IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA

LAVINIA PRINCE, *individually and on behalf of all others similarly situated* Plaintiff, v. BRICKYARD HEALTHCARE, INC. ET AL Defendants.	Case No.: 1:22-cv-01753 Honorable Matthew P. Brookman

NOTICE OF MOTION

PLEASE TAKE NOTICE that upon the accompanying memorandum of law with exhibits attached thereto, the undersigned moves this Court for an Order approving the settlement memorialized in the Settlement Agreement with Defendants Brickyard Healthcare, Inc.; Brickyard LP; and Merrillville Operating, LLC ("Defendants") and dismissing this action. For all the reasons set forth above, Plaintiff respectfully request that the Court grant this Motion by entering the proposed approval order.

Respectfully Submitted,

Dated: January 16, 2024

/s/ Jason S. Rathod
Jason S. Rathod (admitted *pro hac vice*)
Nicholas A. Migliaccio (admitted *pro hac vice*)
Mark Patronella (admitted *pro hac vice*)
MIGLIACCIO & RATHOD LLP
412 H Street N.E., 3rd Floor
Washington, D.C. 20002
(202) 470-3520
jrathod@classlawdc.com
nmigliaccio@classlawdc.com
mpatronella@classlawdc.com

Scott D. Gilchrist (#16720-53)
COHEN & MALAD, LLP

One Indiana Square, Suite 1400
Indianapolis, IN 46204
Tel: (317) 636-6481
Fax: (317) 636-2593
sgilchrist@cohenandmalad.com

Attorneys for the Plaintiff and Proposed Settlement Collective Members

CERTIFICATE OF SERVICE

I hereby certify that, on January 16, 2024, I filed the preceding pleading with the Clerk of the Court using the ECF system, which will send such filing to all attorneys of record.

/s/ Jason Rathod

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA

LAVINIA PRINCE, *individually and on behalf of all others similarly situated*

Plaintiff,

v.

BRICKYARD HEALTHCARE, INC. ET AL
Defendants.

Case No.: 1:22-cv-01753

Honorable Matthew P. Brookman

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S UNOPPOSED MOTION FOR APPROVAL OF THE SETTLEMENT AGREEMENT

ATTORNEYS FOR PLAINTIFFS:

Jason S. Rathod*
Nicholas A. Migliaccio*
Mark D. Patronella*
MIGLIACCIO & RATHOD LLP
412 H Street N.E., 3rd Floor
Washington, D.C. 20002
(202) 470-3520
jrathod@classlawdc.com
nmigliaccio@classlawdc.com
mpatronella@classlawdc.com

*admitted *pro hac vice*

Scott D. Gilchrist (#16720-53)
COHEN & MALAD, LLP
One Indiana Square, Suite 1400
Indianapolis, IN 46204
Tel: (317) 636-6481
Fax: (317) 636-2593
sgilchrist@cohenandmalad.com

INTRODUCTION

Plaintiff Lavinia Prince ("Plaintiff"), alleges that Defendants Brickyard Healthcare, Inc.; Brickyard LP; and Merrillville Operating, LLC ("Defendants") did not compensate her in the correct amount of overtime wages due under the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201, *et seq.* Plaintiff and Defendants (the "Parties") have agreed to settle all claims asserted by Plaintiff pertaining to, arising from, or associated with her FLSA lawsuit claims.

The Parties, by and through their undersigned counsel, respectfully request that this Court enter an order approving the Parties' proposed settlement agreement and granting dismissal because the proposed settlement represents a fair and reasonable resolution of the Parties' bona fide dispute and further state as follows:

I. FACTUAL AND PROCEDURAL BACKGROUND

A. Procedural History

Plaintiff filed a Collective Action Complaint against Defendants in the United States District Court for the Southern District of Indiana, on September 2, 2022, alleging violations of the Fair Labor Standards Act ("FLSA") ("the Action"). (Dkt. No. 1). Plaintiff sought to represent herself and all other hourly-paid employees of Defendants as a collective action under the FLSA. *Id*. Defendants filed their answer on November 1, 2022. *See* **Exhibit 1**, Declaration of Jason S. Rathod ("Rathod Decl.") ¶ 10. On November 16, 2022, the Parties jointly submitted a case management plan to the Court. *Id* at. ¶ 11. Following an initial pretrial conference on November 23, 2022, the case management plan was approved as submitted. *Id.* In December 2022, Plaintiff served formal discovery requests upon Defendants. *Id* at. ¶ 12. In January 2023, Defendants produced voluminous and responsive payroll records in response to Plaintiff's requests for production—as well as interrogatory responses concerning, business and payroll practices. *Id* at. ¶

14. Plaintiff's counsel then reviewed, analyzed, and applied this data to assess damages prior to mediation. *Id* at. ¶ 15-16.

B. Settlement Negotiations

On June 6, 2023, the Parties engaged in a settlement conference with mediator Michael Russell to attempt to resolve this case. After comprehensive settlement negotiations, the Parties ultimately reached an agreement on the settlement amount and the structure of the settlement. *Id*. at ¶ 18. The Parties negotiated the remaining terms of the settlement, which were memorialized in the formal settlement agreement (attached hereto as **Exhibit 2**) executed in full on January 16, 2024. *Id.* at ¶ 20 (the "Settlement Agreement"). This settlement provides substantial monetary relief for the Plaintiff and the Settlement Collective Members.[1] *Id.* ¶ 30.

While Plaintiff believed her liability case was strong, she recognized that a complete victory on every aspect of her claim, including the measure of damages, was far from certain. The Parties also took into account the costs and risks associated with further litigation, and the benefits, certainties, and judicial economies associated with resolving a complex case before dispositive motion practice and possible trial. *Id.* at ¶¶ 18,31. As a result, the Parties negotiated a global resolution of this dispute. *See generally*, Settlement Agreement.

Defendants denied and continue to deny each and every allegation and all charges of wrongdoing or liability of any kind related to the claims and contentions asserted by Plaintiff in the Action. Nonetheless, Defendants agreed to settle the claims asserted in this lawsuit on the terms and conditions set forth in the proposed settlement agreement to avoid the burden and expense of continued litigation.

II. SUMMARY OF THE SETTLEMENT TERMS

[1] Defined in the Settlement Agreement as including: "any hourly worker Defendants employed from September 2, 2019 to the present who was paid an overtime rate that did not account for the extra shift bonuses that he/she was paid in the same week." Settlement Agreement at § II.R.

The terms of this settlement are contained in the Settlement Agreement. There are no undisclosed side agreements between the Plaintiff and Defendants. Rathod Decl. ¶ 23.

A. The Settlement Payment

To avoid the time and expense of continued litigation and risks and delays inherent in continuing the litigation, the Parties agreed to pay $215,000.00 (the "Common Fund Amount"). Settlement Agreement § I. The Common Fund Amount covers: (1) all attorneys' fees and costs in connection with Collective Counsel's representation of Plaintiff, including all attorneys' fees and costs that may arise in the future in connection with the Settlement Agreement, including, without limitation, seeking Court approval of the Settlement Agreement; (2) all payments to the Settlement Collective Members; and (3) a service payment to the Plaintiff. *Id.* at § VI.

B. Releases

The Settlement Agreement provides that, upon entry of an order approving the settlement by the Court, the Settlement Collective Members will agree to:

> release and forever discharge all Released Claims[2] . . . arising or accruing prior to the date of the Approval Order of the Settlement that they have or may have, against the Released Parties.[3]

Settlement Agreement §VI.B.1

[2] Defined as "any and all claims, debts, obligations, guarantees, costs, expenses, attorneys' fees, demands, actions, rights, causes of action, and liabilities against any of the Released Parties, arising under Federal or state law, that were or could have been asserted in the Complaint relating to the alleged failure to include bonuses and incentives into the regular rate for the purposes of calculating overtime pay, including claims arising under the Fair Labor Standards Act of 1938 ("FLSA") and any analogous state or local laws, whether known or unknown, and whether anticipated or unanticipated, that arose or accrued while employed by Defendants from September 2, 2019 through the date of the Approval Order." Settlement Agreement §II.O.

[3] Defined as "Brickyard Healthcare, Inc.; Brickyard LP; and Merrillville Operating, LLC, as well as their owners, predecessors, successors, assigns, agents, directors, officers, employees, representatives, attorneys, insurers, and parents, divisions, subsidiaries, and affiliates, and all persons acting by, through, under, or in concert with any of them." Settlement Agreement §II.P.

The General Release, attached as Exhibit A to the Settlement Agreement, also provides that, upon entry of an order approving the settlement by the Court, the Plaintiff will agree to:

> irrevocably and unconditionally release, discharge, compromise and settle any and all CLAIMS,[4] demands, rights of action or obligation (including all attorneys' fees and costs actually incurred), matured or unmatured, of whatever nature and whether or not presently known that exist as of the execution date of this Agreement, including but not limited to any CLAIMS made in the Lawsuit, and any other CLAIMS arising out of or relating to Plaintiff's employment with any of the RELEASEES[5] and/or her separation therefrom, under any federal, state or local law, common law, or statute.
>
> General Release at § 5.

C. Calculation and Distribution of the Settlement Payment

Within ten business days following the Court's approval of the Settlement Agreement, Defendants shall distribute the Common Fund Amount in accordance with the Settlement Agreement § VI.D. to the third-party claims administrator. Upon deposit, the third-party claims administrator shall promptly distribute attorneys' fees and litigation costs to Collective Counsel and the service award to the Plaintiff. *Id.* at § VI.A.2.

The distribution of the remainder of the Common Fund Amount designated for Settlement Collective Members is based on Defendants' employee payroll data and is allocated to each of the members based on this data. The funds from the Common Fund Amount shall be dispersed to Settlement Collective Members via mailed check, which shall include language stating that, by

[4] Defined as "any and all complaints, lawsuits, claims (including without limitation, the allegations contained in the Lawsuit), liabilities, obligations, promises, agreements, grievances, controversies, damages, actions, causes of action, rights, demands, losses, debts, and expenses (including costs and attorneys' fees actually incurred) that Plaintiff has or ever had against RELEASEES up to and including the date of this Agreement." General Release at § 1.b.

[5] Defined as "Brickyard Healthcare, Inc.; Brickyard LP; and Merrillville Operating, LLC, as well as their owners, predecessors, successors, assigns, agents, directors, officers, employees, representatives, attorneys, insurers, and parents, divisions, subsidiaries, and affiliates, and all persons acting by, through under, or in concert with any of them." General Release at §1.a.

cashing the check, Settlement Collective Members will be subject to the release described in Section II.B. of this motion and § VI.B. of the Settlement Agreement.

D. Service Payment Lavinia Prince

The Common Fund Amount includes the distribution of a service payment to Plaintiff Lavinia Prince in the amount of $5,000.00, as payment for her efforts on behalf of the collective, including assisting counsel with the prosecution of the lawsuit. *Id.* § VI.A.3.

E. Attorneys' Fees and Litigation Costs

The Parties negotiated and agreed that Defendants will not contest a request by Plaintiff's counsel for 1) an award of attorneys' fees in the gross amount of $71,666.67 for work performed in connection with this matter and 2) reasonable out-of-pocket litigation costs expended. *Id.* at § V.A.2. "The Seventh Circuit has recognized that 'most suits for damages in this country are handled on the plaintiff's side on a contingent-fee basis' and that the 'typical contingent fee is between 33 and 40 percent.'" *King v. Trek Travel, LLC*, No. 18-cv-345-wmc, 2019 U.S. Dist. LEXIS 215838, at *6-7 (W.D. Wis. Dec. 12, 2019)(quoting part *Gaskill v. Gordon*, 160 F.3d 361, 362 (7th Cir. 1998)); *Adams v. Aztar Ind. Gaming Co., LLC*, No. 3:20-cv-00143-MPB-MJD, 2023 U.S. Dist. LEXIS 181318, at *13 (S.D. Ind. Aug. 11, 2023)(approving attorney fees of 33.33% of the common fund in an FLSA case); *Scott v. Freeland Enter., Inc.*, No. 1:22-CV-43-HAB, 2023 U.S. Dist. LEXIS 97140, at *6 (N.D. Ind. June 5, 2023)(holding, in an FLSA case, that "Plaintiffs' request for one-third of the settlement in attorneys' fees reflects fees upheld by the Seventh Circuit."). Plaintiff's request for attorney fees amounting to one-third of the common fund here are therefore appropriate.

Plaintiff represents that the attorney fees requested, as well as the requested $13,220.50 in costs, are fair and reasonable in light of all the facts and circumstances, including the past and

anticipated future time spent by counsel, their hourly rates, the risks undertaken, and the results achieved. *Adams v. Aztar Ind. Gaming Co., LLC*, No. 3:20-cv-00143-MPB-MJD, 2023 U.S. Dist. LEXIS 181318, at *13 (S.D. Ind. Aug. 11, 2023)(approving plaintiff's request for reasonable litigation costs on top of attorney fees amounting to 33.33% of the common fund in an FLSA case). Defendants take no position regarding the appropriateness of this fee award.

