

Justin F. Marquez (SBN 262417)
justin@wilshirelawfirm.com
Benjamin H. Haber (SBN 315664)
benjamin@wilshirelawfirm.com
Daniel J. Kramer (SBN 314625)
dkramer@wilshirelawfirm.com
WILSHIRE LAW FIRM
3055 Wilshire Blvd., 12th Floor
Los Angeles, California 90010
Telephone: (213) 381-9988
Facsimile: (213) 381-9989

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE

DULCE MAGALLANES, individually, and on
behalf of all others similarly situated,

Plaintiff,

v.

BIOCAIR, INC., an unknown entity; and DOES
1 through 10, inclusive,

Defendants.

Case No.: 23STCV07027

**CLASS AND REPRESENTATIVE
ACTION**

*[Assigned for all purposes to: Hon. Elihu M.
Berle, Dept. 6]*

**DECLARATION OF JUSTIN F. MARQUEZ
IN SUPPORT OF PLAINTIFF'S MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

*[Filed concurrently with: Plaintiff's Notice of
Motion and Motion for Preliminary Approval
of Class Action Settlement, Memorandum of
Points and Authorities; Declaration of Dulce
Magallanes; and [Proposed] Order Granting
Motion]*

PRELIMINARY APPROVAL HEARING

Date: June 11, 2024

Time: 9:00 a.m.

Dept: 6

Complaint filed: April 13, 2023

FAC filed: July 17, 2023

Trial date: Not set

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1. I am admitted, in good standing, to practice as an attorney in the State of California, the Ninth Circuit Court of Appeals, and the United States District Courts for the Central, Southern, Eastern, and Northern Districts of California. I am a Senior Partner at Wilshire Law Firm, PLC, counsel of record for Plaintiff Dulce Magallanes (“Plaintiff”). I have personal knowledge of the facts set forth in this declaration and could and would competently testify to them under oath if called as a witness. This Declaration is submitted in support of Plaintiff’s Motion for Preliminary Approval of Class Action Settlement.

2. This is a wage and hour class and Private Attorneys General Act (“PAGA”) (Cal. Lab. Code §§ 2699, *et seq.*) representative action. Plaintiff and putative class members worked in California as hourly-paid or non-exempt employees for Defendant Biocair, Inc. (“Defendant”) during the class period. Defendant provides logistics services to the pharmaceutical, biotechnology, and life sciences sectors and has multiple locations throughout California, including in Los Angeles.

4. On March 30, 2023, Plaintiff filed a putative wage-and-hour class action complaint against Defendant for: (1) failure to pay minimum and straight time wages (Labor Code §§ 204, 1194, 1194.2, and 1197); (2) failure to pay overtime wages (Labor Code §§ 1194 and 1198); (3) failure to provide meal periods (Labor Code §§ 226.7 and 512); (4) failure to authorize and permit rest periods (Labor Code §§ 226.7 and 512); (5) failure to timely pay final wages at termination (Labor Code §§ 201-203); (6) failure to provide accurate itemized wage statements (Labor Code §

226); (7) failure to indemnify employees for expenditures (Labor Code § 2802); and (8) unfair business practices (Business and Professions Code 17200 et seq.). On April 13, 2023, Plaintiff sent a notice to Defendant and the California Labor & Workforce Development Agency (“LWDA”) alleging similar wage and hour violations pursuant to the Private Attorneys General Act “PAGA” (Labor Code §§ 2698, *et seq.*) On July 17, 2023, Plaintiff filed a First Amended Complaint against Defendant adding claims for civil penalties under PAGA.

DISCOVERY AND INVESTIGATION

5. Following the filing of the Complaint, the Parties exchanged documents and information before mediating this action. Defendant produced a sample of time and pay records for class members. Defendant also provided employee handbooks outlining its wage and hour policies and practices during the class period, and information regarding the total number of current and former employees in its informal discovery responses.

6. After reviewing documents regarding Defendant’s wage and hour policies and practices, and analyzing Defendant’s timekeeping and payroll records, Class Counsel was able to evaluate the probability of class certification, success on the merits, and Defendant’s maximum monetary exposure for all claims. Class Counsel also investigated the applicable law regarding the claims and defenses asserted in the Litigation. Class Counsel reviewed these records and utilized an expert to prepare a damages analysis prior to mediation.

SETTLEMENT NEGOTIATIONS

7. On December 4, 2023, the Parties participated in private mediation with experienced class action mediator, Steve Rottman, Esq. The mediation was conducted via Zoom. The settlement negotiations were at arm’s length and, although conducted in a professional manner, were adversarial. The Parties went into the mediation willing to explore the potential for a settlement of the dispute, but each side was also prepared to litigate their position through trial and appeal if a settlement had not been reached.

8. After extensive negotiations and discussions regarding the strengths and weaknesses of Plaintiff’s claims and Defendant’s defenses, the Parties were able to reach a resolution, the material terms of which are encompassed within the Settlement Agreement.

Attached as **Exhibit 1** is a true and correct copy of the Joint Stipulation of Class Action Settlement and Release of Claims (“Settlement Agreement”).

9. Class Counsel submitted the proposed Settlement to the LWDA before filing the Motion for Preliminary Approval.

10. I requested several bids from experienced class action settlement administrators to handle the responsibilities of the Settlement Administrator under this Settlement. The Parties accepted the bid of Phoenix Settlement Administrators (“Phoenix”). Phoenix has multiple years of experience in the field of Class Action Administration, particularly in the wage-and-hour arena. In its bid, Phoenix agreed to cap its costs at \$6,500.00 if there are 75 class members. Phoenix’ bid also accounts for Notice in English and Spanish. A true and correct copy of the bid is attached hereto as **Exhibit 2**.

11. Plaintiff does not have any interest, financial or otherwise, in the proposed third-party administrator, Phoenix.

12. No one at Wilshire Law Firm, PLC (meaning the law firm itself and anyone employed at the law firm) has any interest, financial or otherwise, in the proposed third-party administrator, Phoenix.

13. Wilshire Law Firm, PLC has no fee-splitting agreement with any other counsel in this case.

14. Class Counsel is not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

THE PROPOSED SETTLEMENT IS FAIR AND REASONABLE

15. Class Counsel has conducted a thorough investigation into the facts of this case. Based on the foregoing discovery and their own independent investigation and evaluation, Class Counsel is of the opinion that the Settlement is fair, reasonable, and adequate and is in the best interests of the Settlement Class Members in light of all known facts and circumstances, the risk of significant delay, the defenses that could be asserted by Defendant both to certification and on the merits, trial risk, and appellate risk.

16. Based on an analysis of the facts and legal contentions in this case, documents and

1 information from Defendant, I evaluated Defendant's maximum exposure. I took into account the
2 risk of not having the claims certified and the risk of not prevailing at trial, even if the claims are
3 certified. After using the data Defendant provided, including class member timekeeping and
4 payroll records, as well as class member demographics (i.e., the number of class members,
5 workweeks, and average total compensation of the class), with the assistance of a statistics expert,
6 I created a damages model to evaluate the realistic range of potential recovery for the class. The
7 damages model is based on the following benchmarks:

8	Total Class Members: 52
9	Terminated Class Members during 3-year statute: 16
10	Total Workweeks: 4,811
11	Total Shifts Worked by the Class: 23,214
12	PAGA Pay Periods: 1,280
13	PAGA Eligible Employees: 49
14	Avg. Hourly Rate: \$26.45

15 17. Based on Plaintiff's discovery and investigation, Class Counsel reached the
16 conclusion that Defendant failed to pay class members for all hours worked, including overtime
17 wages, Defendant had a policy and practice of not providing its employees with California
18 compliant meal and rest periods which it did not pay appropriate premiums for, and Defendant
19 required its employees to work "off-the-clock" prior to clocking in for the workday, during meal
20 periods, and after clocking out for the workday, time which it did not pay for, and Defendant failed
21 to reimburse its employees for business-related expenses. Defendant denies these claims.

