APPENDIX

APPENDIX A

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

[Filed 12/06/17]

No. 16-55059

D.C. No. 5:15-cv-01305-VAP (SPx)

LOURDES LEFEVRE, as an individual and on behalf of all employees similarly situated,

Plaintiff-Appellee,

v.

FIVE STAR QUALITY CARE, INC., a Maryland Corporation,

Defendant-Appellant.

MEMORANDUM[*]

Appeal from the United States District Court
for the Central District of California
Virginia A. Phillips, District Judge, Presiding

Submitted November 16, 2017[**]
Pasadena, California

[*] This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

[**] The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Before: NGUYEN and HURWITZ, Circuit Judges, and SEEBORG,[***] District Judge

Five Star Quality Care, Inc. appeals the district court's order denying its motion to compel arbitration of Lourdes Lefevre's representative claims under California's Private Attorney General Act ("PAGA"). Reviewing the order *de novo*, *see Kilgore v. Keybank, Nat'l Ass'n*, 718 F.3d 1052, 1057 (9th Cir. 2013) (en banc) (citation omitted), we affirm.

1. Lefevre argues that this Court lacks jurisdiction to hear this appeal because the district court has yet to hold an evidentiary hearing on whether she signed the arbitration agreement in this case. But because the district court issued an order denying arbitration of Lefevre's PAGA claims, this Court has jurisdiction to hear the appeal under 9 U.S.C. § 16(a).

2. Five Star argues that the district court erred in determining that California, not Maryland, contract law governs whether a PAGA waiver is enforceable. To evaluate whether the arbitration agreement's choice-of-law clause was enforceable, the district court applied the principles set forth in Section 187 of the Restatement (Second) of Conflict of Laws. *See Nedlloyd Lines B. V. v. Superior Court*, 3 Cal. 4th 459, 465–66 (1992). Applying the choice-of-law principles of the forum state, California, the district court reasoned that application of Maryland law would be contrary to a fundamental policy of California, which encourages private enforcement of labor code violations. California, which does not recognize contractual waivers of PAGA claims, has a materially greater interest in applying

[***] The Honorable Richard Seeborg, United States District Judge for the Northern District of California, sitting by designation.

its law to an employment contract involving work performed in California than does Maryland. Therefore, the district court was correct to apply California rather than Maryland law when deciding whether the PAGA waiver was enforceable.

3. Five Star argues that *DirecTV, Inc. v. Imburgia*, 136 S. Ct. 463 (2015), abrogated *Sakkab v. Luxottica Retail North America, Inc.*, 803 F.3d 425 (9th Cir. 2015), and *Iskanian v. CLS Transportation Los Angeles,* LLC, 59 Cal. 4th 348 (2014), which find PAGA waivers unenforceable. We disagree; *Imburgia* is not "clearly irreconcilable" with *Sakkab* or *Iskanian*. *Miller v. Gammie*, 335 F.3d 889, 900 (9th Cir. 2003) (en banc). *Imburgia* simply held that a California court failed to place arbitration contracts "on equal footing with all other contracts" when it interpreted a choice-of-law provision in an arbitration agreement. 136 S. Ct. at 468–71 (quoting *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 443 (2006)). *Sakkab* and *Iskanian*, in contrast, directly addressed the validity of PAGA waivers in arbitration agreements. *Sakkab*, 803 F.3d at 431–40; *Iskanian*, 59 Cal. 4th at 378-89. Therefore, neither case is undermined by *Imburgia*.

AFFIRMED.

APPENDIX B

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION

EDCV 15-1305-YAP (SPx)

Lourdes Lefevre, et. al.,

Plaintiffs,

v.

Five Star Quality Care, Inc., et. al.,

Defendants.

ORDER DENYING IN PART DEFENDANT'S MOTION TO COMPEL ARBITRATION

On October 21, 2015, Defendant Five Star Quality, Inc. ("Defendant") filed its Motion to Compel Arbitration ("Motion"). (Doc. 16.) Plaintiff Lourdes Lefevre ("Plaintiff") opposed the Motion on November 20, 2015 (Doc. 18), and Defendant replied on December 2, 2015 (Doc. 24).

After consideration of the papers filed in support of, and in opposition to, the Motion, the Court DECLINES TO RULE on the Motion as to Plaintiff's class action claims and instead sets an evidentiary hearing for December 21, 2015, at 2:00 P.M. to determine whether Plaintiff signed the arbitration agreement that is the subject of this action. To the extent, however, that Defendant seeks to compel arbitration of Plaintiff's representative claims under the Private

Attorneys General Act (PAGA), the Motion is DENIED.