III. STANDARD GOVERNING MOTIONS TO APPROVE FLSA SETTLEMENTS

In the Seventh Circuit, settlements of FLSA claims must be approved by a Court of competent jurisdiction. *See, e.g., Walton v. United Consumers Club, Inc.*, 786 F.2d 303, 306 (7th Cir. 1986) (citing *Lynn's Food Stores, Inc. v. Dep't of Labor*, 679 F.2d 1350, 1352-53 (11th Cir. 1982)); *Koch v. Jerry W. Bailey Trucking, Inc.*, 51 F.4th 748, 752 (7th Cir. 2022). An employee may compromise a claim under the FLSA pursuant to a court-authorized settlement of an action alleging a violation of the FLSA. *Id.* When reviewing a proposed FLSA settlement, the district court must scrutinize the settlement for fairness and decide whether the proposed settlement is a "fair and reasonable resolution of a bona fide dispute over FLSA provisions." *Knox v. Jones Grp.*, No. 15-cv-1738 SEB-TAB, 2017 U.S. Dist. LEXIS 146049, at *3 (S.D. Ind. Aug. 31, 2017)(quoting *Lynn's Food Stores, Inc. v. Dep't of Labor*, 679 F.2d 1350, 1352-54 (11th Cir. 1982)). If a settlement in an employee FLSA suit reflects a reasonable compromise over issues, such as FLSA coverage or computation of back wages that are actually in dispute, the court may approve the settlement "in order to promote the policy of encouraging settlement of litigation." *Lynn's Food Stores, Inc.*, 679 F.2d at 1354.

When FLSA cases are settled on a collective basis, courts in this district have held that a one-step settlement approval process is appropriate. *See Bainter v. Akram Invs., LLC*, No. 17 C 7064, 2018 U.S. Dist. LEXIS 177445, at *5 (N.D. Ill. Oct. 9, 2018); *Heuberger v. Smith*, No. 3:16-

CV-386 JD, 2019 U.S. Dist. LEXIS 118174, at *7 (N.D. Ind. Jan. 4, 2019). Because the failure to opt into an FLSA lawsuit does not prevent potential members of the collective from bringing their own suits in the future, FLSA collective actions do not implicate the same due process concerns as Rule 23 actions. *Woods v. N.Y. Life Ins. Co.*, 686 F.2d 578, 579-80 (7th Cir. 1982); *Knox v. Jones Grp.*, No. 15-cv-1738 SEB-TAB, 2017 U.S. Dist. LEXIS 146049, at *6 (S.D. Ind. Aug. 31, 2017).

IV. APPROVAL OF THE SETTLEMENT IS APPROPRIATE.

The settlement reached by the Parties represents a fair, just, and reasonable resolution of the claims alleged by Plaintiff under the FLSA and any remaining disputes between the Parties. The Settlement Agreement was negotiated at arm's length by experienced counsel concerning *bona fide* disputes between their clients. Rathod Decl. ¶¶ 21-22.

A. ***Bona Fide* Disputes Exist.**

The settlement of the instant action involves a *bona fide* dispute. Plaintiff maintains that Defendants failed to properly calculate the regular rate for the purposes of paying overtime to Plaintiff and the Settlement Collective Members. Specifically, Plaintiff maintains that key non-discretionary bonuses paid out to Settlement Collective Members were not taken into account when calculating the regular rate. On liability, Plaintiff would have to overcome Defendants' legal and factual defenses, including, but not limited to, their arguments that they complied with the FLSA.

As in any complex action, the Plaintiff generally faces uncertainties and cannot know how the case would proceed in the absence of the agreement. *Cf.*, *West Virginia v. Chas. Pfizer & Co.*, 314 F. Supp. 710, 743-44 (S.D.N.Y. 1970), *aff'd*, 440 F. 2d 1079, 1085-86 (2d Cir.) ("[i]t is known from past experience that no matter how confident one may be of the outcome of litigation, such

confidence is often misplaced").

B. The Settlement Is Fair and Reasonable.

In determining whether a settlement is fair and reasonable, courts have considered non-exclusive factors such as: "(1) the complexity, expense, and likely duration of the litigation; (2) the reaction of the Plaintiffs to the settlement; (3) the stage of the proceeding and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the action through the trial; (7) the ability of the Defendants to withstand a larger judgment; (8) the range of reasonableness of the Common Fund Amount in light of the best possible recovery; and (9) the range of reasonableness of the Common Fund Amount in light of all the risks of litigation." *Burkholder v. City of Fort Wayne*, 750 F. Supp. 2d 990, 995 (N.D. Ind. 2010) (quoting *Misiewicz v. D'Onofrio Gen. Contrs. Corp*., 2010 U.S. Dist. LEXIS 60985, at *4 (E.D.N.Y. May 17, 2010).

The Parties' settlement is fair and reasonable and meets all applicable factors considered by courts. The settlement appropriately factored in the complexity, risk, expense, likely duration of the litigation, and the range of reasonableness of the Common Fund Amount in light of the best possible recovery. *See* Rathod Decl. ¶¶ 18,31.

Moreover, the settlement is appropriate at this stage of the proceedings. Defendants produced substantial documents and data and Collective Counsel conducted a thorough review of these materials. *Id.* at ¶¶ 14-16. Collective Counsel's efforts were aided by expert quantitative analysis. *Id*. at ¶15. Plainly, the Parties had more than sufficient information to assess the risks of liability and damages.

Additionally, the settlement is well within the range of possible recovery. As in all wage and hour claims, particularly in the collective action context, the nature and amount of recoverable

damages was uncertain. Even if a trier of fact ultimately found liability, a range of possible damages existed depending on factors including, but not limited to, the Parties and their witnesses' credibility, the limitations in the available data, the applicable statute of limitations, and Defendants' knowledge, willfulness and good faith. Taking these considerations into mind, the amount of the settlement is appropriate in relation to the potential recovery and risks.

The settlement is based on a review of the overtime paid to Settlement Collective Members and that which would have been paid to Settlement Collective Members had their regular rate been calculated to include the non-discretionary bonuses identified in the Complaint. The regular rate calculations are a function of the number of hours worked, the value of the non-discretionary bonuses, and the frequency of the bonuses. The total amount includes additional service payments of $5,000 to Lavinia Prince, who personally devoted considerable time to the prosecution of the lawsuit, including but not limited to providing information during initial case investigation and providing key insight throughout the prosecution of the case. *Id.* at ¶ 28.

Based on the aforementioned factors, the Parties conclude that a settlement on the terms set forth in the Settlement Agreement is fair, reasonable, adequate, in the best interests of the Parties, and not worth the costs and risks associated with a trial. As part of the Common Fund Amount, the Parties have agreed that Collective Counsel will receive $71,666.67 in attorneys' fees plus recoverable costs,[6] a sum Collective Counsel represents is consistent with the attorney-client agreement executed by the Plaintiff. *Id.* at ¶ 27. Defendants take no position regarding the fees and costs. *Id.* at ¶ 29. In sum, the Settlement Agreement constitutes a fair and reasonable

[6] Attorney costs amount to $13,220.50. *Id.* at ¶ 27.

settlement of all claims consistent with abundant precedent, and the interests of judicial economy support approval of the Settlement Agreement.

CONCLUSION

For the reasons set forth above, the Parties respectfully request an order: (1) approving the Settlement Agreement, authorizing the payments to eligible Settlement Collective Members, including the service payments to Plaintiff Lavinia Prince, and the payment of attorneys' fees and costs set forth therein; (2) releasing the claims of Plaintiff Prince and each of the Settlement Collective Members who cash the check mailed to them, (3) dismissing the action in its entirety with prejudice; and (4) retaining jurisdiction only for the purpose of enforcing payment of the Common Fund Amount. *See* Proposed Approval Order attached hereto as **Exhibit 3**.

Dated: January 16, 2024

Respectfully Submitted,

/s/ Jason S. Rathod
Jason S. Rathod (admitted *pro hac vice*)
Nicholas A. Migliaccio (admitted *pro hac vice*)
Mark D. Patronella (admitted *pro hac vice*)
MIGLIACCIO & RATHOD LLP
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Washington, D.C. 20002
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Attorneys for the Plaintiff and Proposed

Settlement Collective Members

CERTIFICATE OF SERVICE

I, the attorney, hereby certify that on January 16, 2024, I filed the attached with the Clerk of the Court using the ECF system, which will send such filing to all attorneys of record.

/s/ Jason S. Rathod
Jason S. Rathod

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA

Lavinia Prince, individually and on behalf of all others similarly situated,	**Case No: 1:22-cv-01753**
Plaintiff,	**District Judge Matthew P. Brookman**
v.	
Brickyard Healthcare, Inc. et al.	
Defendants.	

DECLARATION OF JASON S. RATHOD IN SUPPORT OF THE UNOPPOSED MOTION FOR APPROVAL OF THE SETTLEMENT AGREEMENT

I, Jason S. Rathod, being competent to testify, make the following declaration based on my personal knowledge and, where stated, upon information and belief. I declare:

1. I am a partner in the law firm Migliaccio & Rathod LLP ("M&R") and, alongside Scott Gilchrist of Cohen & Malad, LLP (collectively "Collective Counsel") served as counsel of record for Plaintiff Lavinia Prince and the Settlement Collective in this matter. I submit this Declaration in support of the Unopposed Motion for Approval of the Settlement Agreement. Except as otherwise noted, I have personal knowledge of the facts stated below. If called on to do so, I could and would competently testify thereto.

Counsel Qualifications

2. I have been an attorney in practice for over ten years and am one of the founding partners of Migliaccio & Rathod LLP, which is based in Washington D.C.

3. My partner, Nicholas Migliaccio, and I started our firm in 2016. Since then, M&R has helped secure a number of significant orders in class and collective action cases. Nearly all of M&R's cases fall in the category of complex civil litigation and include a number of

collective and class action cases pending across the country. For example, I was recently appointed to serve on the Plaintiff's Steering Committee in In Re Philips Recalled CPAP, Bi-Level PAP, and Mechanical Ventilator Products Liability Litigation, Case No.2:21-mc-01230 (W.D.P.A.). I and my firm have also been appointed as Class Counsel in a number of noteworthy wage theft, consumer protection, civil rights, and environmental contamination. *See, e.g.*, *Stillman v. Staples*, Case No. 07-849 (D.N.J.) (served as a member of the trial team where the plaintiffs won a nearly $2.5 million verdict against Staples for unpaid overtime on behalf after a six-week jury trial; after the verdict I served in a central role in the consolidated MDL litigation, which lasted nearly two years after the *Stillman* verdict and ultimately settled for $42 million); *Colgate, et al. v. JUUL*, No. 3:18-cv-02499-WHO (Dkt. 63) (appointing firm, along with one other firm, as interim lead counsel in putative nationwide class action against e-cigarette manufacturer JUUL, prior to formation of multidistrict litigation); *Valsartan N-Nitrosodimethylamine (NDMA) Products Liability Litigation*, MDL Case No: 1:19-md-02875-RBK-JS (D.N.J.) (appointed to the plaintiffs' steering committee and serve as co-chair of the medical monitoring committee in multi-district litigation arising from worldwide recalls of generic Valsartan that had been found to be contaminated with probable human carcinogens); *In re Chevrolet Bolt EV Battery Litigation*, Case No. 2:20-cv-13256-TGB-CI (E.D. Mich.) (appointed to plaintiffs' steering committee representing owners and lessees of Chevy Bolt vehicles alleging that a ubiquitous defect in lithium-batteries used in the electric vehicles risk catching fire).

4. The attorneys at M&R have litigated cases leading to recoveries of hundreds of millions of dollars for consumers, workers, and other victims of corporate misconduct. M&R has a track record of investing the time, energy, and resources necessary to develop cases which implicate significant economic, societal, and health concerns. *See, e.g.*, *Hill v. Cty. of*

Montgomery, No. 9:14-cv-00933 (BKS/DJS), 2018 U.S. Dist. LEXIS 140305, at *32 (N.D.N.Y. Aug. 20, 2018) (granting class certification in civil rights case for conditions of confinement and finding M&R adequate to represent the class; case ultimately settled for $1 million on behalf of the class); *see also McDonald v. Franklin County, Ohio*, Case No. 2:13-cv-503 (S.D. Ohio) (served as class counsel and achieving a multi-million dollar settlement on behalf of the class).

5. M&R also has meaningful trial experience, including class and collective action trials. In *Helmer v. Goodyear Tire & Rubber Co.*, Civil Action No. 12-cv-00685-RBJMEH (D. Colo. Mar. 21, 2014I served on the trial team and, in connection with that role, deposed a key statistics expert and successfully had his testimony excluded, even though the expert had testified in dozens of class action cases without limitation. My trial experience prompted the American Association for Justice to select me as a panelist at a nationwide legal education program, *Trying the Class Action: Practical Tips from the Pros*.

6. M&R also brings relevant experience beyond that gained in the courtroom. For example, I published two law review articles about private enforcement and aggregate litigation, one of which was cited in a proposed rule by the Consumer Financial Protection Bureau ("CFPB") to prohibit class action waivers in arbitration agreements in consumer contracts. *See* CFPB, 12 CFR Part 1040, n. 611, *https://files.consumerfinance.gov/f/documents/201707_cfpb_Arbitration-Agreements-Rule.pdf*. Attached hereto as **Exhibit A is a true and correct copy of the firm resume detailing** additional experience.