22 18. Plaintiff further alleges that Defendant failed to pay for all hours worked, including
23 minimum wages, straight time wages, and overtime wages, by requiring class members to work
24 off-the-clock, unpaid. For purposes of calculating Defendant's liability based on a best-case
25 scenario for Plaintiff and the Class, I estimate that Defendant's maximum potential exposure by
26 assuming that all unpaid work time should have been paid at the overtime rate and I assumed that
27 Defendant is liable for 1 hour of unpaid worktime per week. This results in an estimate of
28 \$190,876.43 (4,811 weeks * \$26.45 hourly overtime rate * 1.5 overtime rate * 1 hour of unpaid

1 work per week), but I discounted this figure by 80% to account for the difficulty of prevailing on
2 a motion for class certification and a trial on the merits because liability depends on whether
3 Defendant knew or should have known that class members were working off-the-clock, yielding a
4 realistic damage estimate of \$38,175.29.¹

5 19. With respect to the meal period claim, Plaintiff alleges that Defendant required her
6 and similarly situated class members to either work in lieu of taking meal periods, or their meal
7 periods were untimely or interrupted. Assuming a 50% violation rate for the class period based on
8 Plaintiff's and other class members' experience working for Defendant, Defendant's potential
9 liability for meal break violations is \$307,005.15 (23,214 shifts * .5 * 26.45). I discounted this
10 figure by 80% to account for the difficulty of certifying and proving meal period claims, as well
11 as Defendant's contention that the claim lacks merit, particularly in light of its numerous meal
12 period premium payments, yielding a realistic damage estimate of \$61,401.03.

13 20. With respect to the rest period claim, Plaintiff alleges that Defendant required her
14 and similarly situated class members to work in lieu of taking rest periods, or their rest periods
15 were untimely or interrupted. Assuming a 90% violation rate for the class period based on
16 Plaintiff's and other class members' experience working for Defendant, Defendant's potential
17 liability for the rest period claim is \$552,609.27 (23,214 shifts * 0.9 * \$26.45); however, I
18 discounted this figure by 80% to account for the difficulty of certifying and proving rest period
19 claims, particularly because rest periods do not have to be recorded, and to account for the
20 possibility of class members voluntarily choosing to forego a rest period, yielding a realistic
21 damage estimate of \$110,521.85.

22 21. Plaintiff alleges that Defendant failed to reimburse necessary business expenses.
23 Defendant's employees (including Plaintiff) were frequently required to use their personal cell
24 phones to communicate with their supervisors and managers about work-related duties. This
25

26 ¹ An 80% discount for risk at certification and trial is reasonable because the Judicial
27 Council of California found that only 21.4% of all class actions were certified either as part of a
28 settlement *or* as part of a contested certification motion. *See* Findings of the Study of California
Class Action Litigation, 2000-2006, available at [http:// www.courts.ca.gov/documents/class-
action-lit-study.pdf](http://www.courts.ca.gov/documents/class-action-lit-study.pdf).

1 included communication regarding their schedules and/or the following day's or week's tasks.
2 Additionally, Plaintiff and other class members were required to work rotating weekend schedules
3 that would require them to work from home and use their personal Internet, without reimbursement
4 from Defendant. For purposes of calculating Defendant's liability based on a best case scenario
5 for Plaintiff and the Class, I estimated that Defendant was liable to each class member for \$50 per
6 month, or \$12.50 per week, in unreimbursed expenses, for a total amount of \$60,137.50 ($\$12.50 * 4,811$
7 workweeks); however, I discounted this figure by 80% to account for the difficulty of
8 certifying and proving expense reimbursement claims, particularly in light of written policies and
9 practices providing a mechanism for class member's to seek reimbursement, yielding a realistic
10 damage estimate of \$12,027.50.

11 22. Plaintiff further alleges that Defendant failed to pay Plaintiff and other class
12 members for all on-call time in which they were working under Defendant's control. Plaintiff
13 reports that Defendant instituted a practice whereby Plaintiff and other employees would work a
14 rotating weekend schedule to cover any emails or calls from customers from their homes, but would
15 only be paid for four hours of work, despite regularly working at least eight hours on those days.
16 Because Plaintiff and other employees were required to respond to emails throughout the weekend,
17 employees could not travel or engage in personal activities during these on-call periods, thus,
18 evidencing Defendant's control over Plaintiff and class members for which they were not full
19 compensated. I assumed that Defendant is liable to Plaintiff and class members for at least two
20 hours of unpaid on-call work per workweek, as derived from Plaintiff and other employees
21 receiving only four hours of compensation on days when they were required to be on call for eight
22 hours, which occurred approximately every two weeks. Thus, Defendant is liable for \$254,501.90
23 ($4,811 \text{ weeks} * \$26.45 * 2 \text{ hours of unpaid on-call work per week}$), however, I discounted this
24 figure by 80% to account for the difficulty of certifying and proving the on-call violations, yielding
25 a realistic damage estimate of \$50,900.38.

26 23. In sum, I estimated that Plaintiff's maximum recovery for the off-the-clock claim,
27 meal period violations, rest period violations, failure to reimburse expenses, and on-call work
28 violations is \$1,365,130.25, but, after factoring in the risk and uncertainty of prevailing at

1 certification and trial, I estimate that Plaintiff's realistic estimated recovery for the non-penalty
2 claims is \$273,026.05.

3 24. With respect to Plaintiff's derivative claims for statutory and civil penalties,
4 Plaintiff estimated that Defendant's realistic potential liability is \$185,176.60. While Defendant's
5 maximum potential liability for waiting time penalties is \$116,803.20 based on approximately 16
6 terminated class members during the 3-year statute ($16 * \$26.45 * 9.2 \text{ hours} * 30 \text{ days}$),
7 \$125,550.00 for inaccurate wage statements based on approximately 49 class members who
8 worked 1,280 pay periods within the 1-year statute ($(50 * 49) + (100 * (1,280 - 49))$), and
9 \$128,000.00 for PAGA violations based on the Court assessing a \$100 penalty for initial violations
10 for all 1,280 pay periods within the 1-year statute, I believe that it would be unrealistic to expect
11 the Court to award the full \$370,353.20 in penalties given Defendant's defenses, the contested
12 nature of Plaintiff's claims, and the discretionary nature of penalties. Considering that the
13 underlying claims are realistically estimated to be \$273,026.05, such a disproportionate award
14 would also raise due process concerns. Weighing these factors and applying a discount of 50% to
15 account for the risk and uncertainty of prevailing at trial, I arrived at \$185,176.60 for statutory and
16 civil penalties.

17 25. Using these estimated figures, Plaintiff predicted that the realistic maximum
18 recovery for all claims, including penalties, would be \$458,202.65. This means that the
19 \$275,000.00 settlement figure represents 60% of the realistic maximum recovery ($\$275,000.00 /$
20 $\$458,202.65 = 60.0\%$). Considering the risk and uncertainty of prevailing at class certification and
21 at trial, this is an excellent result for the Class.² Indeed, because of the proposed Settlement, class
22 members will receive timely, guaranteed relief and will avoid the risk of an unfavorable judgment.

23 26. While Plaintiff is confident in the merits of her claims, a legitimate controversy
24

25 ² See, e.g., *Wise v. Ulta Salon, Cosmetics & Fragrance, Inc.* (E.D. Cal. Aug. 21, 2019)
26 2019 WL 3943859 at *8 (granting preliminary approval where the proposed allocation to settle
27 class claims was between 9.53 percent of Plaintiffs' maximum recovery); *Bravo v. Gale*
28 *Triangle, Inc.* (C.D. Cal. Feb 16, 2017) 2017 WL 708766 at * 10 (finding that "a settlement for
fourteen percent recovery of Plaintiffs' maximum recovery is reasonable"); *In re Omnivision*
Techs., Inc. (N.D. Cal. 2008) 559 F.Supp.2d 1036, 1042 (approving settlement amount that "is
just over 9% of the maximum potential recovery asserted by either party.").

exists as to each cause of action. Plaintiff also recognizes that proving the amount of wages due to each Class Member would be an expensive, time-consuming, and uncertain proposition.

27. This Settlement avoids the risks and the accompanying expense of further litigation. Although the Parties had engaged in a significant amount of investigation, informal discovery and class-wide data analysis, the Parties had not yet completed formal written discovery. Plaintiff intended to depose corporate officers and managers of Defendant. Moreover, preparation for class certification and a trial remained for the Parties as well as the prospect of appeals in the wake of a disputed class certification ruling for Plaintiff and/or adverse summary judgment ruling. Had the Court certified any claims, Defendant could move to decertify the claims. As a result, the Parties would incur considerably more attorneys' fees and costs through trial.

28. The Net Settlement Amount available for Class Member settlement payments is estimated to be \$126,833.33, for a class of 52 persons.³ As a result, each Settlement Class Member is eligible to receive an average net benefit of approximately \$2,439.10.

29. The proposed Settlement of \$275,000.00, therefore, represents a substantial recovery when compared to Plaintiff's reasonably forecasted recovery. When considering the risks of litigation, the uncertainties involved in achieving class certification, the burdens of proof necessary to establish liability, the probability of appeal of a favorable judgment, it is clear that the settlement amount of \$275,000.00 is within the "ballpark" of reasonableness, and preliminary settlement approval is appropriate.