I. BACKGROUND

Defendant operates a number of locations for "senior living" in California, including in San Bernardino County. (Complaint (Doc. 1-1) ¶ 3.) Defendant employed Plaintiff in January 2013 as a personal care worker at the company's location in Redlands, California. (*Id*. ¶¶ 5, 12.) During her employment, Plaintiff alleges Defendant violated various California labor laws by, among other things, underpaying her for overtime work, failing to provide her with meal breaks, improperly charging her for the cost of her employment-related uniforms and equipment, and failing to provide her with paper copies of her itemized paychecks. (*Id*. ¶¶ 13-17.) Based on these violations, Plaintiff brings: (1) a representative PAGA action, and (2) a class action on behalf of those who were not paid properly, not given proper meal periods and rest breaks, and suffered improper expense deductions on behalf of Defendant. (*Id*. ¶ 19.)

Defendant nonetheless claims Plaintiff agreed to arbitrate all claims related to her employment pursuant to the Mutual Agreement to Resolve Disputes and Arbitrate Claims ("Agreement") she allegedly signed on January 9, 2013. (Exhibit B (Doc. 16-3) at 13.) The Agreement required the parties to arbitrate "all disputes, claims or controversies arising out of [Plaintiff's] employment" and also included a choice-of-law provision which stated that Maryland law would govern "whether a party's claim is subject to [the] Agreement." (*Id.* at 7, 10.) Defendant brings this Motion to enforce this Agreement.

II. LEGAL STANDARD

The Federal Arbitration Act ("FAA") "was enacted . . . in response to widespread judicial hostility to arbitration agreements." *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 131 S. Ct. 1740, 1745 (2011) (citation omitted). It governs arbitration agreements in contracts involving transactions in interstate commerce, including employment contracts. *See* 9 U.S.C. § 1; *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24 (1983); *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105, 119 (2001).

Section 2 of the FAA states: "A written provision in any . . . contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction . . . shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2. Section 2 of the FAA "reflect[s] both a liberal federal policy favoring arbitration and the fundamental principle that arbitration is a matter of contract." *Concepcion*, 131 S. Ct. at 1745 (citation and internal quotation marks omitted). "In line with these principles, courts must place arbitration agreements on an equal footing with other contracts, and enforce them according to their terms." *Id*. at 1745-46 (citations omitted).

"Because the FAA mandates that district courts shall direct the parties to proceed to arbitration on issues as to which an arbitration agreement has been signed, the FAA limits courts' involvement to determining (1) whether a valid agreement to arbitrate exists and, if it does, (2) whether the agreement encompasses the dispute at issue." *Cox v. Ocean View Hotel Corp*., 533 F.3d 1114, 1119 (9th Cir. 2008) (citation and internal quotation marks omitted). "If the

response is affirmative on both counts, then the [FAA] requires the court to enforce the arbitration agreement in accordance with its terms." *Chiron Corp. v. Ortho Diagnostic Sys., Inc*., 207 F.3d 1126, 1130 (9th Cir. 2000).

"[T]he party resisting arbitration bears the burden of proving that the claims at issue are unsuitable for arbitration." *Green Tree Fin. Corp. v. Randolph*, 531 U.S. 79, 91-92 (2000).

III. DISCUSSION

A. Whether the Parties Entered into an Arbitration Agreement

As with all arbitration disputes, the Court must begin its analysis by determining "whether a valid agreement to arbitrate exists." *Cox*, 533 F.3d at 1119.

Here, Plaintiff claims she "never signed the document that [Defendant] claims is an 'agreement'" and that she is therefore not bound by it. (*See* Opp'n at 5; Lourdes Lefevre Declaration ("Lefevre Declaration") (Doc. 18-1) ¶¶ 2-3.) Plaintiff further claims that "someone falsely wrote [her] name on the [Agreement]" and has attached a "true and correct copy" of her signature as Exhibit A to her Declaration. (Lefevre Declaration ¶ 3.) Exhibit A, however, appears to be incomplete and does not contain her signature.

Defendant claims Plaintiff assented to the Agreement by signing it. (*See* Reply at 9.) Defendant further contends that it has produced "multiple documents containing Plaintiff's handwritten name that appear to be the same handwriting as Plaintiff's signature on the Agreement." (*Id*.) Defendant has provided a declaration from Kristine Iwakoshi, its Regional Human Resources Director, who states the same. (*See* Kristine

Iwakoshi Declaration ("Iwakoshi Declaration") (Doc. 24-1) ¶ 5.)