Initial Investigation

7. This is a collective action brought by Plaintiff Prince ("Plaintiff" or "Collective Representative"), individually and on behalf of all others similarly situated (the "Collective"), arising out of Defendants' Brickyard Healthcare, Inc.; Brickyard LP; and Merrillville Operating,

LLC ("Defendants") failure to include certain bonuses in the "regular rate" for the purposes of calculating overtime.

8. My firm and co-counsel vigorously and aggressively gathered all information available regarding the payroll practices at issue. We conducted a thorough examination and investigation of the facts and law relating to the matters in the Litigation, which included extensive informal discovery, fact gathering, review of federal and state wage and hour law, and consultation with a damages expert.

Procedural Posture

9. After an initial investigation, Plaintiff filed a collective action complaint against Defendants in the United States District Court for the Southern District of Indiana, on September 2, 2022, on behalf of hourly-paid manufacturing employees of Defendants alleging violations of the FLSA.

10. Defendants filed their answer on November 1, 2022.

11. On November 16, 2022, the Parties jointly submitted a case management plan to the Court. Following an initial pretrial conference on November 23, 2022, the case management plan was approved as submitted.

12. In December 2022, Plaintiff served formal discovery requests upon Defendants.

13. On January 13, 2023, Plaintiff filed an extensive preliminary witness list.

14. In January 2023, Defendants produced voluminous and responsive payroll records in response to Plaintiff's requests for production—as well as interrogatory responses concerning business and payroll practices.

15. Collective Counsel then undertook a number of necessary tasks, including working with an expert to analyze timekeeping and pay data to help value possible damages, communicating with the named plaintiffs and certain opt-ins to gather additional facts about their

experiences, and researching and preparing a comprehensive mediation statement.

16. Leading up to the mediation, the Parties continued to exchange payroll information and documents. This allowed for meaningful evaluation of the claims and for the Parties to better weigh the strengths and weaknesses of Plaintiff's case prior to mediation.

The Collective Settlement

History of Negotiations

17. Prior to the mediation, Class Counsel prepared a thorough mediation statement. The mediation statement presented, among other things, a detailed factual recitation, legal argument and risk evaluations regarding the viability of the legal claims and class and collective certification. M&R was a primary drafter of the mediation statement.

18. On June 6, 2023, the parties engaged in a settlement conference with mediator Michael Russell to attempt to resolve this case. The lengthy mediation session culminated in the Parties reaching a settlement in principle—which appropriately factored in the complexity, risk, expense, likely duration of the litigation, and best possible recovery.

19. It then took many months of negotiation thereafter to finalize the term sheet memorializing the terms of the settlement.

20. After even more extensive discussions and negotiations, the Settlement Agreement was fully executed on January 16, 2024.

21. The Settlement is the result of prolonged arm's length negotiations, including numerous telephone and video conferences, as well as emails directly exchanged between experienced counsel who had a comprehensive understanding of the strengths and weaknesses of each party's claims and defenses.

22. While the negotiations between Plaintiff's counsel and Defendants' counsel were always collegial, cordial, and professional, there is no doubt that they were adversarial in nature, with both sides forcefully advocating the position of their respective clients.

23. The terms of this settlement are contained in the Settlement Agreement. There are no undisclosed side agreements between the Plaintiffs and Defendants.

Notice

24. Plaintiff also obtained competitive bids from various experienced settlement administrators. Upon careful consideration of the cost and expertise of various prospective settlement administrators, Plaintiff selected RG/2 Claims Administration LLC ("RG2") to act as the Settlement Administrator, subject to the Court's approval. RG2 has estimated that the cost of the notice and settlement administration will be $15,197.00.

Service Awards, Fees, and Costs

25. The Settlement allows Collective Counsel to make an application to the Court for an award of reasonable attorneys' fees, costs, and expenses from the $215,000.00 common fund.

26. The Parties did not discuss payment of attorneys' fees, costs, expenses, and service award until after the substantive terms of the settlement had been agreed upon.

27. Plaintiff's counsel intends to apply for an attorneys' fee and costs award of one-third of the common fund ($71,666.67) as well as costs of $ 13,220.50, subject to Court approval. This outcome is consistent with the attorney-client agreement executed by the Plaintiff. Plaintiff's counsel also intends to seek a service award for Plaintiff Prince in the amount of $5,000.00 for her services rendered on behalf of the Settlement Collective, subject to Court approval.

28. The Service Award is meant to recognize Plaintiff Prince for her significant efforts on behalf of the Settlement Collective, including providing information for pleadings and

settlement discussions, informal discovery responses, engaging with Collective Counsel regarding the litigation, participating in the settlement negotiations via email, and approving the proposed Settlement terms.

29. Defendants do not take a position regarding the fees and costs.

30. In my opinion, I believe the Settlement is fair, reasonable, and adequate and provides significant benefits for Plaintiff and the Settlement Collective Members. After settlement costs, the plaintiff service award, and attorney fees and costs, I estimate that the Settlement will provide an average of over one hundred dollars to each Collective Member.

31. My years of experience representing individuals in complex collective and class actions contributed to an awareness of Plaintiff's settlement leverage, as well as the needs of Plaintiff and the proposed Settlement Collective. I am aware that a successful trial outcome is uncertain and would be achieved, if at all, only after prolonged, arduous litigation with the attendant risk of drawn-out appeals. It is my individual opinion, based on my experience, that the Settlement provides significant relief to the Settlement Collective Members and warrants the Court's approval.

32. I believe this Settlement is a positive resolution for the Settlement Collective which falls comfortably within the range of reasonableness and represents a fair and reasonable discount from potential recovery. It is also my considered opinion that the notice program accurately and plainly explains the Settlement Benefits and how to obtain them, as well provide sufficient information for members of the Settlement Collective to decide whether to opt in to the Settlement.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 16th day of January 2024 at Washington D.C.

/s/ Jason S. Rathod
Jason S. Rathod (admitted *pro hac vice)*
Migliaccio & Rathod LLP
412 H St. NE
Washington DC 20002
Phone: (202) 470-3520
Email: jrathod@classlawdc.com

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FIRM RESUME

The attorneys at Migliaccio & Rathod LLP ("M&R") have decades of experience in complex civil litigation and have successfully prosecuted a number of noteworthy consumer protection, environmental contamination, civil rights, privacy, and wage theft cases. The firm's attorneys, located in Washington D.C. and California, focus primarily on class or collective actions and take all of their cases on a contingent basis. The attorneys at the firm have litigated cases leading to recoveries of hundreds of millions of dollars in recoveries for consumers, workers, and other victims of corporate misconduct. M&R has a track record of investing the time, energy, and resources necessary to develop cases which implicate significant economic, societal, and health concerns.

NOTABLE MATTERS AND SUCCESSES

- *Morel Then v. Great Arrow Builders LLC, Inc*., Case No. 2:20-cv-00800 (W.D.P.A.). Represented current and former Hourly Craft Union Workers of Great Arrow Builders who alleged they were not paid the correct overtime rate because of the employer's failure to incorporate a guaranteed site allowance into the regular rate of pay used for the overtime calculation. The lawsuit resulted in a class and collective action settlement totaling $2,7250,000.

- *Camara, et al. v. Mastro's Restaurants LLC*, Case No. 1:18-cv-00724 (D.D.C.). Represented a nationwide collective of servers at a high-end restaurant chain alleging that their employer was illegally requiring them to pool tips with non-tipped workers. The lawsuit settled for hundreds of thousands of dollars and provided damages close to 100 percent of the amount taken from servers as part of the employer's "tip credit."

- *Snodgrass v. Bob Evans*, Case No. 2:12-cv-768 (S.D. Ohio). Represented Bob Evans' Assistant Managers in a case alleging that Bob Evans, a restaurant chain with hundreds of locations predominantly in the Midwest, had misclassified its Assistant Managers as exempt from federal and state overtime laws. After a landmark ruling on the application of the so-called "fluctuating workweek" method of payment, the lawsuit settled for $16.5 million. The gross recovery per class member was approximately $6,380. In issuing its order approving the settlement, the court took special note of the "competence of class counsel in prosecuting this complex litigation."

- *Walkinshaw et al. v. CommonSpirit Health*, Case No. 4:19-cv-3012 (D. Neb). Represented class and collective of thousands of nurses in Iowa and Nebraska who alleged they were owed unpaid wages for time spent working remotely while "on-call." The settlement provided substantial monetary relief.

- *Corbin v. CFRA, LLC*, Case No. 1:15-cv-00405 (M.D.N.C.). Represented 1,520 servers in collective action against major IHOP franchise for wage theft violations, culminating in $1.725 million settlement.

- *Craig v. Rite Aid*, Case No. 4:08-CV-2317 (M.D. Pa.). Represented Rite Aid Assistant Managers in a case alleging that Rite Aid had misclassified its Assistant Managers as exempt from federal and state overtime laws. Plaintiffs alleged that their primary duties involved manual labor such as loading and unloading boxes, stocking shelves, cashiering and other duties which are not exempt under federal and state overtime laws. After extensive litigation, the case settled for $20.9 million, covering over 1,900 current and former assistant store managers. In issuing its order approving the settlement, the court stated that the settlement "represents an excellent and optimal settlement award for the Class Members" resulting from "diligent, exhaustive, and well-informed negotiations."

- *Peppler, et al. v. Postmates, Inc*., Case No. 2015 CA 006560 (D.C. Sup. Ct.) and *Singer, et al. v. Postmates, Inc*., 4:15-cv-01284-JSW (N.D. Cal.). Represented plaintiffs in a wage theft class action against application-based courier startup company, alleging that the couriers were misclassified as independent contractors. M&R was named class counsel in the settlement agreement providing for $8.75 million in relief to a nationwide class.

- *Bland v. Calfrac Well Services*, Case No. 2:12-cv-01407 (W.D. Pa.). Represented oil field workers in a nationwide collective and class action lawsuit against Defendant Calfrac Well Services for its alleged failure to properly pay overtime to its field operators. After extensive litigation, the case settled for $6 million, which provided a gross recovery per class member of between $250 and approximately $11,500.

- *Nelson v. Sabre Companies LLC*, Case No. 1:15-cv-0314 (N.D.N.Y.). M&R was lead counsel in this nationwide collective action that settled for $2.1 million on behalf of oil and gas workers for unpaid overtime.

- *Stillman v. Staples*, Case No. 07-849 (D.N.J.). Represented Staples Assistant Managers in Fair Labor Standards Act claims for unpaid overtime. Served as a member of the trial team where the plaintiffs won a nearly $2.5 million verdict against Staples for unpaid overtime on behalf of 342 sales managers after a six-week jury trial. After the verdict, nearly a dozen wage and hour cases against Staples from across the country were consolidated in a multi-district litigation. Served in a central role in the consolidated litigation, which lasted nearly two years after the *Stillman* verdict. The consolidated litigation ultimately settled for $42 million.

- *Fischer et al v. Kmart Corp. et al.*, Case No. 3:13-cv-04116 (D.N.J.). Represented Kmart assistant managers for Fair Labor Standards Act and parallel state law claims in nationwide litigation and arbitrations, culminating in $3.8 million settlement.

- *Camara v Mastros Restaurants LLC*, Case No. 1:18-cv-00724 (D.D.C.). Represented steakhouse servers in nationwide collective action suit alleging minimum wage violations as a result of alleged illegal tip sharing policy. The suit settled for nearly $700,000.

- *Young v. Nationwide Mut. Ins. Co.*, 693 F.3d 532, 535 (6th Cir. 2012). Represented classes of insureds against several major insurance companies for the failure to use technological advances in verifying the addresses of insureds, leading to overcharges. Litigation culminated in several multi-million dollar settlements.

- *Matthews v. TCL Communications et al.,* Case No. 3:17-cv-95 (W.D.N.C.). Represented plaintiffs in a class action brought on behalf of purchasers of Alcatel OneTouch Idol 3 smartphones who alleged that a firmware update removed Band 12 LTE functionality from their phones, greatly reducing their functionality. Served as Court-appointed class counsel in a class action settlement which provided class members with either the reinstatement of Band 12 LTE functionality on their phones, or new phones with LTE Band 12 functionality.

- *In re: JUUL Labs, Inc. Products Litigation,* Case No. 3:18-cv-02499 (N.D. Cal.) M&R was appointed as co-lead interim class counsel prior to formation of an MDL in action brought on behalf of a nationwide class arising from marketing and sale of electronic cigarettes by JUUL, the world's largest e-cigarette manufacturer.

- *Brown et al. v. Hyundai Motor America, et ano.*, Case. No. 2:18-cv-11249 (D.N.J.) M&R was appointed co-lead class counsel in an action brought arising from Hyundai's alleged manufacture, design, marketing and sale of vehicles with a piston-slap defect. The case settled on a class-action basis, and class members were provided with an extended warranty, and reimbursement of expenses.