ENHANCEMENT AWARD FOR PLAINTIFF IS REASONABLE

30. Class Counsel represent that Plaintiff devoted a great deal of time and work assisting counsel in the case, communicated with counsel very frequently for litigation and to prepare for mediation, and was frequently in contact with Class Counsel during the mediation. Plaintiff's requested enhancement award is reasonable particularly in light of the substantial benefits Plaintiff generated for all class members.

³ The Net Settlement Amount is: \$275,000.00 minus \$91,666.67 for Class Counsel's attorneys' fees, minus \$20,000.00 for Class Counsel's litigation expenses, minus \$6,500.00 in administration costs, minus \$20,000.00 for the PAGA payment, and minus \$10,000.00 for the class representative service award to Plaintiff.

1 31. Throughout this Litigation, Plaintiff, who is a former employee of Defendant, has
2 cooperated immensely with my office and has taken many actions to protect the interests of the
3 class. Plaintiff provided valuable information regarding the off-the-clock, meal period, and rest
4 period claims. Plaintiff also informed my office of developments and information relevant to this
5 action, participated in decisions concerning this action, made herself available to answer questions
6 during the mediation, and provided my office with the names and contact information of potential
7 witnesses in this action. Before we filed this case, Plaintiff provided my office with documents
8 regarding the claims alleged in this action. The information and documentation provided by
9 Plaintiff was instrumental in establishing the wage and hour violations alleged in this action, and
10 the recovery provided for in the Settlement Agreement would have been impossible to obtain
11 without Plaintiff's participation.

12 32. At the same time, Plaintiff faced many risks in adding herself as the class
13 representative in this matter. Plaintiff faced actual risks with her future employment, as putting
14 herself on public record in an employment lawsuit could also very well affect her likelihood for
15 future employment. Furthermore, as part of this Settlement, Plaintiff is executing a general release
16 of all claims against Defendant.

17 33. In turn, class members will now have the opportunity to participate in a settlement,
18 reimbursing them for alleged wage violations they may have never known about on their own or
19 been willing to pursue on their own. If these class members would have each tried to pursue their
20 legal remedies on their own, that would have resulted in each having to expend a significant amount
21 of their own monetary resources and time, which were obviated by Plaintiff putting herself on the
22 line on behalf of these other class members.

23 34. In the final analysis, this class action would not have been possible without the aid
24 of Plaintiff, who put her own time and effort into this Litigation, sacrificed the value of her own
25 individual claims, and placed himself at risk for the sake of the class members. The requested
26 enhancement award for Plaintiff for her service as the class representative and for her general
27 release of all individual claims is a relatively small amount of money when the time and effort put
28 into the Litigation are considered and in comparison to enhancements granted in other class actions.

1 The requested incentive award is therefore reasonable to compensate Plaintiff for her active
2 participation in this lawsuit. Indeed, in *Karl Adams, III, et al. v. MarketStar Corporation*, et al.,
3 No. 2:14-cv-02509-TLN-DB, a wage and hour class action alleging that class members were
4 misclassified as exempt outside salespersons, I was co-lead Class Counsel and helped negotiate a
5 \$2.5 million class action settlement for 339 class members, and the court approved a \$25,000.00
6 class representative incentive award for each named Plaintiffs.

7 THE REQUEST FOR ATTORNEYS' FEES AND COSTS IS REASONABLE

8 35. The Settlement provides for attorney's fees payable to Class Counsel in an amount
9 up to one-third (33 1/3%) of the Settlement Amount, for a maximum fees award of \$91,666.67,
10 plus actual costs and expenses not to exceed \$20,000.00. The proposed award of attorneys' fees
11 to Class Counsel in this case can be justified under either method – lodestar or percentage recovery.
12 Class Counsel, however, intend to base the proposed award of fees, costs and expenses on the
13 percentage method as many of the entries in the time records will have to be redacted to preserve
14 attorney-client and attorney work product privileges.

15 36. I am informed and believe that the fee and costs provision is reasonable. The fee
16 percentage requested is less than that charged by my office for most employment cases. My office
17 invested significant time and resources into the case, with payment deferred to the end of the case,
18 and then, of course, contingent on the outcome.

19 37. It is further estimated that my office will need to expend at least another 50 to 100
20 hours to monitor the process leading up to the final approval and payments made to the class. My
21 office also bears the risk of taking whatever actions are necessary if Defendant fails to pay.

22 38. The risk to my office has been very significant, particularly if we would not be
23 successful in pursuing this class action. In that case, we would have been left with no compensation
24 for all the time taken in litigating this case. Indeed, I have taken on a number of class action cases
25 that have resulted in thousands of attorney hours being expended and ultimately having
26 certification denied or the defendant company going bankrupt. The contingent risk in these types
27 of cases is very real and they do occur regularly. Furthermore, we were precluded from focusing
28 on, or taking on, other cases which could have resulted in a larger, and less risky, monetary gain.

1 39. Because most individuals cannot afford to pay for representation in litigation on an
2 hourly basis, Wilshire Law Firm, PLC represents virtually all of its employment law clients on a
3 contingency fee basis. Pursuant to this arrangement, we are not compensated for our time unless
4 we prevail at trial or successfully settle our clients' cases. Because Wilshire Law Firm, PLC is
5 taking the risk that we will not be reimbursed for our time unless our client settles or wins his or
6 her case, we cannot afford to represent an individual employee on a contingency basis if, at the
7 end of our representation, all we are to receive is our regular hourly rate for services. It is essential
8 that we recover more than our regular hourly rate when we win if we are to remain in practice so
9 as to be able to continue representing other individuals in civil rights employment disputes.

10 MY EXPERIENCE AND QUALIFICATIONS

11 40. Wilshire Law Firm, PLC was selected by Best Lawyers and U.S. News & World
12 Report as one of the nation's Best Law Firms for every year since 2020 and is comprised of over
13 70 attorneys and over 500 employees. Wilshire Law Firm, PLC is actively and continuously
14 practicing in employment litigation, representing employees in both individual and class actions
15 in both state and federal courts throughout California.

16 41. Wilshire Law Firm, PLC is qualified to handle this Litigation because its attorneys
17 are experienced in litigating Labor Code violations in both individual, class action, and
18 representative action cases. Wilshire Law Firm, PLC has handled, and is currently handling,
19 numerous wage and hour class action lawsuits, as well as class actions involving consumer rights
20 and data privacy litigation.

21 42. I graduated from the University of California, Los Angeles's College Honors
22 Program in 2004 with Bachelor of Arts degrees in History and Japanese, *magna cum laude* and *Phi*
23 *Beta Kappa*. As an undergraduate, I also received a scholarship to study abroad for one year at
24 Tokyo University in Tokyo, Japan. I received my Juris Doctor from Notre Dame Law School in
25 2008.

26 43. My practice is focused on advocating for the rights of consumers and employees in
27 class action litigation and appellate litigation. I am currently the primary attorney in charge of
28 litigating several class action cases in state and federal courts across the United States.

1 44. I have received numerous awards for my legal work. From 2017 to 2020, Super
2 Lawyers selected me as a “Southern California Rising Star,” and from 2022 to 2024, I was selected
3 as a “Southern California Super Lawyer.” I was selected as one of the “Best Lawyers in America”
4 in 2023 and 2024. In 2016 and 2017, the National Trial Lawyers selected me as a “Top 40 Under
5 40” attorney. I am also rated 10.0 (“Superb”) by Avvo.com.

6 45. I am on the California Employment Lawyers Association (“CELA”)’s Wage and
7 Hour Committee and Mentor Committee, and I was selected to speak at CELA’s 2019 Advanced
8 Wage & Hour Seminar on the topic of manageability of class actions. Since 2013, I have actively
9 mentored young attorneys through CELA’s mentorship program.

10 46. I am also a past member of the Consumer Attorneys of California (“CAOC”). In
11 2020, I was selected for a position on CAOC’s Board of Directors. I am also a past member of
12 CAOC’s Diversity Committee, and I helped assist the CAOC in defeating bills that harm
13 employees. Indeed, I recently helped assist Jacqueline Serna, Esq., Legislative Counsel for CAOC,
14 in defeating AB 443, which proposed legislation that sought to limit the enforceability of California
15 Labor Code § 226.

16 47. As the attorney responsible for day-to-day management of this matter at the
17 Wilshire Law Firm, PLC, I have over fourteen years of experience with litigating wage and hour
18 class actions. Over the last fourteen years, I have managed and assisted with the litigation and
19 settlement of several wage and hour class actions. In those class actions, I performed similar tasks
20 as those performed in the course of prosecuting this action. My litigation experience includes:

21 a. I served as lead or co-lead in negotiating class action settlements worth over \$10
22 million in gross recovery to class members for each year since 2020, including over
23 \$37.5 million in 2022 and over \$75 million in 2023.