On this record, the Court declines to decide whether Plaintiff and Defendant entered into a valid contract to arbitrate Plaintiff's class action claims. The Court orders the parties to appear at an evidentiary hearing set for December 21, 2015, at 2:00 P.M. to determine whether Plaintiff signed the Agreement and assented to its terms.

B. PAGA Claims

In addition to her class action claims, Plaintiff brings representative PAGA claims alleging violations of the California labor laws. (Compl. ¶¶ 80-86.) The Court nonetheless finds that such claims are not subject to arbitration, even if Plaintiff and Defendant agreed to arbitrate their employment-related disputes.

The Court begins by analyzing the choice-of-law provision contained in the Agreement and deciding which state's law – Maryland or California – applies, and then applies the appropriate state's law to determine whether to enforce the Agreement. The Court ultimately finds (1) California law applies, and (2) California law precludes application of the Agreement to Plaintiff's representative PAGA claims.

1. Choice-of-Law Provision

"When a federal court sits in diversity, it must look to the forum state's [choice-of-law] rules to determine the controlling substantive law." *Patton v. Cox*, 276 F.3d 493, 495 (9th Cir. 2002) (citing *Klaxon Co. v. Stentor Elec. Mfg. Co.*, 313 U.S. 487, 496 (1941)).[1] As

[1] Defendant removed the instant action pursuant to the Class Action Fairness Act ("CAFA"). (Notice of Removal (Doc. 1) 910.) Given that CAFA relies on the diversity of the parties for

the forum state here is California, the Court will apply California's choice-of-law rules to determine the enforceability of the Agreement's choice-of-law provision. For the reasons set forth below, the Court finds the provision invalid and thus applies California, rather than Maryland, law to Plaintiff's PAGA claims.

California courts apply a three-part test to determine the enforceability of a contractual choice-of-law provision. *See Nedlloyd Lines B.V. v. Superior Ct.*, 3 Cal. 4th 459, 465-67 (1992). First, the court must determine either: "(1) whether the chosen state has a substantial relationship to the parties or their transaction, or (2) whether there is any other reasonable basis for the parties' choice of law." *Id.* at 466. "If . . . either test is met, the court must next determine whether the chosen state's law is contrary to a *fundamental* policy of California." *Id.* "If . . . there is a fundamental conflict with California law, the court must then determine whether California has a materially greater interest than the chosen state in the determination of the particular issue." *Id.* (internal quotation marks omitted).

a. Substantial Relationship

Here, Defendant has satisfied the first step of the choice-of-law analysis. Maryland "has a substantial relationship to the defendant[] in this case" because "[i]t is the state where [Defendant is] incorporated." *See Klussman v. Cross Country Bank*, 134 Cal. App. 4th 1283, 1292 (2005); Notice of Removal ¶ 34.

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removal, the Court applies the choice-of-law rules of the forum state. *See Becher v. Northwestern Mut. Life Ins. Co.*, No. CV 10-6264 PSG (AGRx), 2010 WL 5138910, at *2, 4 (C.D. Cal. Dec. 9, 2010) (applying choice-of-law rules of forum state in CAFA action).

b. Contrary to Fundamental Policy of California

The second step requires this Court to determine whether Maryland law is "contrary to a *fundamental* policy of California." *See Neddloyd* [sic], 3 Cal. 4th at 466. "To be fundamental . . . , a policy must be a substantial one." *Brack v. Omni Loan Co., Ltd*., 164 Cal. App. 4th 1312, 1323 (2008). "The relative significance of a particular policy or statutory scheme can be determined by considering whether parties may, by agreement, avoid the policy or statutory requirement." *Id.*

At issue in this case is whether a party may waive by agreement her right to bring a representative PAGA claim. The California Supreme Court squarely addressed this issue in *Iskanian v. CLS Transportation Los Angeles, LLC*, and found that "an employee's right to bring a PAGA action is unwaivable." 59 Cal. 4th 348, 382-83 (2014). The court reasoned that "an agreement by employees to waive their right to bring a PAGA action" would undermine PAGA's purpose of "empowering employees to enforce the Labor Code as representatives of the [Labor and Workforce Development] Agency." *Id.* at 383. The court further stated that such an agreement would violate California Civil Code § 3513, which states that a "law established for a public reason cannot be contravened by a private agreement." *See id.* As such an agreement would "harm the state's interests in enforcing the Labor Code and in receiving the proceeds of civil penalties used to deter violations," the court held that it was "against public policy" and should "not be enforced." *See id*. at 383.