- *Wheeler et al. v. Lenovo (United States) Inc.*, Case No. 13-0007150 (D.C. Sup. Ct.) and *Kacsuta v. Lenovo (United States), Inc*., Case No. 13-00316 (C.D. Cal.). Represented plaintiffs in a class action brought on behalf of purchasers of Lenovo laptops that suffered from Wi-Fi connectivity problems. Served among the Court-appointed class counsel in a nationwide settlement where Lenovo agreed to refund $100 cash or issue a $250 voucher (which required no purchase to use) to owners of the laptops.

- *Valsartan N-Nitrosodimethylamine (NDMA) Products Liability Litigation*, MDL Case No: 1:19-md-02875-RBK-JS (D.N.J.). Represent plaintiffs in multi-district litigation arising from worldwide recalls of generic Valsartan that had been found to be contaminated with probable human carcinogens. M&R was appointed to the Plaintiffs' Steering Committee and serves as co-chair of the medical monitoring committee.

- *Adeli v. Silverstar Automotive, Inc.*, Case No. 5:17-cv-05224 (W.D. Ark.). M&R was co-lead trial counsel in this individual consumer fraud suit for economic losses that resulted in a trial verdict of over $5.8 million, the vast majority of which was in punitive damages (judgment later reduced to $533,622, inclusive of a reduced but sizable punitive damages amount, which was affirmed by the Eighth Circuit Court of Appeals).

- *Fath et al. v. Honda North America, Inc.*, Case No. 0:18-cv-01549 (D. Minn.). M&R served on the Plaintiff Steering Committee in this nationwide action arising from Honda's alleged manufacture, design, marketing and sale of vehicles with a fuel dilution defect. The case settled on a class-action basis, and class members were provided with an extended warranty, reimbursement of expenses, and a product update where applicable.

- *Hill v. County of Montgomery et al.*, Case No.: 9:14-cv-00933 (N.D.N.Y.). M&R serves as co-lead counsel in this conditions of confinement civil rights class action for the alleged

provision of insufficient sustenance in the Montgomery County Jail in upstate New York. After years of litigation, the case settled on a class action basis for $1,000,000, providing significant relief to the class of inmates and detainees. The Court has granted preliminary approval of the settlement and final approval is still pending.

- *Beture v. Samsung Electronics America*, Case No. 17-cv-05757 (D.N.J.). M&R was appointed as co-lead interim class counsel in action brought on behalf of a nationwide class arising from a hardware defect affecting hundreds of thousands of Samsung Galaxy Note 4 smartphones.

- *McFadden et al. v. Microsoft Corporation*, Case No. 2:20-cv-00640 (W.D. Wash.) M&R was appointed as co-lead interim class counsel in an action brought on behalf of a nationwide class arising from a hardware defect affecting Microsoft X-Box video game controllers.

- *Walsh et al. v. Globalstar, Inc*., Case No. 3:07-cv-01941 (N.D. Cal.), represented Globalstar satellite telephone service customers who brought claims that Globalstar knew that it was experiencing failures in its satellite constellation and its satellite service was rapidly deteriorating and was no longer useful for its intended purpose, yet failed to disclose this information to its potential and existing customers. Served as Court-appointed class counsel in a nationwide settlement that provided an assortment of benefit options, including, but not limited to, monetary account credits, free minutes, or cash back for returned equipment.

- *Delandro v. County of Allegheny*, Case No. 06-927 (W.D. Pa.). Represented pre-trial detainees who were subjected to unlawful strip searches prior to their admission at Allegheny County Jail, located in Pittsburgh, PA. After winning class certification, partial summary judgment on liability, and an injunction, the case settled for $3 million.

- *Nnadili v. Chevron*, Case No. 02-1620 (D.D.C.). Represented owners and residents of properties in the District of Columbia that were contaminated with gasoline constituents from leaking underground storage tanks that were installed by Chevron. The plaintiffs, who resided in over 200 properties in the Riggs Park neighborhood of Northeast Washington, D.C., alleged that Chevron's contamination interfered with the use and enjoyment of their property, impacted their property values, constituted a trespass on their land, and caused fear and emotional distress. The United States Environmental Protection Agency conducted an extensive investigation into the contamination. After approximately five years of litigation, the case settled for $6.2 million.

- *Ousmane v. City of New York,* Case No. 402648/04 (NY Sup. Ct.). Represented New York City street vendors in a pro bono class action suit against the City of New York for excessive fines and helped secure a settlement with a value of over $1 million.

- *In re National Security Agency Telecommunications Records Litigation*, Case No. 3:06-md-01791 (N.D. Cal.). Represented Sprint subscribers in privacy suit against telecom companies to enjoin the alleged disclosure to the National Security Agency of telephone calling records. Appointed, with co-counsel, interim lead counsel for the Sprint subscriber class in the MDL proceedings. The litigation was ultimately dismissed after Congress granted retroactive immunity to the telecom companies.

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ATTORNEYS

Nicholas A. Migliaccio

Nicholas Migliaccio has been practicing for over 20 years and litigates across the firm's practice areas. He has successfully prosecuted numerous noteworthy class and mass action cases over the course of his career, and has been appointed class counsel in both litigation and settlement classes. He has been recognized by his peers as a Superlawyer in 2016 - 2023.

Mr. Migliaccio graduated from the State University of New York at Binghamton in 1997 (B.A., *cum laude* in Environmental Studies and Philosophy) and received his law degree from Georgetown University Law Center in 2001, where he was an Editor of the Georgetown International Environmental Law Review.

Notable Cases Include:

- Represented assistant managers in a Fair Labor Standards Act misclassification case and served as a member of the trial team for a six-week jury trial that resulted in a $2.5 plaintiffs' verdict. After the verdict, nearly a dozen wage and hour cases against the defendant from across the country were consolidated in a multi-district litigation. Served in a central role in the consolidated litigation, which ultimately settled for $42 million.
- Represented worker class in wage theft assistant manager misclassification case against national restaurant chain that culminated in a $16.5 million settlement
- Represented worker class in wage theft rate miscalculation case against multinational fracking company, resulting in $6 million settlement
- Represented plaintiffs in a consumer class in defective laptop case against multinational computer manufacturer, resulting in a nationwide settlement where defendant agreed to refund $100 cash or issue a $250 voucher (which required no purchase to use) to owners of the laptops.
- Represented pre-trial detainees who were subjected to unlawful strip searches prior to their admission at Allegheny County Jail, located in Pittsburgh, PA. After winning class certification, partial summary judgment on liability, and an injunction, the case settled for $3 million.
- Represented owners and residents of properties in the District of Columbia that were contaminated with gasoline constituents from leaking underground storage tanks that were installed by a major oil company. The plaintiffs alleged that the contamination interfered with the use and enjoyment of their property, impacted their property values, constituted a trespass on their land, and caused fear and emotional distress. After extensive litigation, the case settled for $6.2 million.
- Represented New York City street vendors in a pro bono class action suit against the City of New York for excessive fines and helped secure a settlement with a value of over $1 million.
- Appointed to leadership in recent major data breach cases involving hospitals and health records, including in *In re Netgain Technology, LLC, Consumer Data Breach Litigation*, No. 0:21-cv-01210 (D. Minn.) and in *In re Eskenazi Health Data Incident Litigation*, No. 49D01-2111-PL-038870 (Ind. Sup. Ct.)

Admissions:

- New York
- Washington, D.C.
- United States Court of Appeals for the Third Circuit
- United States Court of Appeals for the Fourth Circuit
- United States Court of Appeals for the Sixth Circuit
- United States District Court for the District of Colorado

- United States District Court for the District of Columbia
- United States District Court for the District of Maryland
- United States District Court for the Eastern District of Michigan
- United States District Court for the Eastern District of New York
- United States District Court for the Northern District of New York
- United States District Court for the Southern District of New York
- United States District Court for the Western District of New York
- United States District Court for the Western District of Pennsylvania

Education:

- Georgetown University Law Center, J.D., 2001
- State University of New York at Binghamton, BA, 1997

Publications and Speaking Engagements:

- Co-authored "Environmental Contamination Treatise: Overview of the Litigation Process," in R. Simons, Ph.D, When Bad Things Happen to Good Property (Environmental Law Institute, 2005).
- Presentation on *The Motor Carrier Act Exception to the FLSA's Overtime Provisions - 13(b)(1) and the SAFETEA-LU Amendments*, Worker's Injury Litigation Group / Ohio Association of Justice Meeting, Winter 2014.
- Presentation on *Litigating Fair Labor Standards Act Collective Action Cases*, Worker's Injury Litigation Group / Ohio Association of Justice Convention, Fall 2011.

Awards:

- SuperLawyers, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023

Jason S. Rathod

Jason S. Rathod is a founding partner of Migliaccio & Rathod LLP and regarded as one of the most accomplished plaintiff-side class action litigation lawyers under the age of 40, particularly in the areas of consumer protection and defective products. Mr. Rathod has been appointed to leadership teams in some of the most high-profile cases in the country. In *In Re: Philips Recalled CPAP, Bi-Level Pap, and Mechanical Ventilator Products Litigation*, he is among a small group of lawyers appointed to the Plaintiffs' Steering Committee and serves as the co-chair of the Science and Experts Committee. He was also recently appointed to serve on the experts committee in the *In Re: Kia Hyundai Vehicle Theft* MDL. Mr. Rathod has been quoted in the national press, including in The Wall Street Journal and Washington Post. In addition to his consumer protection work, Mr. Rathod also prosecutes data privacy, wage theft, civil rights, and environmental protection cases.

Mr. Rathod has been recognized as a leader in his field beyond the courtroom. He is the author of several published works, including a law review article on aggregate litigation in poor countries. Another recent law review article that he co-authored, comparing public and private enforcement in the United State and Europe, was cited by the Consumer Financial Protection Bureau in its proposed rule prohibiting class action waivers in the fine print of consumer contracts.

Mr. Rathod graduated from Grinnell College in 2006 (B.A. with honors in Political Science and Religious Studies). After college, he traveled to Fiji, Mauritius, South Africa, Trinidad & Tobago, Guyana, and Suriname on a Watson Fellowship, studying the Indian Diaspora. He graduated law school from the Duke University School of Law in 2010, where he was an Articles Editor of the Duke Law Journal. In law school, he also worked for the Self-Employed Women's Association in Ahmedabad, India on behalf of street vendors seeking an injunction against the city government for unlawful harassment and evictions.

Notable Cases Include:

- Representing consumer classes in insurance overcharge cases, including by drafting appellate briefs about the propriety of class certification. The Sixth Circuit Court of Appeals affirmed order for the classes 3-0, leading to several multi-million-dollar settlements;
- Representing consumer in consumer fraud trial for economic losses that resulted in verdict for the Plaintiff on all counts and a multimillion dollar punitive damages award (later reduced on remittitur, but still totaling in the hundreds of thousands of dollars and representing a 25:1 ratio of punitive to economic damages);
- Representing consumer class of laptop purchasers against multinational corporation in nationwide class action settlement valued at over $16 million;
- Representing consumer class of vehicle purchasers and lessees in nationwide class action settlement, following allegations of engine defect;
- Representing consumer class of vehicle purchasers and lessees in nationwide class action settlement, alleging oil dilution defect;
- Representing consumer classes in two cases in D.C. Superior Court arising from the alleged unlawful repossession of vehicles, resulting in classwide settlements with significant pro rata payments and injunctive relief, including debt relief;
- Representing consumer class at trial in product defect class action;
- Representing worker class in wage theft assistant manager misclassification case against national restaurant chain that culminated in a $16.5 million settlement;
- Representing worker class and collective against multinational startup company for independent contractor misclassification claims, resulting in $8.75 million settlement;
- Representing worker class in wage theft rate miscalculation case against multinational fracking company, resulting in $6 million settlement;
- Representing over 1,500 servers in multistate collective action, resulting in $1.72 million settlement;
- Representing consumer class in defective laptop case against multinational computer manufacturer; and

- Representing consumer class in defective construction case against multinational home builder, drafting key briefs leading to class certification and maintenance of suit in court, rather than arbitration.
- Appointed to leadership in recent major data breach cases involving hospitals and health records, including in *In re Eskenazi Health Data Incident Litigation*, No. 49D01-2111-PL-038870 (Ind. Sup. Ct.)