24 b. I lead a team of attorneys that successfully obtained class certification of meal
25 period, rest period, and related derivative claims on April 5, 2024 in *Aguilar-Flores*
26 *v. Javier’s CC LLC*, Los Angeles Superior Court No. 19STCV36438 (Hon. Elihu
27 M. Berle).

28 c. I was part of the team of attorneys that prevailed in *Moore v. Centrelake Medical*

1 *Group, Inc.* (2022) 83 Cal.App.5th 515, the first California appellate decision in a
2 data breach class action holding that consumer plaintiffs adequately alleged injury
3 in fact under the benefit of the bargain theory and monitoring-costs theory.

4 d. In 2022, Top Verdict recognized Wilshire Law Firm and myself for having one case
5 in the Top 20 Labor & Employment Settlements (including number 19 for the \$4.1
6 million settlement in The FPI Management Wage and Hour Cases) and four
7 additional cases in the Top 50 Labor & Employment Settlements (numbers 36, 39,
8 41, and 49).

9 e. In 2021, Top Verdict recognized Wilshire Law Firm and myself for having one case
10 in the Top 20 Labor & Employment Settlements (including number 19 for the \$1.6
11 million settlement in *Moreno v. Pretium Packaging, L.L.C*) and four additional
12 cases in the Top 50 Labor & Employment Settlements (numbers 27, 30, 33, and 37).

13 f. To my knowledge, I am the only attorney to appear on each of the following Top
14 Verdict lists for 2018 in California: Top 20 Civil Rights Violation Verdicts, Top 20
15 Labor & Employment Settlements, and Top 50 Class Action Settlements.

16 g. As lead counsel, on April 29, 2021, I prevailed against CVS Pharmacy, Inc. by
17 winning class certification on behalf of hundreds of thousands of consumers for
18 misleading advertising claims in *Joseph Mier v. CVS Pharmacy, Inc.*, U.S. Dist. Ct.
19 C.D. Cal. no. SA CV 20-1979-DOC-(ADSx).

20 h. As lead counsel, I prevailed against Bank of America by: winning class certification
21 on behalf of thousands of employees for California Labor Code violations; defeating
22 appellate review of the court's order certifying the class; defeating summary
23 judgment; and defeating a motion to dismiss. (*Frausto v. Bank of America, N.A.*
24 (N.D. Cal. 2019) 334 F.R.D. 192, 2020 WL 1290302 (9th Cir. Feb. 27, 2020), 2019
25 WL 5626640 (N.D. Cal. Oct. 31, 2019), 2018 W.L. 3659251 (N.D. Cal. Aug. 2,
26 2018).). The decision certifying the class in *Frausto* is also discussed in Class
27 Certification Under Fed. R. Civ. P. 23 in Action by Information Technology or Call
28 Center Employees for Violation of State Law Wage and Hour Rules, 35 A.L.R. Fed.

3d Art. 8.

- i. I was the primary author of the class certification and expert briefs in *ABM Industries Overtime Cases* (2017) 19 Cal.App.5th 277, a wage and hour class action for over 40,000 class members for off-the-clock, meal period, split shift, and reimbursement claims. *ABM Industries Overtime Cases* is the first published California appellate authority to hold that an employer’s “auto-deduct policy for meal breaks in light of the recordkeeping requirements for California employers is also an issue amenable to classwide resolution.” (*Id.* at p. 310.)⁴ Notably, the Court of Appeal also held that expert analysis of timekeeping records can also support the predominance requirement for class certification. (*Id.* at p. 310-11.) In 2021, the case settled for \$140 million, making it one of the largest ever wage and hour class action settlements for hourly-paid employees in California.
- j. I briefed, argued, and won *Yocupicio v. PAE Group, LLC* (9th Cir. 2015) 795 F.3d 1057. The Ninth Circuit ruled in my client’s favor and held that non-class claims under California’s Private Attorney Generals Act (“PAGA”) cannot be used to calculate the amount in controversy under the Class Action Fairness Act (“CAFA”). This case is cited in several leading treatises such as Wright & Miller’s *Federal Practice & Procedure*, and *Newberg on Class Actions*. In October 2016, the U.S. Supreme Court denied review of a case that primarily concerned *Yocupicio*. That effort was led by Theodore J. Boutrous, who brought the cert petition, with amicus support from a brief authored by Andrew J. Pincus.⁵ Considering that leading Supreme Court practitioners from the class action defense bar were very motivated in undermining *Yocupicio* case, but failed, this demonstrates the national importance of the *Yocupicio* decision.

⁴ As a California district court observed before the *ABM Industries Overtime* decision, “[t]he case law regarding certification of auto-deduct classes is mixed.” (*Wilson v. TE Connectivity Networks, Inc.* (N.D. Cal. Feb. 9, 2017) No. 14-CV-04872-EDL, 2017 WL 1758048, *7.)

⁵ <http://www.chamberlitigation.com/cases/abm-industries-inc-v-castro>.

- 1 k. On December 13, 2018, the United States District Court granted final approval of
2 the \$2,500,000 class action settlement in *Mark Brulee, et al. v. DAL Global Services,*
3 *LLC* (C.D. Cal. Dec. 13, 2018) No. CV 17-6433 JVS(JCGx), 2018 WL 6616659 in
4 which I served as lead counsel. In doing so, the Court found: “Class Counsel’s
5 declarations show that the attorneys are experienced and successful litigators.” (*Id.*
6 at p. *10.)
- 7 l. *Gasio v. Target Corp.* (C.D. Cal. Sep. 12, 2014) 2014 U.S. Dist. LEXIS 129852, a
8 reported decision permitting class-wide discovery even though the employer has a
9 lawful policy because “[t]he fact that a company has a policy of not violating the
10 law does not mean that the employees follow it, which is the issue here.” The court
11 also ordered defendant to pay for the cost of *Belaire-West* notice.
- 12 m. In 2013, I represented a whistleblower that reported that his former employer was
13 defrauding the State of California with the help of bribes to public employees. The
14 case, a false claims (qui tam) action, resulted in the arrest and criminal prosecution
15 of State of California employees by the California Attorney General’s Office.
- 16 n. In 2013, I was part of a team of attorneys that obtained conditional certification for
17 over 2,000,000 class members in a federal labor law case for misclassification of
18 independent contractors that did crowdsourced work on the Internet, *Otey v.*
19 *CrowdFlower, Inc.*, N.D. Cal. Case No. 12-cv-05524-JST (MEJ), resulting in the
20 following pro-plaintiff reported decisions:
- 21 i. 2013 U.S. Dist. LEXIS 151846 (N.D. Cal. Oct. 22, 2013) (holding that an
22 unaccepted Rule 68 offer doesn’t moot plaintiff’s claims, and granting
23 plaintiff’s motion to strike defendant’s affirmative defenses based on
24 *Twombly/Iqbal*).
- 25 ii. 2013 U.S. Dist. LEXIS 122007 (N.D. Cal. Aug. 27, 2013) (order granting
26 conditional collective certification).
- 27 iii. 2013 U.S. Dist. LEXIS 95687 (N.D. Cal. July 8, 2013) (affirming the
28 magistrate judge’s discovery ruling which held that “evidence of other

sources of income is irrelevant to the question of whether a plaintiff is an employee within the meaning of the FLSA”).

iv. 2013 U.S. Dist. LEXIS 91771 (N.D. Cal. June 20, 2013) (granting broad discovery because “an FLSA plaintiff is entitled to discovery from locations where he never worked if he can provide some evidence to indicate company-wide violations”).

o. From 2012 to 2013, I was part of a team of attorneys that obtained class certification for over 60,000 class members for off-the-clock claims, *Linares v. Securitas Security Services USA, Inc.*, Los Angeles Superior Court No. BC416555. We also successfully opposed subsequent appeals to the California Court of Appeal and California Supreme Court.