To the extent that Defendant argues the Federal Arbitration Act ("FAA") preempts the *Iskanian* rule, both the California Supreme Court and the Ninth

Circuit have found no preemption. *See Iskanian*, 59 Cal. 4th at 386; *Sakkab v. Luxottica Retail North America, Inc*., 803 F.3d 425, 431 (9th Cir. 2015). In *Iskanian*, the California Supreme Court reasoned that "a PAGA claim lies outside the FAA's coverage because it is not a dispute between an employer and an employee arising out of their contractual relationship. It is a dispute between an employer and the *state." See Iskanian*, 59 Cal. 4th at 386. The Ninth Circuit further stated that "the *Iskanian* rule prohibiting waiver of representative PAGA claims does not diminish parties' freedom to select informal arbitration procedures." *Sakkab*, 803 F.3d at 435. As the rule did not conflict with the FAA's purposes, the court found no preemption. *See id*.

Given that representative PAGA claims cannot be waived by private agreement, the Court finds that the *Iskanian* rule embodies "the kind of policy which is fundamental within the meaning of section 187 of the Restatement." *See Brack*, 164 Cal. App. 4th at 1324.

The Court further finds that Maryland law conflicts with the policy embodied in the *Iskanian* rule. PAGA is a California-specific statute, and thus Maryland courts have not had an opportunity to interpret or apply it. Presumably, a Maryland court would apply traditional contract principles to determine whether there was a valid arbitration agreement that precluded a PAGA representative action. As Defendant argues, if a Maryland court were to do so, it would find the arbitration agreement valid. (Motion at 10.) Furthermore, although Defendant claims that "Maryland law is not contrary to any policy in California with regard[] to the enforcement of arbitration agreements," it has wholly failed to discuss the *Iskanian* decision and its application to PAGA claims. (*See*

id. at 8.) Rather, Defendant simply states that the Maryland Uniform Arbitration Act is "consistent with federal and California law" in that it "expresses a legislative policy favoring the enforcement of agreements to arbitrate." (*Id*.) Without an analysis of the *Iskanian* decision, the Court finds Defendant's contentions unpersuasive.

Accordingly, the Court finds that Maryland law is "contrary to [the] *fundamental* policy of California" embodied in the *Iskanian* decision. *See Neddloyd* [sic], 3 Cal. 4th at 466.

c. Materially Greater Interest in the Litigation

The final step is to determine which state has a "materially greater interest" in the litigation. *See Nedlloyd*, 3 Cal. 4th at 466. To make this determination, courts consider factors such as "(a) the place of contracting, . . . (b) the place of negotiation of the contract, . . . (c) the place of performance, . (d) the location of the subject matter of the contract, and . . . (e) the domicil[e], residence, nationality, place of incorporation and place of business of the parties." *Application Grp., Inc. v. Hunter Grp., Inc*., 61 Cal. App. 4th 881, 903 (1998) (citations omitted) (internal quotation marks omitted). A court may also consider "which state . . . will suffer greater impairment of its policies if the other state's law is applied." *Brack*, 164 Cal. App. 4th at 1329.

Here, Plaintiff claims "the employment relationship that gave rise to the allegations set forth [in the Complaint] was entered into in California, and that the subject of said employment relationship arose in the County of San Bernardino." (Compl. ¶ 11.) The three classes that Plaintiff seeks to represent are all

composed of "employees employed by Defendant in California." (*Id.* ¶ 19.) Plaintiff is also a "citizen of the State of California" and was employed in Redlands, California. (Notice of Removal ¶ 33; Compl. ¶ 5.) Accordingly, "the place of contracting," "the place of performance," "the location of the subject matter of the contract" and "the domicil[e]" of Plaintiff weigh in favor of applying California law.

Furthermore, as in *Brack*, the Court here finds that California will "suffer greater impairment of its policies" if Maryland law is applied. *See* 164 Cal. App. 4th at 1329. In *Brack*, the court found that applying Nevada, rather than California, law "would deprive a substantial segment of the borrowing public in [California] of the substantive and regulatory protection California affords all of its other consumers." *Id.* Similarly, in this case, application of Maryland law would deprive California employees of the protections provided in PAGA. As "[Maryland's] interest in applying its law is limited to its more general interest in enforcing the provisions of contracts made by one of its citizens," California has a greater interest in applying its laws to the instant action.[2] *See id*.

