violations on its behalf and vindicate the rights of all employees who have been subjected to these same Labor Code violations by AG ARCADIA.

If you have any questions or require additional information, please do not hesitate to contact us. Thank you in advance for your attention to this matter.

Very Truly Yours,



Harout Messrelian, Esq.

EXHIBIT B

<<DATE>>

TO BE TRANSLATED INTO SPANISH BY THE ADMINISTRATOR

<<FIRST NAME>> <<LAST NAME>>
<<ADDRESS>>

Re: Payment From *Onisha Anthony v. AG Arcadia, LLC*

Dear <<FIRST NAME>> <<LAST NAME>>:

Enclosed you will find a check made payable to you. This is your payment from the settlement of the lawsuit entitled *Onisha Anthony v. AG Arcadia, LLC*, Los Angeles County Superior Court, Case No. 22STCV36624 (the “Action”). The Action was filed against AG Arcadia, LLC (“AG Arcadia”) under the California Private Attorneys General Act of 2004, California Labor Code section 2698 *et seq.* (“PAGA”). The claim was brought by a former employee of AG Arcadia on behalf of the State of California and all persons who worked for AG Arcadia as hourly, non-exempt employees in the State of California at any point from November 21, 2021, to May 30, 2024 (“Aggrieved Employees”). You have been identified as an Aggrieved Employee on whose behalf the case was brought.

The plaintiff in this lawsuit claimed that AG Arcadia owed penalties under PAGA for alleged violations of the California Labor Code, including but not limited to the alleged failure to pay for all hours worked, minimum wages, and overtime wages; provide rest and meal periods; provide accurate wage statements; reimburse business expenses; and timely pay all wages due during employment and when employment ends, among other claims. AG Arcadia strongly denies all allegations, maintains that its policies and practices are and were lawful, and that all employees are and were provided with all wages and working conditions in conformance with applicable law at all times. This settlement constitutes a compromise of disputed claims and should not be construed as an admission of liability on the part of AG Arcadia.

The Court has not ruled on the merits of the lawsuit, but it has approved a gross settlement of \$110,000. By law, 75% of the net settlement amount (the amount left over after certain costs and fees are deducted) goes to the State of California. The remainder (i.e., 25%) goes to the Aggrieved Employees. Enclosed is a check for your share of the settlement, which is based on the number of pay periods you worked as an hourly, non-exempt employee for AG Arcadia in California between November 21, 2021 and May 30, 2024.

You are not a party to this lawsuit, but you and the State are bound by the judgment and the release of claims. The claims released by this Settlement are more fully described in Paragraph 5 of the Settlement Agreement, which is available at [Settlement Administrator’s website].

If you have further questions about this settlement, please contact Phoenix Settlement Administrators, [Settlement Administrator’s contact info].

Sincerely,

[NAME AND TITLE OF SIGNATORY]

EXHIBIT 2



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

June 25, 2024

CASE ASSUMPTIONS

Class Members	387
Opt Out Rate	N/A
Opt Outs Received	
Total Class Claimants	387
Subtotal Admin Only	\$5,008.28

Flat Fee Total \$5,000.00

For 387 Class Members

Pricing Good for Scope of Estimate Only

All Aspects of Escheating to the State of CA Included

Spanish Translation, Printing & Mailing Included

Case: Anthony v. AG Arcadia, PAGA Administration

Phoenix Contact: Michael E. Moore
Contact Number: 949.331.0131
Email: mike@phoenixclassaction.com

Requesting Attorney: Harout Messrelian
Firm: Messrelian Law, Inc.
Contact Number: 818.484.6531
Email: hm@messrelianlaw.com

Assumptions and Estimate are based on information provided by counsel. If class size changes, PHX will need to adjust this Estimate accordingly.

Estimate is based on 387 Class Members. Class data **Must** be sent in Microsoft Excel or uploaded in the same format. Class Data Must be sent in one spreadsheet, with no additional programming needed. A rate of \$150 per hour will be charged for any additional analysis or programming. Pricing good for 90 day

Case & Database Setup / Toll Free Setup & Call Center / NCOA (USPS)

Administrative Tasks:	Rate	Hours/Units	Line Item	Estimate
Programming Manager	\$100.00	2		\$200.00
Programming Database & Setup	\$100.00	1		\$100.00
Toll Free Setup*	\$100.00	1		\$100.00
Call Center & Long Distance	\$2.50	41		\$102.50
NCOA (USPS)	\$75.00	1		\$75.00
Total				\$577.50

* Up to 120 days after disbursement

Data Merger & Scrub / PAGA Letter & Check / Postage / Spanish Translation

Project Action	Rate	Hours/Units	Line Item	Estimate
Notice Packet Formatting	\$100.00	1		\$100.00
Spanish Translation	\$150.00	1		\$150.00
Data Merge & Duplication Scrub	\$0.09	387		\$34.83
PAGA Letter and Check Packet	\$1.00	387		\$387.00
Estimated Postage (up to 1 oz.)*	\$0.64	387		\$247.68
Total				\$919.51

* Prices good for 90 days. Subject to change with the USPS Rate or change in Notice pages or Translation, if any.