48. My current contingent billing rate of \$1,500.00 per hour is consistent with my actual billing rate for paid legal industry consulting services, my practice area, lead appellate experience in the Ninth Circuit Court of Appeals, numerous awards received, legal market and accepted hourly rates:

- a. I have been paid for legal industry consulting services at \$1,500 per hour by Gerson Lehrman Group (GLG), a company that provides financial information and advises investors and consultants with business clients seeking expert advice. GLG is one of the largest companies that provides expert consulting services. GLG’s clients include corporations, hedge funds, private equity firms, and consulting firms. I have worked with GLG on numerous occasions at a rate of \$1,500 per hour, including on three recent occasions in October and November of 2023.
- b. On January 11, 2024, the Hon. Laurel Beeler of the United States District Court, Northern District of California approved my \$1,500 hourly rate when she granted final approval of the class action settlement in *Suarez v. Bank of America, N.A.* (N.D. Cal. Jan. 11, 2024), No. 18-cv-01202-LB, 2024 WL150721, *3 (“As for the lodestar cross-check, the billing rates are normal

and customary for timekeepers with similar qualifications and experience in the relevant market.”)

c. My \$1,500 hourly rate was approved by many California state courts:

1. On December 8, 2023, the Hon. Marcella O. McLaughlin of the San Diego County Superior Court approved my \$1,500 hourly rate when she granted final approval of the class action settlement in *Payabyab v. Bridge Hospice, LLC*, Case No. 7-2021-00046218-CU-OE-CTL.
2. On January 11, 2024, the Hon. Harold Hopp of the Riverside County Superior Court approved my \$1,500 hourly rate when he granted final approval of the class action settlement in *Gutierrez v. Next Level Door & Millwork, Inc.*, Case No. CVRI2105455.
3. On January 19, 2024, the Hon. Lauri A. Damrell of the Sacramento County Superior Court approved my \$1,500 hourly rate when she granted final approval of the class action settlement in *Sunshine Retirement Wage and Hour Cases*, Case No. JCCP 5247.
4. On January 26, 2024, the Hon. Loren G. Freestone of the San Diego Superior Court approved my \$1,500 hourly rate when he granted final approval of the class action settlement in *Lupercio v. Western CNC, Inc.*, Case No. 37-2021-00010314-CU-OE-CTL.
5. On February 1, 2024, the Hon. Joseph T. Ortiz of the San Bernardino Court approved by \$1,500 hourly rate when he granted final approval of the class action settlement in *Jackson, et al. v. Apple Valley Communications, Inc.*, et al., Case No. CIVSB2124721.
6. On February 2, 2024, the Hon. Harold Hopp of the Riverside County Superior Court approved by \$1,500 hourly rate when he granted final approval of the class action settlement in *Barrera v.*

1 *Paradise Chevrolet Cadillac*, Case No. CVSW2107199.

2 7. On January 11, 2024, the Hon. Harold Hopp of the Riverside
3 County Superior Court approved my \$1,500 hourly rate when he
4 granted final approval of the class action settlement in *Gutierrez*
5 *v. Next Level Door & Millwork, Inc.*, No. CVRI2105455.

6 d. On May 6, 2022, the Hon. Jay A. Garcia-Gregory of the United States District
7 Court in Puerto Rico approved my \$850 hourly rate when he granted final
8 approval of the class action settlement in *Serrano v. Inmediata Corp.*, No. 3:19-
9 cv-01811-JAG, Dkt. 57 (U.S. Dist. Ct. P.R. May 6, 2022).

10 e. On September 9, 2021, the Hon. Peter Wilson of the Orange County Superior Court
11 approved my \$800 hourly rate when he granted final approval of the class action
12 settlement in *Ricardo Campos Hernandez v. Adams Iron Co., Inc.*, No. 30-2019-
13 01066522-CU-OE-CXC.

14 f. On August 6, 2021, the Hon. Stanley Blumenfeld, Jr. of the United States District
15 Court granted final approval of the \$1,600,000 class action settlement in *Carlos*
16 *Moreno v. Pretium Packaging, Inc.* (C.D. Cal. Aug. 6, 2021) No. 8:19-cv-02500-
17 SB-DFM, 2021 WL 3673845 in which I served as lead counsel. In doing so, the
18 Court approved my then \$750 hourly rate after finding it was “reasonable, given the
19 qualifications of the attorneys who worked on this matter.” (*Id.* at p. *3.)

20 g. On January 19, 2021, the Hon. Elihu M. Berle of the Los Angeles County Superior
21 Court approved my \$750 hourly rate when he granted final approval of the class
22 action settlement in *Faye Zhang v. Richemont North America, Inc.*, Case No.
23 19STCV32396.

24 49. The reasonableness of my firm’s hourly rates is also supported by several surveys
25 of legal rates, including the following:

26 a. The 2022 Real Rate Report survey compiled by Wolters Kluwer, which presents
27 the real market rates of Los Angeles area attorneys who practice litigation. For
28 that category, the third quartile 2022 rate was \$1,045 per hour for partners and

1 \$855 for associates. Likewise, page 32 of the Report describes the rates charged
2 by 183 Los Angeles partners with “21 or more years of experience” and “Fewer
3 than 21 years.” For those categories, the third quartile Los Angeles partner rate in
4 2022 were \$1,133 per hour for 21 or more years and \$1,075 for attorneys with
5 fewer than 21 years. A true and correct copy of portions of the 2022 Real Rate
6 Report is attached hereto as **Exhibit 3**.

7 b. In an article entitled “Big Law Rates Topping \$2,000 Leave Value ‘In Eye of
8 Beholder,’” written by Roy Strom and published by Bloomberg Law on June 9,
9 2022, the author describes how Big Law firms have crossed the \$2,000-per hour
10 rate. The article also notes that law firm rates have been increasing by just under
11 3% per year. A true and correct copy of this article is attached hereto as **Exhibit 4**.

12 50. Benjamin H. Haber is a seventh-year Associate Attorney at Wilshire Law Firm. He
13 graduated from the University of California, Los Angeles, with a Bachelor of Arts in Political
14 Science, and received his Juris Doctor from the University of California, Hastings College of the
15 Law in 2016. During law school, he was a member of the executive board for the Hastings Law
16 Journal and student mediator at the San Francisco Superior Court, Small Claims Division. He was
17 admitted to practice law in the State of California in 2017. Since graduating from law school, he
18 has focused his legal work primarily on wage-and-hour litigation and has helped obtain dozens of
19 settlements on behalf of tens of thousands of workers in California. He was also selected as a
20 “Southern California Rising Star” in 2024.

21 51. Daniel J. Kramer is a sixth-year Associate Attorney at Wilshire Law Firm, PLC.
22 He was admitted to practice law in the State of California and the Central, Eastern, and Northern
23 Districts of California. He graduated from Stanford University with a Bachelor of Arts in History
24 and Political Science, and received his Juris Doctor from Loyola Law School, Los Angeles in 2016.
25 During law school, he was a research editor for the Loyola of Los Angeles International and
26 Comparative Law Review. Before joining Wilshire Law Firm, he practiced briefly at a firm that
27 focused on municipal law and code enforcement and then moved to a respected plaintiff-side firm
28 to practice wage and hour class action litigation. He has several years of work experience litigating

1 wage and hour class actions.

2 52. Bradford Smith is a Law and Motion Attorney at Wilshire Law Firm. He graduated
3 from the University of California, Irvine with a Bachelor of Arts in History and received his Juris
4 Doctor from Loyola Law School, Los Angeles in 2022. He was admitted to practice law in the
5 State of California in 2022. Before joining Wilshire Law Firm, he worked at a law firm
6 specializing in insurance defense litigation. His focus now is on wage and hour class action
7 litigation.

8 I declare under penalty of perjury under the laws of the State of California and the United
9 States that the foregoing is true and correct.

10 Executed on May 2, 2024, at Los Angeles, California.

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13 Justin F. Marquez
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Exhibit 1

Matthew C. Sgnilek, Esq. (State Bar No. 235299)
msgnilek@ohaganmeyer.com
Andrea Rosenkranz, Esq. (SBN 301559)
arosenkranz@ohaganmeyer.com
Carla Vasques dos Santos-Moore, Esq. (State Bar No. 241883)
cmoore@ohaganmeyer.com
O'HAGAN MEYER
3200 Park Center Drive, Suite 700
Costa Mesa, California 92626
Telephone: (949) 942-8500
Facsimile: (949) 942-8510

Attorneys for Defendant
BIOCAIR, INC.

Justin F. Marquez, Esq. (SBN 262417)
justin@wilshirelawfirm.com
Benjamin H. Haber (SBN 315664)
benjamin@wilshirelawfirm.com
Daniel J. Kramer (SBN 314625)
dkramer@wilshirelawfirm.com
WILSHIRE LAW FIRM
3055 Wilshire Blvd., 12th Floor
Los Angeles, California 90010
Telephone: (213) 381-9988
Facsimile: (213) 381-9989

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE

DULCE MAGALLANES, individually, and on
behalf of all others similarly situated,

Plaintiff,

v.

BIOCAIR INC., an unknown entity; and DOES 1
through 10, inclusive,

Defendants.