Accordingly, the Court will apply California law to Plaintiff's representative PAGA claims.

2. California Law and Plaintiff's Representative PAGA Claims

As stated above, the California Supreme Court has held that representative PAGA claims are "unwaivable." *Iskanian*, 59 Cal. 4th at 383. The Ninth Circuit

[2] Defendant identifies no other interest of Maryland relevant here, and the Court finds none as well.

has reaffirmed the *Iskanian* decision and has concluded that the FAA does not preempt the California Supreme Court's decision. *Sakkab*, 803 F.3d at 439.

Given that Plaintiff could not have waived by arbitration agreement her right to bring representative PAGA claims, the Court DENIES Defendant's Motion to Compel Arbitration.

IV. CONCLUSION

For the reasons stated above, the Court declines to rule on whether Plaintiff's class action claims are subject to arbitration pending an evidentiary hearing regarding Plaintiff's assent to the Agreement. The Court sets the hearing on December 21, 2015, at 2:00 P.M.

With regard to Plaintiff's representative PAGA claims, the Court applies California law and concludes that she has not waived them. Defendant's Motion to Compel is thus DENIED as to these claims.

IT IS SO ORDERED.

Dated: 12/11/15

/s/ Virginia A. Phillips
Virginia A. Phillips
United States District Judge

APPENDIX C

IMPORTANT NOTICE REGARDING YOUR EMPLOYMENT WITH FIVE STAR

YOU MUST CAREFULLY READ THE ATTACHED MUTUAL AGREEMENT TO RESOLVE DISPUTES AND ARBITRATE CLAIMS.

As a condition of your employment with Five Star, you are required to agree to participate in Five Star's dispute resolution and arbitration program which is described in detail in the attached Mutual Agreement to Resolve Disputes and Arbitrate Claims (the "*Agreement*"). Because participation in the dispute resolution and arbitration process is one of the conditions of your employment with Five Star, if you decide not to agree to the terms of the Agreement, Five Star will consider your employment application to be withdrawn.

The attached Agreement describes this important program in detail, including:

- Your and Five Star's agreement to attempt to resolve grievances through an informal grievance and dispute resolution process;
- Your and Five Star's agreement to use binding arbitration, instead of court action or jury trials, to resolve disputes if the grievance is not satisfactorily resolved through the informal grievance and dispute resolution procedure;
- Your and Five Star's agreement to pursue claims on an individual basis, and not through a class or collective action; and waiver of the right to bring, or be a party to class or collective actions;

- The benefits of the dispute resolution program, including potentially quicker and less expensive resolution of disputes related to your employment, Five Star's agreement not to use a lawyer in the proceedings if you choose not to use a lawyer, Five Star's agreement to pay all filing costs associated with arbitration, and Five Star's agreement to waive any rights it might have to recover costs or fees from you if Five Star prevails.

You should take the time to carefully review this important document before you sign it. You also have the right to ask a lawyer about the effect and meaning of the Agreement.

MUTUAL AGREEMENT TO RESOLVE DISPUTES AND ARBITRATE CLAIMS

THIS MUTUAL AGREEMENT TO RESOLVE DISPUTES AND ARBITRATE CLAIMS (this "*Agreement*") is adopted and entered into by Five Star Quality Care, Inc., FSQ, Inc., FVE Managers, Inc., and FVE IL-Managers, Inc. (together with its and their parents, affiliates and subsidiaries and its and their current and former employees, officers and directors, successors and assigns, the "*Company*") and its employees ("*you*") effective as of the day you begin your employment with the Company.

You and the Company may have disagreements during or following your employment with the Company. To simplify and reduce the cost of resolving disputes that may arise that are not resolved in the ordinary course of your employment, the Company has adopted the following grievance and arbitration procedures. It is a condition of your employment by the

Company that you agree to be bound by the grievance and arbitration procedures set forth below.

I. Requirement to Grieve and Arbitrate.

You and the Company are required to follow the grievance process set forth in Section II(A) below and then, if necessary, the arbitration process set forth in Section II(B) below with respect to any claims, including any claims that could be brought in a court.