Education:

- Duke University School of Law, J.D. 2010
- Grinnell College, B.A., 2006

Admissions:

- Illinois
- Washington, D.C.
- United States Court of Appeals for the District of Columbia Circuit
- United States Court of Appeals for the Second Circuit
- United States Court of Appeals for the Third Circuit
- United States Court of Appeals for the Fourth Circuit
- United States Court of Appeals for the Eighth Circuit
- United States District Court for the District of Columbia
- United States District Court for the District of Maryland
- United States District Court for the District of Nebraska
- United States District Court for the Northern District of Illinois
- United States District Court for the Western District of Pennsylvania
- United States District Court for the District of Colorado
- United States District Court for the Eastern District of Michigan
- United States District Court for the Western District of Michigan

Publications and Speaking Engagements:

- *Arbitration Tactics and Strategy* (July 2020) (CLE presentation), American Association for Justice ("AAJ")
- *Fighting for Food Policy Progress Across Legal Arenas* (panelist), Food Systems Virtual Summit with CUNY Urban Food Policy Institute (April 2020)
- *Human Capital and Fragmentation* (Nov. 15, 2019) (panelist), ClassCrits Conference
- *Plaintiffs, Procedure & Power* (Nov. 3, 2018) (panelist), ClassCrits Conference
- *DNA Barcoding analysis of seafood accuracy in Washington, D.C. restaurants*, PeerJ (April 25, 2017) (co-authored)
- *The Arc and Architecture of Private Enforcement Regimes in the United States and Europe: A View Across the Atlantic*, 14 U.N.H. L. Rev. 303 (2016) (co-authored)
- *Trying the Class Action: Practical Tips from the Pros* (AAJ) (June 4, 2015) (panelist)

- *Emerging Markets, Vanishing Accountability: How Populations in Poor Countries Can Use Aggregate Litigation to Vindicate Their Rights*, 24 Transnat'l L. & Contemp. Probs. 69 (2014)
- *Note: Not Peace, But a Sword: Navy v. Egan and the Case Against Judicial Abdication in Foreign Affairs*, 59 Duke L.J. 595 (2009)

Awards

- SuperLawyers Rising Stars, 2017, 2018, 2019, 2020, 2021, 2022, and 2023

Mark Patronella

Mark Patronella is an Associate at the firm and litigates class actions across the firm's practice areas. He takes particular pride in helping consumers obtain fair compensation for predatory behavior on the part of large corporations.

Mr. Patronella has been recognized for his considerable commitment to pro bono practice. He dedicated well over one thousand hours to representing asylum-seekers, tenants facing eviction, and environmental initiatives.

Mr. Patronella graduated magna cum laude from Drew University in 2015 (B.A. with honors in Economics). He graduated law school from Duke University School of Law in 2018, where he was a Staff Editor of the Duke Environmental Law and Policy Forum and served as a

teaching assistant for an environmental law course. Throughout law school, he provided legal services for a number of local and national environmental organizations.

Education:

- Duke University School of Law, J.D., 2018
- Drew University, B.A., 2015

Admissions:

- New Jersey
- Washington D.C.
- United States District Court for the Southern District of Texas
- United States District Court for the Eastern District of Texas
- United States District Court for the Eastern District of Michigan

Bryan Faubus

Bryan Faubus is Senior Counsel at the firm and litigates cases across the firm's areas of practice including in consumer protection, data breach, and wage theft class actions.

Mr. Faubus received a B.A. in Urban Studies, with Honors, from the University of Texas at Austin in 2005, and a J.D., *cum laude*, from Duke University School of Law, where he was the Online Editor of the Duke Law Journal. Mr. Faubus authored *Narrowing the Bankruptcy Safe Harbor for Derivatives to Combat Systemic Risk*, 59 DUKE L.J. 801 (2010). Prior to joining Migliaccio & Rathod LLP, he practiced commercial litigation and real estate law at two large, international law firms and securities, antitrust, and consumer protection law at a California-based plaintiff's law firm.

Education:

- Duke University School of Law, J.D. 2010
- University of Texas – Austin, B.A. 2005

Admissions:

- New York

Matthew A. Smith

Matthew ("Matt") Smith is Senior Counsel at the firm and litigates in the firm's consumer protection and civil rights practice areas. He joined M&R after practicing with nationally recognized plaintiffs' firms based in Washington D.C. and the San Francisco Bay Area. Previous successes include an $18 million trial judgment on behalf of a class of retired steelworkers, as well as contributions to antitrust, civil rights, and employee benefits cases that have resulted in substantial settlements and judgments in favor of the class. After graduating *magna cum laude* from Duke Law School where he was inducted into the honor's society, he clerked for the Hon. Rosemary Barkett on the United States Court of Appeals for the Eleventh Circuit. Previous cases include:

- *Walkinshaw v. CommonSpirit Health*, (D. Neb.): wage-and-hour class action lawsuit resulting in $800,000 settlement to benefit nurses employed by hospital chain;

- *In re Packaged Seafood Antitrust Litig*., (S.D. Cal.): antitrust class action against seafood retailers resulting in $6.5 million settlement on behalf of allegedly injured consumers;

- *In re Optical Disk Drive Antitrust Litigation*, (N.D. Cal): antitrust class action against producers of consumer electronic equipment, resulting in a $205 million settlement.

- *In re Resistors Antitrust Litigation*, (N.D. Cal.): antitrust class action against manufactures of industrial electronic equipment, resulted in $50 million settlement.

- *Severstal Wheeling, Inc. Retirement Committee v. WPN, Inc.*, (S.D.N.Y. & 2d Cir.): three-week federal bench trial resulting in a $15 million judgment benefiting thousands of retired steelworkers; obtained unanimous affirmance of trial judgment on appeal.

- *Tibble v. Edison International* (U.S. Supreme Court): wrote an *amicus curiae* brief to the United States Supreme Court addressing issues under the Employee Retirement Income Security Act of 1974; the brief contributed to a unanimous decision in favor of the legal position adopted by the client.

Education:

- Duke University School of Law, J.D., *magna cum laude*, Order of the Coif, 2011
  - LLM, International and Comparative Law
  - Notes Editor, Duke Law Journal
- UC Santa Cruz, MA, History of Consciousness
- Columbia University, BA, *cum laude*

Admissions:

- New York
- California
- United States District Court for the Northern District of California
- United States District Court for the Southern District of California
- United States District Court for the Eastern District of California
- United States District Court for the Central District of California
- United States Court of Appeals for the Third Circuit
- United States Court of Appeals for the Second Circuit

Publications:

"The Indexicality of Representation: Toward a Reconciliation of Representational and Inferential Theories of Meaning." MA Thesis: University of California, Santa Cruz, June 2022. Adviser: R. Meister.

"Delegating Away the Unitary Executive: The INA § 287(g) Agreements Through the Lens of the Unitary Executive Theory." *Duke Journal of Constitutional Law and Public Policy*, vol. 81, 2013.

"Reasons Behind the Rules: From Description to Normativity in International Criminal Procedure." *North Carolina Journal of International Law and Commercial Regulation*, vol. 35, 2011 (with N. Weisbord).

Note, "Advice and Complicity." *Duke Law Journal*, vol. 60, 2010

Eugenie Montague

Eugenie Montague is Of Counsel to the firm and litigates cases across the firm's areas of practice including in consumer protection, data breach, and wage theft class actions.

Education:

- Duke University School of Law, J.D. 2009
- UC Irvine, Master of Fine Arts, Fiction, 2010
- Colby College, B.A.

Admissions:

- California

THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA

LAVINIA PRINCE, *individually and on behalf of all others similarly situated* Plaintiff, v. BRICKYARD HEALTHCARE, INC. ET AL Defendants.	Case No.: 1:22-cv-01753 Honorable Matthew P. Brookman

COLLECTIVE ACTION SETTLEMENT AGREEMENT

This settlement agreement (the "Agreement" or "Settlement Agreement") is entered into as of the date of the last signature on this Agreement, between Lavinia Prince ("Named Plaintiff"), for herself, the Settlement Collective, as defined below, and Brickyard Healthcare, Inc.; Brickyard LP; and Merrillville Operating, LLC ("Defendants") (collectively, with Named Plaintiff and the Settlement Collective, the "Parties"), by their respective counsel, to resolve wage claims asserted in *Prince et al. v. Brickyard Healthcare, Inc. et al*., Case No.: 1:22-cv-01753 (S.D. Ind.) (the "Action").

I. RECITALS

WHEREAS, on September 2, 2022, Named Plaintiff filed the Action in the United States District Court for the Southern District of Indiana ("Court"), for herself and a putative group of similarly situated employees, alleging that Defendants failed to include non-discretionary bonuses and shift premiums in the "regular rate" used to calculate overtime wages owed to its employees in violation of the Fair Labor Standards Act ("FLSA");

WHEREAS, Defendants deny the allegations in the Action and state that they did not violate the law and that they have no liability for any claims asserted in the Action, but that they have agreed to the terms of this Agreement because it will: (1) avoid the further expenses and disruption of business due to the pendency and expense of the litigation; and (2) put the claims asserted in the Action to rest. Nothing in this Agreement shall be deemed or used as an admission of liability by Defendants or any of the Released Parties (as defined herein) of any fault, liability or wrongdoing, or as an admission that this action may proceed as a collective action under the FLSA and/or a class action under Rule 23 of the Federal Rules of Civil Procedure for any purpose other than settlement;

WHEREAS, the Parties participated in mediation conducted by experienced class and collective action mediator Michael Russell. Following the mediation and further discussions between the Parties and Mr. Russell, the Parties reached an agreement in principle, which included a Common Fund Amount (as defined herein) of $215,000.00, exclusive of Defendants' share of payroll taxes on the wage-based component of the Common Fund Amount;

WHEREAS, Collective Counsel have conducted a thorough investigation of the claims asserted by Plaintiff against Defendants in the Action;

WHEREAS the purpose of this Agreement is to finally and fully compromise, resolve, discharge, and settle the Released Claims, subject to the Court's approval;

WHEREAS, in exchange for (a) the dismissal of the Action with prejudice; (b) the settlement and release of all Released Claims against all Released Parties; and (c) otherwise subject and pursuant to the terms and conditions of this Agreement, Defendants have agreed to pay up to an amount not to exceed the Common Fund Amount (plus Defendants' share of payroll taxes on the wage-based component of the Common Fund Amount);

WHEREAS, the Parties shall cooperate in the formal steps necessary to carry out the terms set forth in this Agreement, which is subject to approval by the Court;

NOW, THEREFORE, it is hereby stipulated and agreed by the Named Plaintiff, for herself and for the Settlement Collective Members, and Defendants that, subject to the Court's approval, the Action will be settled, compromised, and dismissed on the merits and with prejudice, and the Released Claims will be finally and fully settled, compromised, and dismissed as to the Released Parties in the manner and upon the terms and conditions set forth in this Agreement (the "Settlement").

II. DEFINITIONS

The terms set forth below shall have the meanings defined herein wherever used in this Agreement (including its exhibits).

A. "Action" means the above-captioned action, inclusive of the claims asserted therein pursuant to the federal Fair Labor Standards Act and Indiana law.

B. "Agreement" means this written Settlement Agreement, which sets forth the terms of the settlement and final amicable resolution of this Action.

C. "Collective Counsel" means Migliaccio & Rathod LLP and Cohen & Malad, LLP.

D. "Collective Representative" means Named Plaintiff.

E. "Common Fund Amount" means the aggregate amount of money to be paid by Defendants in connection with this Agreement. The Common Fund Amount is $215,000.00. In addition to the Common Fund Amount, Defendants shall be responsible for paying all employer-paid payroll taxes including FUTA and the employer's share of FICA and state unemployment, as required by law with respect to settlement payments to Participating Settlement Collective Members.

F. "Court" means the United States District Court for the Southern District of Indiana (Judge Matthew P. Brookman, presiding).

G. "Defendants" means Brickyard Healthcare, Inc.; Brickyard LP; and Merrillville

Operating, LLC.

H. "Defense Counsel" means Dinsmore & Shohl LLP.

I. "Effective Date" means the date upon which all of the following have occurred in the Action: (a) entry of the Approval Order; (b) issuance of an order dismissing the Action with prejudice in accordance with the terms of this Agreement; and (c) the expiration of the appeal rights of the Parties (which, if no objections to the proposed settlement are submitted, shall be deemed to be 30 days following entry of the order dismissing the Action with prejudice in accordance with the terms of this Agreement, or, if objections to the proposed settlement are submitted, shall be deemed to be 30 days following entry of the order dismissing the Action with prejudice and entering judgment in accordance with the terms of this Agreement if no timely notice of appeal is filed, or if a timely notice of appeal is filed, shall be deemed to be 7 days following the expiration of all such appeals and related proceedings without any material alteration of the terms of the Approval Order).

J. "Approval Order" means the order to be entered by the Court: (a) approving the terms of this Agreement as fair, reasonable, and adequate, and directing consummation of its terms and provisions; (b) granting certification of the Settlement Collective and granting approval of the settlement and release of claims by the Named Plaintiff and Participating Settlement Collective Members, as set forth herein; and (d) dismissing the Action on the merits and with prejudice and permanently enjoining all Named Plaintiff and Participating Settlement Collective Members from prosecuting against Defendants and the Released Parties, any Released Claims.

K. "Named Plaintiff" means Lavinia Prince.

L. "Participating Settlement Collective Members" means all Settlement Collective Members who cash the Settlement Check issued to them pursuant to this Agreement.

M. "Parties" means, collectively, Named Plaintiff, individually and as representative of the Participating Settlement Collective Members, and Defendants.

N. "Qualified Settlement Fund" or "QSF" means the account established by the Third-Party Administrator into which Defendants are to deposit the settlement amounts to be paid pursuant to this Agreement. The QSF will be controlled by the Third-Party Administrator subject to the terms of this Agreement and the Court's Approval Order. Interest, if any, earned on amounts deposited in the QSF is Defendants' exclusive property and will be returned to Defendants following issuance of all settlement payments.