Case No. 23STCV07027

CLASS ACTION

**JOINT STIPULATION OF CLASS
ACTION SETTLEMENT AND
RELEASE OF CLAIMS**

*[Assigned for all purposes to: Hon. Elihu
M. Berle]*

Complaint filed:	March 30, 2023
FAC Filed:	July 17, 2023
Trial date:	Not set

1 This Joint Stipulation of Class Action Settlement and Release of Claims (“Settlement” or
2 “Agreement”) is made and entered into by and between Plaintiff DULCE MAGALLANES
3 (“Plaintiff” or “Class Representative”), individually and on behalf of all putative class members,
4 and Defendant BIOCAIR, INC. (“Defendant”). Plaintiff and Defendant are collectively referred to
5 herein as “the Parties.”

6 **I. DEFINITIONS**

7 The following definitions are applicable to this Settlement, in addition to other terms defined
8 elsewhere in this Settlement:

9 1. “Action” shall mean the operative Complaint of the civil action initially commenced
10 on March 30, 2023, filed and maintained by Plaintiff against Defendant in the Superior Court of
11 California, County of Los Angeles, Case No. 23STCV07027.

12 2. “Class” shall mean all hourly-paid, non-exempt employees who, during the Class
13 Period, have previously been or currently are employed in California by Defendant, as an hourly-
14 paid, non-exempt employee. “Class Member” shall mean an individual who is a member of the
15 Class (or if any such person is incompetent, deceased, or unavailable due to military service, the
16 person’s legal representative or successor in interest evidenced by reasonable verification).

17 3. “Class Counsel” shall mean the attorneys representing Plaintiff in the Action, Justin
18 F. Marquez, Esq.; Benjamin H. Haber, Esq.; and Daniel J. Kramer, Esq. of Wilshire Law Firm.

19 4. “Class Counsel Fees Payment” shall mean an award to Class Counsel of up to 33
20 1/3% of the Maximum Settlement Amount (currently estimated to be Ninety One Thousand Six
21 Hundred and Sixty-Six Dollars and Sixty-Seven Cents (\$91,666.67)) subject to approval by the
22 Superior Court as Class Counsel’s attorneys’ fees incurred in connection with the Action, including
23 fees incurred in pre-filing investigation, filing of the Action, and all related litigation activities, this
24 Settlement, and all post-Settlement compliance procedures.

25 5. “Class Counsel Litigation Expenses Payment” shall mean the actual litigation
26 expenses and/or costs expended by Class Counsel subject to approval by the Superior Court
27 incurred in connection with the Action, including pre-filing investigation, filing of the Action, and
28 all related litigation activities, this Settlement, and all post-Settlement compliance procedures. Class

1 Counsel's expenses are not to exceed Twenty Thousand Dollars and Zero Cents (\$20,000.00).

2 6. "Class Notice" shall mean the Notice of Proposed Settlement, Preliminary Approval
3 of Settlement, and Hearing Date for Final Court Approval, a sample of which is attached hereto as
4 Exhibit "A." The Class Notice shall further contain (i) a Class Member's first and last name, (ii)
5 last known address, (iii) the Class Member's Individual Workweeks, (iv) the PAGA Group
6 Member's Individual Pay Periods, if applicable; (v) the Class Member's estimated amount of the
7 Settlement Share; and (vi) the PAGA Group Member's estimated PAGA Payment Share, if
8 applicable. The Class Notice shall also provide the Class Members with instructions on how to opt-
9 out of and/or object to the Settlement.

10 7. "Class Period" shall mean the period of time from March 30, 2019 through February
11 2, 2024.

12 8. "Class Representative Payment" shall mean the special payment made to Plaintiff in
13 her capacity as Class Representative to compensate her for prosecuting the Action, and performing
14 work in support of the Action, in the amount of Ten Thousand Dollars and Zero Cents
15 (\$10,000.00), subject to approval by the Superior Court.

16 9. "Defense Counsel" shall mean the attorneys representing Defendant in the Action,
17 Matthew C. Sgnilek, Esq.; Andrea Rosenkranz, Esq.; and Carla Vasques dos Santos-Moore of
18 O'Hagan Meyer.

19 10. "Effective Date" shall mean the first business day following the last of the following
20 occurrences: (i) if no Class Member both objects and also files either a timely motion to intervene
21 and/or a timely motion to vacate the judgment, then seven (7) days following the date the Court
22 enters an order granting Final Approval of the Settlement; (ii) if a Class Member both objects and
23 either files a timely motion to intervene or a timely motion to vacate the judgment, then sixty-one
24 (61) days following the date the Court enters an order granting Final Approval of the Settlement,
25 assuming no appeal is filed; or (iii) if a Class Member both objects and also files a timely motion to
26 intervene or files a motion to vacate the Judgment and also files a timely appeal, then the date of
27 final resolution of that appeal (including any requests for rehearing and/or petitions for certiorari),
28 resulting in final and complete judicial approval of the Settlement in its entirety, with no further

1 challenge to the Settlement being possible. The occurrence of the Effective Date is a prerequisite to
2 any obligation of Defendant to pay any funds into the Settlement Account.

3 11. "Employer's Payroll Taxes" shall mean Defendant's share of all payroll taxes
4 payable to any and all government agencies incurred for any payments of Settlement Shares to
5 Participating Class Members pursuant to this Settlement. Defendant's payment of the normal
6 employer's share of payroll taxes will be made separately and shall not come from the Maximum
7 Settlement Amount.

8 12. "Final Approval Hearing" shall mean the hearing to be conducted by the Superior
9 Court to determine whether to finally approve and implement the terms of this Settlement.

10 13. "Individual Pay Periods" shall mean the number of Pay Periods for an individual
11 PAGA Group Member.

12 14. "Individual Workweeks" shall mean the number of Workweeks for an individual
13 Class Member.

14 15. "Judgment" shall mean the Order of Final Judgment entered by the Superior Court
15 that the Parties anticipate will be entered following a Final Approval Hearing on the Settlement in
16 this Action.

17 16. "LWDA Payment" shall mean the payment to the California Labor and Workforce
18 Development Agency ("LWDA") constituting seventy-five percent (75%) of the value assigned to
19 the claim for penalties under the California Labor Code Private Attorneys General Act, California
20 Labor Code Section 2698, *et seq.* ("PAGA"). Specifically, Fifteen Thousand Dollars and Zero
21 Cents (\$15,000.00), which shall constitute the LWDA's seventy-five percent (75%) share of
22 Twenty Thousand Dollars and Zero Cents (\$20,000.00) in civil penalties paid under this
23 Settlement. The remaining Five Thousand Dollars and Zero Cents (\$5,000.00) in civil penalties
24 shall be distributed on a *pro rata* basis based upon the number of pay periods worked by each
25 PAGA Group Member ("PAGA Payment").

26 17. "Maximum Settlement Amount" shall mean the maximum settlement amount of
27 Two Hundred Seventy-Five Thousand Dollars and Zero Cents (\$275,000.00) payable by
28 Defendant as provided by this Agreement, unless that amount is increased pursuant to Paragraph 18

below, exclusive of the normal employer's share of any payroll taxes attributable to the Settlement Share payments allocated to wages. Defendant's payment of the normal employer's share of payroll taxes will be made separately, according to each Defendant's agreed upon proportionate share of the Maximum Settlement Amount and shall not come from the Maximum Settlement Amount.

18. Defendant represents that as of December 4, 2023, the number of workweeks worked by Class Members during the Class Period is approximately 4,811. If it is determined that the total workweeks worked by Class Members during the Class Period exceeds 5,292 (4,811 plus 10% of 4,811), then Defendant shall have the option of either (i) increasing the Net Settlement Amount by an amount determined by the following formula: $([\text{Actual Number of Workweeks} - 5,292] \div 5,292) \times \text{Net Settlement Amount}$; or (ii) changing the end date of the Class Period (and PAGA Period) to a date for which there are no more than 5,292 workweeks.

19. "Net Settlement Amount" shall mean the Maximum Settlement Amount, less (i) the Class Representative Payment approved by the Superior Court; (ii) the Class Counsel Fees Payment approved by the Superior Court; (iii) the Class Counsel Litigation Expenses Payment approved by the Superior Court; (iv) the LWDA Payment approved by the Superior Court; (v) the PAGA Payment approved by the Superior Court; (vi) the Settlement Administrator Payment approved by the Superior Court; and (vii) any other fees or expenses (other than Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment) incurred in implementing the terms and conditions of this Agreement as approved by the Superior Court.

20. "Non-Participating Class Member" shall mean a Class Member who submits a complete, valid, and timely request to be excluded from the Settlement pursuant to the instructions provided in the Class Notice.

21. "PAGA Group" mean all hourly-paid, non-exempt employees who, during the PAGA Period, have previously been or currently are employed in California by Defendant. "PAGA Group Member" shall mean an individual who is a member of the PAGA Group (or if any such person is incompetent, deceased, or unavailable due to military service, the person's legal representative or successor in interest evidenced by reasonable verification).