For purposes of this Agreement, the term "claims" means any and all disputes, claims or controversies arising out of your employment or the termination of your employment which could be brought in a court, including, but not limited to, claims under the Age Discrimination in Employment Act; Title VII of the Civil Rights Act of 1964; the Fair Labor Standards Act; the Family and Medical Leave Act; the Americans with Disabilities Act of 1990; Section 1981 through 1988 of Title 42 of the United States Code; state and local anti-discrimination laws; and any other federal, state, or local law, ordinance or regulation, and claims based on any public policy, contract, tort, or common law and any claim for costs, fees, and other expenses or relief, including attorney's fees. Claims subject to this Agreement shall not include: (i) claims relating to workers' compensation benefits; (ii) unemployment compensation benefits; (iii) claims with respect to any stock plan, employee pension or welfare benefit plan if that plan contains some form of specific grievance or other procedure for the resolution of disputes under the plan; (iv) claims filed with a federal, state, or local administrative agency (*e.g.*, the NLRB, EEOC, *etc.*) or reporting of criminal activity to appropriate public authorities; and (v) claims covered by a written employment contract signed by both parties which

provides for a specific, different form of dispute resolution in accordance with that contract's terms.

II. The Grievance and Arbitration Process.

A. The Grievance Process. If you believe you have a claim against the Company, you must send notice of your claim to the Company. The notice must be given by completing the form entitled "Dispute Resolution Claim Form" and mailing it by certified or overnight mail, return receipt requested, to the Company's Human Resources Department, 400 Centre Street, Newton, MA 02458. A copy of the Dispute Resolution Claim Form is attached hereto and is also available by contacting a member of the Company's Human Resources Department at the above address or by calling (617) 796-8387. You must fully complete the Dispute Resolution Claim Form. If the Company believes it has a claim against you, it will send a completed Dispute Resolution Claim Form by overnight or certified mail, return receipt requested, to your last known address listed in its records. Upon receipt of the Dispute Resolution Claim Form, the non-grieving party must investigate the claim and provide a written response. The grieving party may be contacted by the non-grieving party for more information about the claim. The parties must cooperate fully in this investigation.

All Dispute Resolution Claim Forms must be sent within the time that the underlying substantive claim could have been properly filed in a court. If the applicable law under which the claim is made requires a preliminary filing with a governmental agency, the Dispute Resolution Claim Form must be sent within that time. The applicable statute of limitations will be held in abeyance, or tolled, beginning on the date that the grieving party sends the non-grieving party the

Dispute Resolution Claim Form. If a party sends a Dispute Resolution Claim Form, but fails to file for arbitration within the periods specified herein, the tolling period ends and the limitations period resumes.

The non-grieving party shall send the grieving party a written response within 30 calendar days after receipt of the Dispute Resolution Claim Form. If the non-grieving party provides a timely response to the grievance, the grieving party has 30 calendar days from receipt of that response to negotiate a settlement or to file for arbitration as set forth in Section B below. If the non-grieving party does not provide a written response to the grieving party within 30 calendar days after receipt (or refusal or inability to deliver) of the Dispute Resolution Claim Form, then either party may file for arbitration as set forth in Section B below within 30 calendar days after the date that such written response was due. The failure to negotiate a settlement or to file for arbitration within the above time limitations will result in a waiver of the claim asserted in the Dispute Resolution Claim Form and the tolling period ending and the limitations period resuming for similar claims by the grieving party.

B. The Arbitration Process.

i. The Arbitration Firm. The Company has selected National Arbitration and Mediation, Inc. ("*NAM*") to arbitrate all disputes under this Agreement. However, the Company reserves the right to change the arbitration firm from time to time provided that it gives advance notice to you of such change and that the arbitration firm selected by the Company is a nationally recognized and experienced neutral arbitration organization (NAM and any designated successor to NAM is hereinafter referred to as the "*Arbitration Firm*"). The Arbitration Firm may not be changed

for any pending claim unless the Arbitration Firm previously selected ceases to exist or otherwise is unable to serve.

ii. Filing for Arbitration. Except as otherwise provided below, the party seeking arbitration shall follow the then current procedures required by the Arbitration Firm to file for arbitration of its claim(s) described in the Dispute Resolution Claim Form. A copy of NAM's rules will be provided to you upon request made to the Human Resources Department, 400 Centre Street, Newton, MA 02458, telephone no. (617) 796-8387, or you may contact NAM to request a copy at 990 Stewart Avenue, Garden City, NY 11530, telephone no. (800) 358-2550, fax no. (516) 794-8518 or you may obtain them from NAM's website (www.namadr.com). If an Arbitration Firm other than NAM is selected by the Company, the Company will provide you with information on how to obtain such firm's rules.