O. "Released Claims" means any and all claims, debts, obligations, guarantees, costs, expenses, attorneys' fees, demands, actions, rights, causes of action, and liabilities against any of the Released Parties, arising under Federal or state law, that were or could have been asserted in the Complaint relating to the alleged failure to include bonuses and incentives into the regular rate for the purposes of calculating overtime pay, including claims arising under the Fair Labor Standards Act of 1938 ("FLSA") and any analogous

state or local laws, whether known or unknown, and whether anticipated or unanticipated, that arose or accrued while employed by Defendants from September 2, 2019 through the date of the Approval Order.

P. "Released Parties" means: Brickyard Healthcare, Inc.; Brickyard LP; and Merrillville Operating, LLC, as well as their owners, predecessors, successors, assigns, agents, directors, officers, employees, representatives, attorneys, insurers, and parents, divisions, subsidiaries, and affiliates, and all persons acting by, through, under, or in concert with any of them.

Q. "Settlement Checks" means check(s) issued by the Third-Party Administrator to Settlement Collective Members for their shares of the Common Fund Amount, pursuant to the settlement allocation agreed to by the Parties and as set forth below.

R. "Settlement Collective Members" means any hourly worker Defendants employed from September 2, 2019 to the present who was paid an overtime rate that did not account for the extra shift bonuses that he/she was paid in the same week.

S. "Third-Party Administrator" means RG/2 Claims Administration LLC, as mutually agreed by the Parties.

III. SETTLEMENT COLLECTIVE

A. For purposes of this Agreement, the "Settlement Collective" shall be defined as all hourly workers Defendants employed from September 2, 2019 to the present who: were paid an overtime rate that did not account for the extra shift bonuses that he/she was paid in the same week.

B. Nothing herein may be construed as an admission or acknowledgement by the Parties that any collective action treatment is either proper or improper in the Action, except for purposes of settlement. Neither the Agreement nor approval by the Court of the Agreement is admissible in any other proceeding regarding the propriety of collective action treatment.

IV. COMPROMISE ACKNOWLEDGMENT

A. The Parties agree that this Agreement is entered into solely as a compromise with respect to disputed wage claims, and that this Agreement is not, and may not be construed as, either an admission of liability or proof of a lack of liability. The Parties agree that this Agreement is not, and may not be construed as, an admission by Defendants that they have acted wrongfully with respect to Named Plaintiff, any Settlement Collective Members, or any other person. Furthermore, the Parties agree this Settlement does not constitute an adjudication of the merits of the action, or any other matters released in this Settlement. Accordingly, the Parties agree that none of them have prevailed on the merits.

B. The Parties have engaged in an intensive investigation of the facts relevant to this Action and formal and informal discovery of the claims and defenses in the Action, including analyzing the relevant law and payroll information. Relying upon their fact investigations and

analyses, the Parties have engaged in arm's-length settlement negotiations, including formal mediation with a neutral mediator.

C. Nothing in this Agreement or any action taken to implement it or any statements, discussions, communications, or materials prepared or used during settlement negotiations may be used in any other proceeding of any kind or be considered evidence of a violation of any federal, state, or local law, statute, rule, or executive order, or any obligation or duty at law or equity. However, the Agreement may be used to inform any proceeding that has as its purpose the interpretation or enforcement of the Agreement.

V. CERTIFICATION OF A COLLECTIVE FOR SETTLEMENT PURPOSES ONLY

A. For settlement purposes only, the Parties stipulate to the certification of a Settlement Collective as defined in Section III.A. above.

B. Defendants agree not to object to Named Plaintiff's request that Migliaccio & Rathod LLP and Cohen & Malad, LLP, be appointed "Collective Counsel" for purposes of this Agreement.

C. The certification of the Settlement Collective, appointment of Named Plaintiff as "Collective Representative," and appointment of Collective Counsel by the Court will be binding on the Parties with respect to settlement of the Action only.

VI. TERMS OF THE SETTLEMENT AGREEMENT

A. Settlement Amounts

1. Common Fund

a. In full consideration for the terms, conditions, and promises in this Agreement, Defendants agree to pay $215,000.00 to establish a common fund, which shall be a Qualified Settlement Fund, to resolve this Action ("the Common Fund Amount"). The Common Fund Amount is the maximum amount that Defendants are obligated to pay under this Agreement, exclusive of Defendants' share of payroll taxes on the wage-based component of the Common Fund Amount. The Common Fund Amount includes the entire amount Defendants are obligated to pay under this Agreement, including, without limitation, settlement wage payments to Settlement Collective Members, attorneys' fees, litigation costs, interest, penalties, enhancement payments, and Third-Party Administrator costs (described *infra* Section VI.A.4), except that Defendants are separately responsible for payment of all employer-side payroll taxes owed on the wage-based component of the Common Fund Amount.

b. The computation of the payments to Settlement Collective Members is based on data and representations provided by Defendants. Specifically, Defendants represented and warranted that 1) the shift differentials; Covid Bonuses; and incentive hours, excluding the Extra Shift Bonus, were all included in calculating the overtime rate for Defendants' employees at all relevant times at all facilities; 2) the following facilities included the Extra Shift Bonus in the overtime rate at all relevant times: Beverly Health and Rehabilitation Services, Brandywine Indiana Operating LLC, Indianapolis Operating LLC, North

Willow Operating LLC, Brookview Operating LLC, Valparaiso Operating LLC, Brickyard Richmond, Brickyard Petersburg LLC; and 3) the Extra Shift Bonus was incorporated into the overtime rate for all employees beginning December 17, 2020. Defendants represent and warrant that to the best of their knowledge and belief, these representations are accurate and the data supplied is complete and accurate in its reflection of the dates of employment and compensation paid to the Settlement Collective Members during the relevant time period under Indiana and federal law, and Defendants further understand that these representations are a material term of this agreement.

2. Attorneys' Fees and Litigation Costs

a. Defendants agree not to oppose a request by Collective Counsel for an attorneys' fee award of $71,666.67 (1/3 of the Common Fund Amount) plus reimbursement of their costs in the Action, estimated to be $13,220.50. Collective Counsel agrees not to seek attorneys' fees or costs in excess of these amounts. Collective Counsel further agrees that any allocation of fees between or among Collective Counsel and any other attorney representing any member of the Settlement Collective will be the sole responsibility of Collective Counsel. Collective Counsel's attorneys' fees and litigation costs will be paid solely from the Common Fund Amount.

b. Within ten business days after the entry of the Approval Order, Defendants will wire the Common Fund Amount to an account designated by the Third-Party Administrator who, thereafter, will promptly distribute the Court-approved attorneys' fee and cost amounts to Collective Counsel and the Service Award to the Named Plaintiff (defined infra Section VI.A.3).

c. This settlement is not contingent on the Court approving Collective Counsel's motion for attorneys' fees or Named Plaintiff's requested service payment. If the Court denies or reduces Collective Counsel's requested attorneys' fees, or Named Plaintiff's service payment, the remainder of this settlement shall remain in place, with the exception that any fees or service payments denied or reduced by the Court shall be deducted from the total amount of the Common Fund Amount.

3. Named Plaintiff Service Award

Defendants agree not to oppose Named Plaintiff's request for approval of a Service Award out of the Common Fund Amount of up to $5,000.00 for her service as Collective Representative. If this payment (referred to as a "Service Award") is approved by the Court, the Service Award will be treated as non-wage income and included on an IRS form 1099 provided by the Third-Party Administrator to the Named Plaintiff.

4. Responsibilities and Costs of Third-Party Administrator

a. The "Third-Party Administrator" will be an entity selected by Collective Counsel (subject to approval by Defendants, who shall not unreasonably withhold approval) who will be responsible for: formatting and mailing notice; researching and updating addresses through skip-traces and similar means; reporting on the status of the administration of

the Settlement to the Parties; resolving any settlement payment dispute, in concert with the counsel for the Parties; providing the Parties with all necessary data; setting up, administering and making payments from the settlement fund; distributing settlement payments and withholding therefrom the Settlement Collective Members' share of payroll taxes and remitting such funds along with the employer's share of payroll taxes to the appropriate taxing authorities, along with any associated tax reporting, return and filing requirements, and performing such additional duties as the Parties may mutually direct. All disputes relating to the Third-Party Administrator performance of its duties shall be referred to the Court, if necessary, which will have continuing jurisdiction over the terms and conditions of this Settlement until all payments and obligations contemplated by this Settlement have been fully carried out. The administration costs will be paid from the Common Fund Amount, and shall include all costs necessary to administer the Settlement. The actions of the Third-Party Administrator shall be governed by the terms of the Settlement Agreement. Defendants will provide Collective Counsel and the Third-Party Administrator with, as to each Collective Action Member and to the extent the information is currently in Defendants' records: 1) name; 2) last known home address; 3) last known personal email address; 4) social security number; and 5) last known telephone number. Defendants will provide to the Third-Party Administrator its damages analysis for purposes of calculating the settlement payment amount for each Collective Action Member, as set forth in Section VI.5.B, *infra*. Defendants will produce this information either (i) sixty (60) days after signing this Agreement or (ii) seven (7) days after the entry of the Approval Order, whichever is later.

b. The Third-Party Administrator's fee will include all costs necessary to administer the Settlement, and barring a second round of fund distribution or unforeseen costs, will not exceed $15,197.00. This fee will be paid from the Common Fund Amount. The Parties agree to cooperate in the settlement administration process and to make all reasonable efforts to control and minimize the costs incurred in the administration of the Settlement.

c. The Parties will cooperate fully to promptly resolve any issues identified by the Third-Party Administrator regarding communications to Settlement Collective Members, the administration of the Settlement and disbursement of Settlement Checks, and any other issues related to the Third-Party Administrator's duties under this Agreement.

5. Payment Amounts to the Settlement Collective Members

a. The Common Fund Amount, less all amounts allocated to attorneys' fees, litigation costs, and costs of the Third-Party Administrator, as described in Sections VI.A.2, 3 and 4, will be allocated among the Settlement Collective on an even *pro rata* basis based on the difference between the amount a Settlement Collective Member was paid and how much that person would have received if non-discretionary bonuses were included when calculating their overtime rate (during the time period covered by this Agreement). For Settlement Collective Members, the "Settlement Collective Period" extends from September 2, 2019 to the date of Approval Order. By way of illustration, if a particular Settlement Collective Member had unpaid overtime of $1, and the total amount of unpaid overtime for all Settlement Collective Members was $100, the Settlement Collective Member's total share of the Common Fund Amount allocated to payments to Settlement Collective Members would be 1%.

b. Defendants engaged an expert to prepare a damages analysis based on the data in Defendant's possession in preparation for the mediation in this matter. The purpose of the analysis was to calculate the difference between the value of overtime payments that were paid and the value of what overtime payments would have been if the Extra Shift Bonus was included in every employee's regular rate throughout the relevant time period. Defendants will share their expert analysis with Collective Counsel on an Attorneys' Eyes-Only Basis for purposes of assisting in the allocation of payments among the collective; the only individuals who shall have access to Defendants' damages calculation shall be Collective Counsel and the Third-Party Administrator. Collective Counsel agrees to destroy/delete their copy of the damages analysis after distribution. Defendants shall also provide the Third-Party Administrator with information sufficient to locate each Settlement Collective Member for distribution of a Settlement Check, as set forth in Section VI.A.4.a, *supra*.

c. Fifty percent of the payment each Settlement Collective Member receives from the Common Fund Amount will be deemed wages with the remaining fifty percent being deemed non-wage liquidated damages. Defendants will consequently only be responsible for withholding payroll taxes on half of the funds dispersed to each Settlement Collective Member.

d. The appropriate withholding of federal, state, and local income taxes, each Settlement Collective Member's share of FICA, FUTA, SUTA, Medicare, and any other payroll taxes including backup withholding, if required, will be made from the settlement payments to Settlement Collective Members. The Third-Party Administrator will also issue an IRS form W-2 to all Settlement Collective Members at the times and in the manner required by the Internal Revenue Code and consistent with this Agreement. If the Internal Revenue Code, the regulations issued thereunder, or other relevant tax laws change after the Effective Date, the processes in this subparagraph may be modified in a manner to ensure compliance with such changes. The Third-Party Administrator will be solely responsible for all withholdings.

e. Each Settlement Collective Member is solely responsible to pay all federal, state, and local taxes owed as a result of any consideration received under this Agreement.

B. Waiver And Release

1. In exchange for the Settlement Amounts and the other good and valuable consideration provided pursuant to the terms of this Agreement, the Settlement Collective Members, for themselves and each of their heirs, representatives, successors, assigns, and attorneys, will release and forever discharge all Released Claims (as defined in Section II above) arising or accruing prior to the date of the Approval Order of the Settlement that they have or may have, against the Released Parties.

2. In exchange for the Settlement Amounts and the other good and valuable consideration provided pursuant to the terms of this Agreement, the Named Plaintiff agrees to execute the General Release Agreement, which includes a waiver and release of all claims, including but not limited to the Released Claims, against Defendant, in the form attached hereto as **Exhibit A**.