22. "PAGA Payment Share" shall mean the value of each PAGA Group Member's share of the PAGA Payment as provided by this Agreement.

23. "PAGA Period" shall mean the period of time from April 13, 2022 through February 2, 2024.

24. "Participating Class Member" shall mean all Class Members who have not submitted a complete, valid, and timely request to be excluded from the Settlement pursuant to the instructions provided in the Class Notice.

25. "Pay Period" shall mean any pay period in which a Class Member actually received payment from Defendant as an hourly-paid, non-exempt employee.

26. "Preliminary Approval" shall mean the Superior Court's preliminary approval of the Settlement without material change that the Parties anticipate will be made following submission of this Agreement to the Court.

27. "Settlement Administrator" shall mean Phoenix Settlement Administrators, as proposed by the Parties and appointed by the Superior Court to administer the Settlement.

28. "Settlement Administrator Payment" shall mean the payment to the Settlement Administrator for its fees and expenses in administering this Settlement.

29. "Settlement Share" shall mean the value of each Participating Class Member's share of the Net Settlement Amount as provided by this Agreement.

30. "Superior Court" shall mean the Superior Court of California for the County of Los Angeles.

31. "Workweek" shall mean any week in which a Class Member actually performed paid work for Defendant during the Class Period as an hourly-paid, non-exempt employee.

II. RECITALS

32. On April 13, 2023, Class Counsel, on behalf of Plaintiff and the PAGA Group, gave written notice to the Labor Workforce and Development Agency ("LWDA") of the Labor Code violations Defendant is alleged to have violated ("LWDA Exhaustion Letter").

33. On March 30, 2023, Plaintiff filed a Class Action Complaint against Defendant in the Los Angeles County Superior Court, Case No. 23STCV07027. In his Complaint, Plaintiff pled

1 causes of action for: (1) Failure to Pay Minimum and Straight Time Wages; (2) Failure to Pay
2 Overtime Wages; (3) Failure to Provide Meal Periods; (4) Failure to Authorize and Permit Rest
3 Periods; (5) Failure to Timely Pay Final Wages at Termination; (6) Failure to Provide Accurate
4 Itemized Wage Statements; (7) Failure to Indemnify Employees for Expenditures; and (8) Unfair
5 Business Practices.

6 34. On July 17, 2023, Plaintiff amended her Complaint to add a ninth cause of action for
7 Civil Penalties pursuant to PAGA.

8 35. Defendant denies and continues to deny all of Plaintiff's material allegations.
9 Specifically, Defendant contends (1) it did not fail to pay the Class the minimum, straight time,
10 regular rate, and/or overtime wages; (2) it paid the Class for all hours worked; (3) it provided the
11 Class with all meal periods according to law; (4) it provided the Class with all rest periods
12 according to law; (5) it did not fail to timely pay the Class wages due and owing during
13 employment and/or upon separation; (6) it provided the Class with accurate itemized wage
14 statements, consistent with Labor Code Section 226; (7) it properly maintained all payroll records;
15 (8) it reimbursed employees for all necessary business expenses; (9) it did not violate Business &
16 Professions Code Section 17200, *et seq.*; (10) the PAGA Group is not entitled to penalties under
17 PAGA; and (11) Defendant is not liable for damages, including unpaid wages, liquidated damages,
18 statutory penalties, attorneys' fees, or costs of litigation to the Class.

19 36. In connection with the Action, and in order to work toward a mediated resolution
20 without the time and expense of formal discovery, the Parties produced voluminous documents and
21 data (including, by Defendant, human resources documents and policies, time records, and payroll
22 data during the Class Period) which were reviewed, investigated, and analyzed by Class Counsel.

23 37. On December 4, 2023, the Parties in Action participated in a full day of mediation
24 before an experienced employment and class action mediator, Steve Rottman, Esq. (the
25 "Mediation") and the Parties reached a settlement at the Maximum Settlement Amount.

26 38. The Settlement described in this Agreement represents a compromise and settlement
27 of highly disputed claims. Nothing in this Settlement is intended or will be construed as an
28 admission by Defendant that Plaintiff's claims in the Action have any merit or that it has any

liability to Plaintiff, the Class, the PAGA Group or the State on those claims, or as an admission by Plaintiff that Defendant's defenses in Action have any merit. This Settlement is intended to fully, finally, and forever compromise, release, resolve, discharge, and settle the released claims subject to the terms and conditions set forth in this Settlement.

39. Based on its own thorough, independent investigation and evaluation of this case, Class Counsel is of the opinion that the Settlement of this Action with Defendant for the consideration and on the terms set forth in this Settlement is fair, reasonable, adequate, and in the best interest of the Class in light of all known facts and circumstances, including the risk of significant costs and delay, the risk of non-certification of the Class, the defenses asserted by Defendant, including the risks of adverse determinations on the merits and numerous potential appellate issues. Although Defendant contends that it has no liability in the Action, Defense Counsel shares Class Counsel's belief that the Settlement represents a fair and adequate settlement, given the respective risks associated with the case.

40. Based on the foregoing Recitals, the Parties agree as follows:

III. PROCEDURE FOR APPROVING SETTLEMENT

41. **Motion for Preliminary Approval of Settlement by the Superior Court.** Plaintiff will move the Superior Court for an order granting Preliminary Approval of the Settlement, setting a date for the Final Approval Hearing no earlier than 120 days from the date of the order granting Preliminary Approval of the Settlement, and approving the Class Notice (attached as Exhibit "A" to this Stipulation) ("Motion for Preliminary Approval"). Any unresolved disagreement among the Parties concerning the Class Notice or other documents necessary to implement the Settlement will be referred first to Steve Rottman, Esq., and if no resolution is reached, then to the Superior Court.

42. At the hearing on the Motion for Preliminary Approval, the Parties anticipate that they will jointly appear, support the granting of the Motion for Preliminary Approval, and obtain an order granting Preliminary Approval, granting approval of the Class Notice, and setting a date for the Final Approval Hearing no earlier than 120 days from the date of the order granting Preliminary Approval.

43. Should the Superior Court require any amendments to this Agreement or the Motion

1 for Preliminary Approval, the Parties agree to work jointly to resolve any issues in order to secure
2 the Superior Court's Preliminary Approval.

3 44. Should the Superior Court decline to preliminarily approve any material aspects of
4 the Settlement, the Settlement will be null and void and the Parties will have no further obligations
5 under it. In such event, the Parties shall be returned to their respective positions as of the date and
6 time immediately prior to the execution of this Agreement, and the Parties shall proceed in all
7 respects as if this Agreement had not been executed.

8 45. **Class Notice.** After the Superior Court enters its order granting Preliminary
9 Approval, every Class Member will be provided with the Class Notice (in English and Spanish)
10 which will include the Class Notice completed to reflect the order granting Preliminary Approval of
11 the Settlement and the Class Member's information as follows:

12 (a) Within fourteen (14) days after the Motion for Preliminary Approval is
13 granted, Defendant will provide to the Settlement Administrator the "Class Members' Data," which
14 shall consist of an electronic database containing (i) each Class Member's first and last name, (ii)
15 last known mailing address, (iii) the Class Member's Social Security number or Tax ID, (iv) the
16 Class Member's total number of Individual Workweeks, and (v) the Class/PAGA Group Members'
17 total number of Individual Pay Periods, if applicable. If any or all of the Class Members' Data are
18 unavailable to Defendant, Defendant will so inform Class Counsel prior to the date on which
19 Defendant is required to submit the Class Members' Data to the Settlement Administrator and the
20 Parties will make their best efforts to reconstruct or otherwise agree upon the Class Members' Data
21 prior to when it must be submitted to the Settlement Administrator. If the Parties are unable to
22 agree, the dispute will be resolved by the Settlement Administrator as provided in Paragraph 48.
23 This information will otherwise remain confidential and will not be disclosed to anyone, except as
24 required to applicable taxing authorities, as required to carry out the reasonable efforts to identify
25 Class Member information as described in Paragraph 45(c), pursuant to Defendant's express written
26 authorization, or by order of the Superior Court.

27 (b) Within seven (7) days after receiving the Class Members' Data, or as soon
28 thereafter as it is able to do so, the Settlement Administrator will mail the Class Notice to all

1 identified Class Members via first-class U.S. Mail using the mailing address information provided
2 by Defendant, unless modified by any updated address information that the Settlement
3 Administrator obtains in the course of administration of the Settlement.