iii. Selection of the Arbitrator. The Arbitration Firm shall provide each party with a list of three (3) arbitrators who are qualified in the field of employment law. The party filing for the arbitration shall eliminate one arbitrator from the list, then the other party shall eliminate one arbitrator from the list of remaining two (2) arbitrators. The remaining arbitrator shall arbitrate the claims. If the party filing for arbitration fails to eliminate one arbitrator from the list within twenty (20) days after receiving the list of the three arbitrators, then the claim shall be waived. If the other party fails to eliminate one arbitrator within the twenty (20) days after notice that the filing party eliminated one arbitrator from the list, the Arbitration Firm shall do so. Only those claim(s) described in the Dispute Resolution Claim Form shall be arbitrated. Additional

claims may be brought only by complying with the grievance process described in this Agreement.

iv. Payment of the Arbitration Firm's Fees and the Arbitrator's Fee and Expenses. The Company will pay 100% of the Arbitration Firm's fees as well as the arbitrator's fees and expenses. The Company also will pay (or reimburse you) for 100% of any filing fees that the Arbitration Firm may charge to initiate arbitration. Each party shall otherwise bear its own costs and fees associated with the arbitration including, but not limited to, attorneys' fees and the costs and fees of responding to discovery requests.

v. Time and Place of Arbitration. The arbitration will be held at a mutually convenient time and place within 50 miles of the Company location at which you most recently are or were working.

vi. Rules of Arbitration. The arbitration shall be conducted by a single arbitrator. Except as provided in this paragraph, the arbitration shall be conducted in accordance with the Arbitration Firm's then current rules for the resolution of employment disputes. The arbitrator may, but shall not be required to, apply the Federal Rules of Civil Procedure (except for Rules 23 and 26) and the Federal Rules of Evidence. It will not be necessary to conduct pre-hearing discovery, but either you or the Company may do so. If either party elects to conduct pre-hearing discovery, each party shall be allowed only up to five (5) interrogatories, including sub-parts, five (5) requests for production, including sub-parts, and two (2) depositions. Electronic discovery will be limited to searches of e-mail accounts of no more than two (2) addresses for a twelve month period (or any shorter period for which e-mails are retained in the ordinary course) and a maximum of five (5) search terms or phrases will be permissible.

Either party may proceed in arbitration with or without an attorney to represent it, at its own expense. If you initiate the arbitration, the decision whether to use a lawyer must be made at the time that arbitration is initiated. If the Company initiates the arbitration, your decision whether to use a lawyer must be made within twenty (20) calendar days after your receipt of notice that the Company has initiated arbitration. The Company agrees that if you elect not to use a lawyer at arbitration, then the Company will not use a lawyer either. Unless the arbitrator determines otherwise, the arbitration hearing shall not last more than one day. If you are employed by the Company at the time of arbitration, then you shall be permitted an excused, but unpaid, absence from work to attend the arbitration.

The arbitrator may award reasonable attorneys' fees and expenses only if expressly required by an applicable statute or law. In the absence of such an express requirement, the arbitrator may award attorneys' fees and expenses to either party only if the arbitrator determines that a failure to award attorneys' fees and expenses would be unconscionable under applicable law.

vii. The Arbitrator's Decision. The arbitrator shall state the reasons for his decision in a writing delivered to you and the Company. Subject to a party's right to appeal as set forth below, the decision or award of the arbitrator shall be final and binding on both you and the Company. A judgment which is not appealed may be entered as a final order in any court having jurisdiction.

viii. Appeal of the Arbitrator's Decision. A party may file for an appeal of a decision of an arbitrator to a panel of three (3) arbitrators (the "*Panel*") within 30

calendar days after receipt of the arbitrator's decision. The Panel shall be appointed by the Arbitration Firm. The Panel shall review the arbitrator's decision as if it is a court of appellate jurisdiction reviewing a lower court's decision, except that it shall overturn the arbitrator's decision only if it determines that the arbitrator abused his or her discretion. No bond shall be required in the case of an appeal. The Panel shall set an appropriate schedule for the briefing of the appeal. The Panel shall determine the matter based upon written documentation provided by the arbitrator and the parties. No oral argument shall be permitted. An interlocutory appeal of an arbitrator's decision may be brought before a Panel where an arbitrator has breached the explicit rules of this Agreement or if a party seeks to recuse or remove an arbitrator for legally sufficient grounds. The decision of the Panel is final and binding. The decision of the Panel may be entered as a final order in any court having jurisdiction.

ix. Company's Costs. The Company agrees that if it prevails at the arbitration it shall not seek or pursue from you any of the costs it incurred in connection with the arbitration. This waiver shall not apply to other employees or supervisors who may be individually accused in the grievance.