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

Skip Tracing & Remailing PAGA Packets / Tracking & Programming Undeliverables

Project Action:	Rate	Hours/Units	Line Item	Estimate
Case Associate	\$55.00	3		\$165.00
Skip Tracing Undeliverables	\$0.75	71		\$53.25
Remail PAGA Packets	\$1.00	68		\$68.00
Estimated Postage	\$0.64	68		\$43.52
Programming Undeliverables	\$50.00	1		\$50.00
Total				\$379.77

Case Management

Project Action:	Rate	Hours/Units	Line Item	Estimate
Case Associate	\$55.00	2		\$110.00
Case Manager	\$85.00	2		\$170.00
Total				\$280.00

Calculation & Disbursement Programming/ Create & Manage QSF/ Mail Checks

Project Action:	Rate	Hours/Units	Line Item	Estimate
Programming Calculations	\$135.00	1		\$135.00
Disbursement Review	\$135.00	1		\$135.00
Programming Manager	\$95.00	2		\$190.00
QSF Bank Account & EIN	\$135.00	1		\$135.00
Check Run Setup & Printing	\$135.00	2		\$270.00
Total				\$865.00

* Checks are printed on 8.5 x 11 in. sheets with W2/1099 Tax Filing



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

Tax Reporting & Reconciliation / Re-Issuance of Checks / Conclusion Reports and Declarations				
Project Action:	Rate	Hours/Units	Line Item	Estimate
Case Supervisor	\$115.00	2		\$230.00
Remail Undeliverable Checks (Postage Included)	\$1.50	41		\$61.50
Case Associate	\$55.00	2		\$110.00
Reconcile Uncashed Checks	\$85.00	3		\$255.00
Conclusion Reports	\$115.00	2		\$230.00
Case Manager Conclusion	\$85.00	2		\$170.00
Final Reporting & Declarations	\$115.00	2		\$230.00
QSF Annual Tax Reporting *	\$700.00	1		\$700.00
(State Tax Reporting & Escheating Uncashed Checks to the State of CA included)				

Total \$1,986.50

* All applicable California State & Federal taxes, which include SUI, ETT, and SDI, and FUTA filings. Additional taxes are Defendant's responsibility.

Estimate Total: \$5,008.28



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

TERMS AND CONDITIONS

Provisions: The case estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make any provision for any services or class size not delineated in the request for proposal or stipulations. Proposal rates and amounts are subject to change upon further review, with Counsel/Client, of the Settlement Agreement. Only pre-approved changes will be charged when applicable. No modifications may be made to this estimate without the approval of PSA (Phoenix Settlement Administrators). All notifications are mailed in English language only unless otherwise specified. Additional costs will apply if translation into other language(s) is required. Rates to prepare and file taxes are for Federal and California State taxes only. Additional charges will apply if multiple state tax filing(s) is required. **Pricing is good for ninety (90) days.**

Data Conversion and Mailing: The proposal assumes that data provided will be in ready-to-use condition and that all data is provided in a single, comprehensive Excel spreadsheet. PSA cannot be liable for any errors or omissions arising due to additional work required for analyzing and processing the original database. A minimum of two (2) business days is required for processing prior to the anticipated mailing date with an additional two (2) business days for a National Change of Address (NCOA) update. Additional time may be required depending on the class size, necessary translation of the documents, or other factors. PSA will keep counsel apprised of the estimated mailing date.

Claims: PSA's general policy is to not accept claims via facsimile. However, in the event that facsimile filing of claims must be accepted, PSA will not be held responsible for any issues and/or errors arising out of said filing. Furthermore, PSA will require disclaimer language regarding facsimile transmissions. PSA will not be responsible for any acts or omissions caused by the USPS. PSA shall not make payments to any claimants without verified, valid Social Security Numbers. All responses and class member information are held in strict confidentiality.

Payment Terms: All postage charges and 50% of the final administration charges are due at the commencement of the case and will be billed immediately upon receipt of the data and/or notice documents. PSA bills are due upon receipt unless otherwise negotiated and agreed to with PSA by Counsel/Client. In the event the settlement terms provide that PSA is to be paid out of the settlement fund, PSA will request that Counsel/Client endeavor to make alternate payment arrangements for PSA charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the settlement account is funded by Defendant, or no later than the time of disbursement. Amounts not paid within thirty (30) days are subject to a service charge of 1.5% per month or the highest rate permitted by law.

Tax Reporting Requirements

PSA will file the necessary tax returns under the EIN of the QSF, including federal and state returns. Payroll tax returns will be filed if necessary. Under the California Employment Development Department, all taxes are to be reported under the EIN of the QSF with the exception of the following taxes: Unemployment Insurance (UI) and Employment Training Tax (ETT), employer-side taxes, and State Disability Insurance (SDI), an employee-side tax. These are reported under Defendant's EIN. Therefore, to comply with the EDD payroll tax filing requirements we will need the following information:

1. Defendant's California State ID and Federal EIN.
2. Defendant's current State Unemployment Insurance (UI) rate and Employment Training Tax (ETT) rate. This information can be found in the current year DE 2088, Notice of Contribution Rates, issued by the EDD.
3. Termination dates of the class members, or identification of current employee class members, so we can account for the periods that the wages relate to for each class member.
4. An executed Power of Attorney (Form DE 48) from Defendant. This form is needed so that we may report the UI, SDI, and ETT taxes under Defendant's EIN on their behalf. If this form is not provided we will work with the EDD auditors to transfer the tax payments to Defendant's EIN.
5. Defendant is responsible for reporting the SDI portion of the settlement payments on the class member's W-2. PSA will file these forms on Defendant's behalf for an additional fee and will issue an additional W-2 for each class member under Defendant's EIN, as SDI is reported under Defendant's EIN rather than the EIN of the QSF. The Power of Attorney (Form DE 48) will be needed in order for PSA to report SDI payments.

EXHIBIT 3