3. Upon approval of the Agreement by the Court, execution of the Agreement by Collective Counsel will fully effectuate the release provisions herein to which each Settlement Collective Member is bound.

C. Court Approval

1. Named Plaintiff agrees to submit a joint motion for approval of the settlement and proposed Order granting approval by January 15, 2024.

D. Common Fund

1. Within ten business days of the entry of the Approval Order, Defendants will deposit the $215,000.00 Common Fund in an account designated by the Third-Party Administrator.

2. The Common Fund will be used to make all required payments under this Agreement.

3. The Parties agree to treat the Common Fund as a "qualified settlement fund" within the meaning of Treas. Reg. Section 1.468B-1. In addition, the Parties will jointly and timely make the "relation back election" to the earliest permitted date, as provided in Treas. Reg. Section 1.468B-1(j)(2). Such election will be made in compliance with the procedures and requirements set forth in such Treasury regulations. The Third-Party Administrator is solely responsible for preparing and delivering the necessary documents for signature by the Parties and making the appropriate filing.

4. For purposes of Internal Revenue Code of 1986 Section 468B(d)(2)(C) and Treas. Reg. Section 1.468B-2(k)(3), the Third-Party Administrator will be comprised of "persons a majority of whom are independent of the taxpayer," will be the qualified "administrator," and will timely and properly file all information and other tax returns necessary or available with respect to the settlement amounts including, without limitation, the returns described in Treas. Reg. Sections 1.468B-2(k)(1) and 1.468B-(2)(l). The returns will be consistent with this Agreement and in all events will reflect that all taxes, including any estimated taxes, interest, or penalties arising with respect to the payments made to Named Plaintiff, Settlement Collective Members and Collective Counsel, will be paid out of the Common Fund Amount. All taxes, expenses, and costs incurred relating to the operation and implementation of this paragraph, including, without limitation, any expenses of tax counsel or accountants and mailing costs and expenses relating to the filing or failing to file any returns ("tax expenses") will be paid out of the Common Fund Amount and payments made to Named Plaintiff, Settlement Collective Members and Collective Counsel. Taxes and tax expenses will be treated as, and considered to be, a cost of administering the individual settlement amounts and the qualified Third-Party Administrator will be obligated to withhold from individual settlement amounts any funds necessary to pay such taxes and tax expenses and any taxes that may be required to be withheld pursuant to Treas. Reg. Section 1.468B-2(l)(2).

E. Distribution

1. Within ten business days after settlement approval is granted, Defendants shall deposit the full Common Fund Amount, less any amount already paid to the Third Party Administrator, to an account designated by the Third Party Administrator. Upon deposit, the Third-Party Administrator shall be immediately authorized to distribute the amount. The Third-Party Administrator shall distribute settlement award checks to all non-Named Plaintiff settlement claimants with a release (similar to the release listed in this Memorandum) on the back of the check. The Third-Party Administrator shall issue for each Claimant an IRS form 1099 showing the amount of liquidated damages paid and an IRS form W-2 showing the amount of back pay in the year it was paid.

2. Within fifteen business days of the Effective Date, the Third-Party Administrator will send the Settlement Collective Members' Settlement Checks by First Class U.S. Mail with a summary notice of the Settlement (**Exhibit B**) and link to the settlement website where important case documents can be accessed and viewed. Before sending the checks and summary notice of the Settlement, the Third-Party Administrator will run a National Change of Address ("NCOA") database search for the addresses and make any necessary updates.

3. Each settlement check will be accompanied by the language stating that, by cashing the check, the Settlement Collective Member will join the Action and release all Released Claims against the Released Parties.

4. If a recipient does not negotiate his/her check within 180 days of mailing, and the Third Party Claims Administrator is unable to reach settlement recipient to send a re-issued check, the proceeds from uncashed checks may be used to cover any additional uncompensated administration invoices at the discretion of Collective Counsel. If the parties agree there are sufficient funds afterwards to warrant a redistribution to those class members who negotiated their first settlement check, the Third Party Claims Administrator will redistribute those residual funds which will be reportable on a Form 1099. Those redistribution checks will have a 90 day check void date. If the parties agree that the amount of residual funds from uncashed checks is insufficient to economically conduct a redistribution, such funds will be donated to a *cy pres* beneficiary chosen by Collective Counsel and approved by Defendants, which approval shall not be unreasonably withheld. Any re-distribution shall be considered liquidated damages or interest and thus reportable on a Form 1099.

VII. GENERAL PROVISIONS

A. Parties' Authority

1. The signatories to this Agreement represent that they are fully authorized to enter into this Agreement and bind the Parties to the terms and conditions in the Agreement.

2. The Parties acknowledge that, throughout the negotiations that led to this Agreement, they have been represented by counsel experienced in wage and hour collective litigation and that this Agreement is made with the consent and approval of counsel who have prepared the Agreement.

B. Mutual Full Cooperation

The Parties agree to cooperate fully to accomplish the terms of this Settlement, which includes, but is not limited to, executing all required documents, meeting the deadlines set forth herein, using their best efforts to effectuate this Settlement and the terms set forth herein, and complying with any Order the Court may issue relating to this Settlement.

C. Disputes Related to the Settlement Agreement

The Court will retain continuing jurisdiction to enforce the terms of the Settlement Agreement and to resolve any dispute that arises out of the finalization of the settlement or administration of the settlement. The Parties agree that, if a dispute arises as to the settlement (including its terms, documentation, or administration), they will submit the dispute to Mr. Michael Russell first, who will advise the parties of a potential resolution. If Mr. Russell's proposal does not resolve the issue to the satisfaction of the parties, either Party (or both Parties) may then submit the issue to the Court.

D. Confidentiality

4. The Parties agree that the proposed settlement terms shall remain confidential and not be disclosed to the media or public until a Settlement Agreement is filed for approval. The Parties and their counsel agree not to make any disparaging public statements, both before and after approval.

E. Entire Agreement

Except with respect to any terms or statement of settlement stated in the court record, this Agreement and its exhibits constitute the entire agreement between the Parties concerning the subject matter hereof. No extrinsic evidence of any kind will modify or contradict the terms of this Agreement.

F. Modification

This Agreement may not be changed, altered, or modified, except in a writing signed by the Parties and approved by the Court.

G. Voiding the Agreement

1. If the Court does not approve this Agreement, the Parties will file a joint motion for a stay of proceedings and work cooperatively and in good faith for up to 45 days to revise the Agreement as needed to obtain Court approval. In this event, no Party may use subsequent legal developments or other intervening events, other than the decision(s) denying or reversing approval of the Agreement, as justification for renegotiating the settlement.

2. Notwithstanding Section VII.G.1, if the Court rejects any portion of Sections VI.A.2.a or VI.A.3, the Parties agree that such portions will be removed from the Agreement or modified in a manner consistent with the Court's ruling. The enforceability of the remainder of the Agreement will not be affected by such removal or modification.

3. If the Parties are ultimately unable to secure approval for this Settlement Agreement, they will be restored to their respective places in the litigation before the date of this Agreement. In such event, the terms and provisions of this Agreement will have no further force or effect; the Parties' right and defenses will be restored, without prejudice, to their respective positions as if this Agreement had never been executed; and any orders entered by the Court in connection with this Agreement will be vacated.

H. Counterparts

This Agreement may be executed in counterparts, and when each Party has executed at least one counterpart, the counterpart will be deemed an original, and when taken together, the counterparts will constitute one Agreement, which will be binding and effective as to all Parties.

I. Binding on Assigns and Successors

This Agreement will be binding upon, and inure to the benefit of, the Parties, and their respective heirs, trustees, executors, successors, legal administrators, and assigns.

J. Enforcement of this Agreement and Continuing Jurisdiction

The Court possesses exclusive and continuing jurisdiction over this Settlement Agreement and over all Parties and Settlement Collective Members to interpret, effectuate, enforce, and implement this Settlement Agreement. The Court will have exclusive jurisdiction to resolve any disputes involving this Settlement Agreement.

In witness hereof, the Parties and their duly authorized representatives have executed this Agreement below.

Dated: 1/16, 2024

Jason Rathod

Jason S. Rathod
Counsel for Named Plaintiff and the Settlement

Dated: 1/16, 2024

Jeremy Smith

Jeremy Smith
Counsel for Defendants

Dated: 1/9, 2024

Lavinia Prince
Plaintiff

January 11th
Dated: ___, 2024

Brickyard Healthcare, Inc.

January 11th
Dated: ___, 2024

Brickyard LP

January 11th
Dated: ___, 2024

Merrillville Operating, LLC

COURT AUTHORIZED NOTICE OF FLSA SETTLEMENT FOR UNPAID WAGES
PLEASE READ THIS NOTICE CAREFULLY. IT AFFECTS YOUR RIGHTS.

The United States District Court for the Southern District of Indiana authorized this notice. This is not a solicitation from a lawyer.

To: **[INSERT NAME]**

Date: February XX, 2024

Re: Notice of Lawsuit Settlement for Unpaid Wages in *Prince v. Brickyard Healthcare, Inc. et al.*, S.D. Ind. Case No. 1:22-cv-01753

You are one of approximately 1,096 current or former hourly employees of Defendants Brickyard Healthcare, Inc.; Brickyard LP; and Merrillville Operating, LLC ("Defendants") eligible for payment from a settlement in the *Prince* lawsuit. This lawsuit involves Defendants' alleged failure to properly calculate the overtime rate to include non-discretionary bonuses (such as an extra shift bonus) as required by the Fair Labor Standards Act ("FLSA"). Defendants deny the claims in the lawsuit. We write to inform you that this lawsuit recently was **settled** and the assigned judge, Honorable Matthew P. Brookman, has ruled that the case can proceed on a collective basis and approved the settlement as fair and reasonable.

Enclosed in this mailing is a check for your settlement amount with a release on the back. Please note that your check will expire on [ ]. By depositing or cashing the enclosed check, you are agreeing to join this lawsuit and release Defendants and the other Released Parties from all claims relating to the alleged failure to include bonuses and incentives into the regular rate for the purposes of calculating overtime pay, arising or accruing prior to [date of the approval order]. Essentially, this means if you participate in the lawsuit and settlement, you will not be able to separately sue Defendants to recover additional money or benefits for any alleged failure to include bonuses and incentives into the regular rate for the purposes of calculating overtime pay, arising or accruing prior to [date of the approval order]. Your heirs, agents, assigns, or anyone acting on your behalf would also be prohibited from bringing a suit arising out of these released Claims. If you do not wish to participate in the Settlement or release your claims against Defendants, all you need to do is refrain from depositing or cashing the enclosed check. If you choose not to deposit or cash the check, you will not receive any money from the settlement. Please note that it is against the law for any employer, including the Defendants, to fire, discipline, or retaliate against you in any manner for taking part in this case. Defendants may not take any action against you for accepting the Settlement Award.

As background, the settlement requires Defendants to pay a total of $215,000.00 (from which notice program costs will be subtracted). Of this total amount, $84,887.17 will be paid to the Plaintiff's law firms for attorney's fees and litigation costs that were incurred representing you and the other employees of Defendants and $5,000 will be paid as a "service award" to Lavinia Prince for acting as class representative in the lawsuit and obtaining a recovery for you and the other current or former employees of Defendants.

Under the settlement, all current or former Defendants' employees covered by the settlement will receive payment for wages allegedly owed under the formula for regular rate calculations as outlined by the FLSA, as well as an equal amount in liquidated damages. The formula used essentially incorporates the non-discretionary extra shift bonuses you received into your regular rate of pay and then recalculates the required overtime wage. The payments provided by this settlement are based on the difference between the overtime wages determined by this formula and what you were actually paid as overtime during the relevant time period. The more non-discretionary extra shift bonuses you received and overtime you worked between September 2, 2019 and [date of the approval order], the higher your payment will be.

Under the settlement, 50% of your payment will be treated as wages (subject to typical withholdings and deductions and reported as wage income as required by law), and 50% of your payment will be treated as non-wage recovery (not subject to any withholding or deductions and reported as non-wage income as required by law). You should speak with a tax advisor if you have any questions about these issues. You will receive a 1099 Form for the non-wage payment in approximately [ ] 2024 and a W-2 Form for the wage payment in approximately [ ] 2024. You will need the W-2 and 1099 for tax purposes.

You may review the operative complaint and important case documents at the following website: www.[ ].com.

If you have any questions about what claims you are releasing, the process of joining the lawsuit, or the amount you are receiving, please contact RG/2 Claim Administration LLC (the court-appointed claim administrator) at [phone or email] or Plaintiff's counsel Migliaccio & Rathod LLP at info@classlawdc.com or (202) 470-3520.

SETTLEMENT AGREEMENT AND GENERAL RELEASE

This Settlement Agreement and General Release ("Agreement") is entered into between Brickyard Healthcare, Inc.; Brickyard LP; and Merrillville Operating, LLC (collectively, "Defendants") and Lavinia Prince ("Plaintiff;" collectively with Defendants, "Parties").