III. Other Provisions.

A. Class/Collective Action Waiver. You and the Company agree to waive all rights to bring, or be a party to, any class or collective claims against one another and agree to pursue claims on an individual basis only.

B. Administrative Charges. This Agreement does not prohibit you from filing a claim with, or participating in, any investigation conducted by any federal, state, or local government agency.

C. Applicable Law and Construction/Waiver of Jury Trial. The law of the jurisdiction in which you are primarily employed will govern the substance of your grievance. However, all disputes regarding the enforcement of this Agreement, any of the provisions of this Agreement or whether a party's claim is subject to this Agreement shall be determined in accordance with the law of the State of Maryland. All challenges to the interpretation or enforceability of any provision of this Agreement shall be brought before the arbitrator, and the arbitrator shall rule on all questions regarding the interpretation and enforceability of this Agreement. In the event that any provision of this Agreement shall be construed to be unlawful or unenforceable, and if the offending provision can be deleted without affecting the primary intention of the parties or can be reformed to effect the primary intention of the parties as expressed herein, then the offending provision shall be so deleted or reformed and the remainder of this Agreement shall remain in full force and effect as written. **IF THIS AGREEMENT IS DETERMINED TO BE UNENFORCEABLE ANY CLAIMS BETWEEN YOU AND THE COMPANY RELATED TO YOUR EMPLOYMENT SHALL BE SUBJECT TO A NON-JURY TRIAL IN THE FEDERAL OR STATE COURT THAT HAS JURISDICTION OVER THE MATTER.**

D. Consideration. Your accepting employment with the Company, your continued employment with the Company subsequent to the effective date of this Agreement, the mutual agreement to arbitrate claims,

and the other good and valuable consideration set forth in this Agreement shall constitute consideration and acceptance by you of the terms and conditions set forth in this Agreement. The parties agree that the consideration set forth in this paragraph is wholly adequate to support this Agreement.

E. No Employment Agreement/Employment At Will. The terms and conditions described in this Agreement are not intended to, and shall not, create a contract of employment for a specific duration of time. Employment with the Company is at will and voluntarily entered into, and both you and the Company are free to end that relationship at any time, for any reason and with or without prior notice.

F. Federal Arbitration Act. The Parties acknowledge and agree that the Company is involved in transactions involving interstate commerce and that the Federal Arbitration Act shall govern any arbitration pursuant to this Agreement, including but not limited to the Agreement's scope, interpretation and application.

G. Electronic Signatures. This Agreement may be signed electronically.

H. Receipt and Acknowledgement. By your signature below, you acknowledge receipt of this Agreement. You also acknowledge that this Agreement is a legal document which, among other things, requires you to grieve, and then to arbitrate, all claims you may have now or in the future with the Company, which otherwise could have been brought in court. **YOU ALSO ACKNOWLEDGE THAT YOU HAVE HAD SUFFICIENT TIME TO READ AND UNDERSTAND THE TERMS OF THIS AGREEMENT AND THAT BY RECEIPT OF THIS**

AGREEMENT, THE COMPANY HAS INFORMED YOU THAT YOU HAVE A RIGHT TO SEEK LEGAL COUNSEL REGARDING THE MEANING AND EFFECT OF THIS AGREEMENT. By signing below, you knowingly, voluntarily and freely agree to accept and be bound by the terms of this Agreement.

BY SIGNING BELOW YOU ARE GIVING UP YOUR RIGHTS TO INITIATE OR PARTICIPATE IN CLASS ACTIONS AFFECTING YOUR EMPLOYMENT BY THE COMPANY.

[Signatures appear on the following page]

This Mutual Agreement to Resolve Disputes and Arbitrate Claims is entered into by the Company and you as of the day you begin your employment with the Company.

FIVE STAR QUALITY CARE, INC. FSQ, INC. FVE MANAGERS, INC. FVE IL-MANAGERS, INC.	EMPLOYEE
By: /s/ Bruce J. Mackey, Jr. Bruce J. Mackey, Jr. President and Chief Executive Officer	_____ Print name: Date:

This Mutual Agreement to Resolve Disputes and Arbitrate Claims is entered into by the Company and you as of the day you begin your employment with the Company.

FIVE STAR QUALITY CARE, INC. EMPLOYEE
FSQ, INC.
FVE MANAGERS, INC.
FVE IL-MANAGERS, INC.

By: /s/ Bruce J. Mackey, Jr.
Bruce J. Mackey, Jr.
President and Chief
Executive Officer

/s/ Lourdes Lefevre
Print name:
Date: 1/9/13