WHEREAS, Plaintiff was previously employed by Defendants; and

WHEREAS, Plaintiff filed Case No. 1:22-cv-01753, styled *Lavinia Prince, et al., v. Brickyard Healthcare, Inc., et al.* (the "Lawsuit") in the United States District Court for the Southern District of Indiana (the "Court") on September 2, 2022; and

WHEREAS, Defendants have denied and continue to deny any and all CLAIMS contained in the above-referenced matter; and

WHEREAS, the Parties successfully resolved all CLAIMS contained in the Lawsuit, and such resolution called for Plaintiff to release any and all claims against Defendants through the execution of a separate release and waiver of claims; and

WHEREAS, this Agreement is entered into in connection with the Settlement Agreement and Release executed by Prince and Defendants ("Collective Settlement Agreement") which resolves all CLAIMS contained in the Lawsuit on behalf of Prince and others similarly situated; and

WHEREAS, under the Collective Settlement Agreement, Defendants agreed to provide Plaintiff a Collective Representative Payment of $5,000.00 as payment for her involvement in commencing and litigating the claims asserted in the Lawsuit and resolved in the Collective Settlement Agreement and for her involvement in settlement negotiations for the benefit of all collective members of the Lawsuit; and

WHEREAS, Plaintiff and Defendants now desire to reach a complete and final settlement of any and all differences that exist or that may exist between them, including but in no way limited to, the differences embodied in the Lawsuit; and

NOW, THEREFORE, in consideration of the mutual promises and valuable consideration described below, the parties agree as follows:

1. As used in this Settlement Agreement and General Release, these words shall have the following meanings:

    a. RELEASEES means Brickyard Healthcare, Inc.; Brickyard LP; and Merrillville Operating, LLC, as well as their owners, predecessors, successors, assigns, agents, directors, officers, employees, representatives, attorneys, insurers, and parents, divisions, subsidiaries, and affiliates, and all persons acting by, through under, or in concert with any of them.

    b. CLAIM or CLAIMS means any and all complaints, lawsuits, claims (including without limitation, the allegations contained in the Lawsuit), liabilities,

obligations, promises, agreements, grievances, controversies, damages, actions, causes of action, rights, demands, losses, debts, and expenses (including costs and attorneys' fees actually incurred) that Plaintiff has or ever had against RELEASEES up to and including the date of this Agreement.

2. This Agreement is entered into in connection with the settlement of the Lawsuit. Accordingly, this Agreement's validity is conditioned upon the Court's approval of the Collective Settlement Agreement. As such, subject to Paragraph 9, the effective date of this agreement ("Effective Date") shall be the same as the Effective Date in the Collective Settlement Agreement. In the event that the Court does not approve the settlement or the payment of a Collective Representative Payment to Plaintiff amounting to $5,000.00, this Agreement shall be deemed null and void in its entirety.

3. In accordance with the terms of the Collective Settlement Agreement, Defendants shall pay Plaintiff a Collective Representative Payment of $5,000, as payment for her involvement in commencing and litigating the claims asserted in the Lawsuit and resolved in the Collective Settlement Agreement and for her involvement in settlement negotiations for the benefit of all collective members of the Lawsuit, for which Defendants shall issue Plaintiff an IRS Form 1099.

4. Each party shall bear all of the fees, costs, and expenses incurred by them or their own attorneys or advisors in connection with this Agreement and the settlement it represents.

5. In exchange for her receipt of the Collective Representative Payment, and as a material inducement to RELEASEES to enter into this Agreement, as against RELEASEES, Plaintiff does hereby irrevocably and unconditionally release, discharge, compromise and settle any and all CLAIMS, demands, rights of action or obligation (including all attorneys' fees and costs actually incurred), matured or unmatured, of whatever nature and whether or not presently known that exist as of the execution date of this Agreement, including but not limited to any CLAIMS made in the Lawsuit, and any other CLAIMS arising out of or relating to Plaintiff's employment with any of the RELEASEES and/or her separation therefrom, under any federal, state or local law, common law, or statute. This Agreement does not restrict Plaintiff from filing a charge with the U.S. Equal Employment Opportunity Commission or comparable state agency, provided, however, Plaintiff waives her right to recover any monetary damages with respect to any such charge or any CLAIM or suit brought by or through any local, state, or federal department, agency, or court. Plaintiff does not waive or release any future CLAIMS that arise after Plaintiff executes this Agreement. Plaintiff also agrees that Plaintiff has not assigned or transferred any CLAIMS to another person or entity. This Agreement does not release Plaintiff's right to any vested right or benefits under any qualified savings, pension, or retirement plan.

6. Plaintiff acknowledges and agrees that this Agreement is a compromise of disputed CLAIMS, and any actions taken in connection with it do not constitute, and should not be understood as constituting, an acknowledgment, evidence, or an admission of any liability or

violation of any law or statute, the common law, or any agreement which exists or which allegedly may exist by and between Plaintiff and Defendants. Defendants deny and disclaim any liability to Plaintiff and by entering into this Agreement intend merely to avoid continued litigation.

7. Plaintiff agrees not to make any statements or remarks which are disparaging toward RELEASEES.

8. This Agreement is binding upon Plaintiff and her heirs, administrators, representatives, executors, and assigns, and shall inure to the benefits of RELEASEES and to their heirs, administrators, representatives, executors, successors, and assigns.

9. Exclusively as this Agreement pertains to Plaintiff's release of CLAIMS under the Age Discrimination in Employment Act of 1967, as amended ("ADEA"), Plaintiff, pursuant to and in compliance with the Older Workers Benefit Protection Act: (i) is advised in writing to consult with her attorney prior to executing this Agreement, (ii) has been afforded a period of twenty-one (21) calendar days to consider this Agreement, and (iii) may revoke this Agreement (only with regard to her ADEA waiver and release) during the seven (7) calendar days following its execution. Revocation must be sent via email to Brad Jokovich at brad.jokovich@brickyardhc.com. To the extent Plaintiff executes this Agreement prior to the expiration of the twenty-one (21) calendar day period specified above, Plaintiff acknowledges and agrees that Plaintiff was afforded the opportunity to have at least twenty-one (21) calendar days to consider it before executing it and that Plaintiff's execution of the Agreement prior to the expiration of said period was Plaintiff's voluntary act. Plaintiff also agrees that this Agreement is written in a manner that enables Plaintiff to fully understand its content and meaning. Plaintiff also agrees that Plaintiff is waiving and releasing CLAIMS (including any ADEA CLAIM) in exchange for valuable consideration identified above that is in addition to anything of value to which Plaintiff is already entitled.

This Agreement, as it pertains to a release of CLAIMS under the ADEA, shall become effective and enforceable: (i) seven (7) calendar days after its execution, provided Plaintiff does not revoke it as provided herein; or (ii) on the Effective Date, whichever is later. All other provisions of this Agreement or parts thereof shall become effective on the Effective Date. If Plaintiff revokes this Agreement as provided herein, Defendants may revoke this Agreement in its entirety during the seven (7) day calendar day period following receipt of revocation.

10. This Agreement – together with the Collective Settlement Agreement – sets forth the entire agreement by and between Plaintiff and Defendants and supersedes any and all prior agreements and understandings, whether written or oral, between them. This Agreement shall not be modified except by written agreement duly executed by or on behalf of each of the parties hereto. If any part of this Agreement shall be deemed invalid or unenforceable, all remaining parts shall remain binding and in full force and effect.

11. The failure of Plaintiff or Defendants to insist upon strict adherence to any term of this Agreement on any occasion shall not be considered a waiver thereof or deprive that party of

the right thereafter to insist upon strict adherence to that term or any other term of this Agreement.

12. Plaintiff acknowledges that she is fully able and competent to enter into this Agreement, that she has read this Agreement in its entirety, that she had an opportunity to review it with her attorney, and that her agreement to all of its provisions is made freely, voluntarily, and with full and complete knowledge and understanding of its contents. Plaintiff also acknowledges and agrees that, in signing this Agreement, she has not relied upon any representations made by Defendants with regard to the subject matter, basis, or tax consequences – including the character or treatment of the settlement payment hereunder, or effect of this Agreement or otherwise, other than the obligations of the parties set forth in this Agreement.

Lavinia Prince

Lavinia Prince

Date: 01/09/2024

Brickyard Healthcare, Inc.

By: Wesley Rogers

Its:

Date: January 11, 2024

Brickyard LP

By: Wesley Rogers

Its:

Date: January 11, 2024

Merrillville Operating, LLC

By: Wesley Rogers

Its:

Date: January 11th, 2024

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA

LAVINIA PRINCE.,
individually and on behalf of all others similarly situated,

Plaintiff,

v. **Civil Action No. 1:22-cv-01753**

BRICKYARD HEALTHCARE, INC. et al.

Defendants

|PROPOSED| ORDER

Upon consideration of the Plaintiffs' Unopposed Motion for Approval of the Settlement, and upon consideration of the supporting exhibits, including the Settlement Agreement between Named Plaintiff Lavinia Prince and Defendants Brickyard Healthcare, Inc.; Brickyard LP; and Merrillville Operating, LLC, the Motion is GRANTED.

The parties have entered into a FLSA Collective Action Settlement, which if approved would resolve this FLSA Collective Action. Upon review and consideration of the motion papers and the Settlement Agreement and the exhibits thereto, including the proposed forms of notice to the FLSA Collective ("Notice"), the Court finds that there is sufficient basis for (a) granting approval of FLSA Collective Settlement Agreement: (b) certifying the FLSA collective for settlement purposes only; (c) approving the Parties' proposed form and method of notice to the FLSA Collective of the settlement; (d) approving the Parties' proposed Notice and the procedures set forth in the Settlement for individuals to opt-in to the settlement, and directing that notice be disseminated to the FLSA Collective pursuant to the terms of the Settlement; and

(e) approving Plaintiffs' Counsel's application for attorneys' fees and costs, and Named Plaintiff Prince's service award. The Court hereby FINDS and ORDERS the following:

1. This Action is certified as a collective action under the FLSA for purposes of the settlement pursuant to 29 U.S.C. § 216(b). The certified collective is defined as any hourly worker Defendants employed from September 2, 2019 to the date in which the settlement agreement is fully executed, who was paid an overtime rate that did not account for the extra shift bonuses that he/she was paid in the same week.

2. This Order hereby adopts and incorporates by reference the terms and conditions of the FLSA Collective Action Settlement Agreement ("Settlement Agreement") together with the definitions and terms used and contained therein.

3. The Court finds that it has jurisdiction over the subject matter of the Action and over all parties to the action, including all members of the FLSA Collective.

4. The Notice fully and accurately informs the FLSA Collective of all material elements of the proposed settlement; is the best notice practicable under the circumstances; is valid, due, and sufficient notice to the FLSA Collective; and complies fully with due process. The Notice fairly and adequately describes the settlement and provides the FLSA Collective with adequate instructions and a variety of means to obtain additional information.

5. The Settlement Agreement, which is attached as Exhibit 2 to the Memorandum in Support of Approval of the Settlement is fair and reasonable. It was negotiated and entered into at arm's length and in good faith, within the range of judicial approval, and the product of *bona fide* disputes over liability and therefore approved. The Court hereby directs the consummation of the Settlement Agreement's terms and provisions.

6. The Court hereby directs RG/2 Claims Administration LLC to act as the independent Settlement Administrator, consistent with the terms of the Settlement Agreement.

7. Defendants shall issue payment of the Settlement Amount of $215,000.00 to RG/2 Claims Administration LLC within 10 days of this order in the following manner:

8. The Service Award of $5,000 to Named Plaintiff Lavinia Prince is approved, and RG/2 Claims Administration LLC shall issue payment promptly upon receipt of the Common Fund Amount by Defendants.

9. Plaintiffs' Counsel's request for payment of out-of-pocket costs and payment of attorneys' fees in the total amount of $84,887.17 is approved and to be paid by RG/2 Claims Administration LLC promptly upon receipt of the Common Fund Amount.

10. All putative FLSA Collective Members have been, and will be, given notice and a full and fair opportunity to join the Settlement, benefit from its provisions, and be bound by the release, or to withhold their consent and retain their rights. Accordingly, the terms of the Settlement Agreement and of the Court's Order shall be forever binding on all those individuals who opt-in to the Settlement by cashing their checks as outlined in the Notice to the FLSA Collective and further communications with the FLSA Collective Members. These participating FLSA Collective Members will release and forever discharge Defendant and the Released Parties for any and all Released Claims as set forth in the Settlement Agreement.

11. This action is dismissed with prejudice. Counsel for the Parties are authorized to jointly use all reasonable procedures in connection with approval and administration of the Settlement that are not materially inconsistent with the Settlement Agreement, including making, without further approval of the Court, minor changes to the form or content of the Notice that they jointly agree are reasonable and necessary.

12. The Court retains jurisdiction over the claims alleged and the Parties in the Lawsuit to implement and supervise the Parties' Agreement and enforce the terms of this settlement.

13. The Parties are hereby ordered to comply with the terms of the Settlement.

SO ORDERED this _____ day of _____, 2024

_____

The Honorable Matthew P. Brookman
United States District Court for the
Southern District of Indiana