4 (c) If a Class Notice is returned by the U.S. Postal Service because of an
5 incorrect address, the Settlement Administrator will promptly, and not later than five (5) days from
6 receipt of the returned packet, search for a more current address for the Class Member and re-mail
7 the Class Notice to the Class Member. The Settlement Administrator will use the Class Members'
8 Data and otherwise work with Defense Counsel or utilize its own resources, such as skip traces, to
9 find a more current address. The Settlement Administrator will be responsible for taking reasonable
10 steps, consistent with its agreed-upon job parameters, court orders, and fee, to trace the mailing
11 address of any Class Member for whom a Class Notice is returned by the U.S. Postal Service.
12 These reasonable steps shall include the tracking of all undelivered mail; performing address
13 searches for all mail returned without a forwarding address; and promptly re-mailing to Class
14 Members for whom new addresses are found. Any such Class Members who failed to receive a
15 Class Notice, or who were subject to a re-mailing of the Class Notice as described herein shall be
16 given an additional fourteen (14) days to opt out or object to the Settlement.

17 (d) The Settlement Administrator will inform Class Counsel and Defense
18 Counsel of the number of returned Class Notices it receives and Class Notices re-mailed in a
19 weekly status report.

20 (e) Not later than sixteen (16) court days prior to the Final Approval Hearing, the
21 Settlement Administrator will serve on the Parties a declaration of due diligence setting forth its
22 compliance with its obligations under this Settlement. The declaration will be filed with the papers
23 submitted with the Motion for Final Approval. Prior to the Final Approval Hearing, the Settlement
24 Administrator will supplement its declaration of due diligence if any material changes occur from
25 the date of the filing of its prior declaration.

26 **46. Participating Class Members; Requests for Exclusion from Class Settlement;**
27 **and Objections to Settlement.** Class Members may submit requests to be excluded from the effect
28 of the Settlement; or objections to the Settlement, pursuant to the following procedures:

1 (a) **Participating Class Members.** Each Class Member shall be deemed to be a
2 Participating Class Member unless they submit a complete, timely, and valid request to be excluded
3 from the effect of the Settlement as provided below. All Participating Class Members shall be
4 bound by the provisions and releases contained in this Settlement.

5 (b) **Request for Exclusion from Settlement.** Class Members who wish to
6 exclude themselves from the Settlement (“opt out” of the Settlement) must submit to the Settlement
7 Administrator, not later than forty-five (45) days after the date that the Settlement Administrator
8 first mails the Class Notices, an Exclusion Request (“the Exclusion Period”). Exclusion Requests
9 may be submitted to the Settlement Administrator via U.S. Mail (or similar method), fax, or e-mail.
10 Class Members must complete, sign, date, and timely return an Exclusion Request to the Settlement
11 Administrator to exclude themselves from the Settlement, setting forth their (i) name, (ii) address,
12 and (iii) the following statement or a similar statement: “I wish to exclude myself from the
13 settlement reached in the matter of *Magallanes v. Biocair, Inc.* I understand that by excluding
14 myself, I will not receive any money from the settlement reached in this matter.” A Class Member
15 who does not complete and submit a valid and timely Exclusion Request in the manner and by the
16 conclusion of the Exclusion Period will remain a Participating Class Member and, if the Court
17 approves the Settlement, will be bound by all terms and conditions of the Settlement and by the
18 Judgment. A Class Member who timely submits a valid Exclusion Request will not participate in,
19 or be bound by, the Settlement of the Judgment and will not receive any payment pursuant to the
20 Settlement except for a payment from the portion of the PAGA Payment to the PAGA Group if the
21 Class Member is a PAGA Group Member, and will not be bound by the terms of the Settlement,
22 except for the release of the PAGA Group Released Claims if the Class Member is a PAGA Group
23 Member, and will not have any right to object, appeal, or comment thereon. To be valid, Exclusion
24 Requests must be completed in full, signed, and returned to the Settlement Administrator before the
25 expiration of the Exclusion Period. Non-Participating Class Members will not be permitted to file
26 objections to the Settlement and/or appear at the Final Approval Hearing to voice any objections to
27 the Settlement. Members of the PAGA Group cannot seek to exclude themselves from the
28 Settlement of the PAGA claim, but retain all rights to exclude themselves from the Class Settlement

1 as delineated herein. The Settlement Administrator will provide Class Counsel, Defense Counsel,
2 and the Superior Court with only the names of the Non-Participating Class Members.

3 (c) **Objections to Settlement.** The Class Notice will provide that any Class
4 Member who does not request exclusion from the Settlement and who wishes to object to the
5 Settlement must serve on the Settlement Administrator, not later than forty-five (45) days after the
6 Settlement Administrator initially mails the Class Notice, a written objection to the Settlement,
7 which sets forth the grounds for the objection and the other information required by Paragraph
8 46(d). The objection must be served as follows:

9 *Magallanes v. Biocair, Inc.*

10 c/o _____

11
12 (d) The written objection must state the Class Member's (i) name, (ii) address,
13 (iii) the dates of the Class Member's employment with Defendant, (iv) the basis for each objection
14 in clear and concise terms, and (v) whether the Class Member intends to appear and object at the
15 Final Approval Hearing. A Class Member who does not serve a written objection in the manner
16 and by the deadline specified may appear at the Final Approval Hearing to state their objection to
17 the Settlement. If a Class Member fails to submit a written objection or to appear at the Final
18 Approval hearing to make an oral objection, the Class Member will be deemed to have waived all
19 objections and will be foreclosed from making any objections – whether by appeal or otherwise – to
20 the Settlement.

21 (e) If a Class Member submits both a Request for Exclusion and a written
22 objection, the Settlement Administrator shall attempt to contact and determine whether the Class
23 Member would like to withdraw either the Request for Exclusion or the objection. If the Class
24 Member does not withdraw the Request for Exclusion or if the Settlement Administrator cannot
25 contact a Class Member who submits both a Request for Exclusion and an objection, the Request
26 for Exclusion shall be valid and it shall be presumed that the Class Member does not wish to
27 participate in the Settlement and therefore has no standing to object to the Settlement.

28 (f) If the Superior Court rejects the Class Member's objection, or if the Superior

1 Court approves the settlement despite any objections, the Class Member will be deemed to be a
2 Participating Class Member and will be bound by the terms of this Settlement.

3 (g) A Class Member who timely submits a valid Exclusion Request will not
4 participate in, or be bound by, the Settlement of the Judgment and will not receive any payment
5 pursuant to the Settlement except for a payment from the portion of the PAGA Payment to the
6 PAGA Group if the Class Member is a PAGA Group Member, and will not be bound by the terms
7 of the Settlement and Judgment, except for the release of the PAGA Group Released Claims if the
8 Class Member is a PAGA Group Member, and will not have any right to object, appeal, or
9 comment thereon.

10 47. **Report.** Not later than seven (7) days after the deadline for submission of requests
11 to be excluded and/or objections, the Settlement Administrator will provide each Defendant,
12 through its respective Defense Counsel, with a complete and accurate list of names for all
13 Participating Class Members, all Non-Participating Class Members, all PAGA Group Members, and
14 all Class Members who objected to the settlement. The report shall also be accompanied by an
15 itemized calculation of the Settlement Shares for each Participating Class Member. The Settlement
16 Administrator shall also provide both Parties with a report identifying the number of Participating
17 Class Members, the number of Non-Participating Class Members, the number of PAGA Group
18 Members, and the number of Class Members who submitted a valid, timely, and complete
19 objection. Class Counsel shall also receive a list of Class Members who object to the Settlement.

20 48. **Resolution of Class Member and PAGA Group Member Disputes.** If a Class
21 Member and/or PAGA Group Member disputes the number of his or her Individual Workweeks
22 and/or Individual Pay Periods stated in their Class Notice, the Class Member and/or PAGA Group
23 Member must, within forty-five (45) days after the Settlement Administrator initially mails the
24 Class Notice, ask the Settlement Administrator to resolve the matter by returning the Class Notice
25 with a statement of the number of Workweeks and/or Pay Periods that he or she contends were
26 worked and include any documentation the Class Member and/or PAGA Group Member has to
27 support their contention. The Settlement Administrator shall notify Defendant of the dispute and
28 provide them with a copy of the Class Notice and any documentation received in support of the

1 dispute within three (3) court days of receipt thereof. Defendant shall review their payroll and
2 personnel records and verify the correct number of Workweeks and/or Pay Periods within five (5)
3 court days of the Settlement Administrator's notification. Defendant's records will have a
4 rebuttable presumption of accuracy. After consultation with Class Counsel, Defense Counsel, and
5 the applicable Class Member and/or PAGA Group Member, the Settlement Administrator will,
6 within three (3) court days of Defendant's verification, make a determination of the Class Member's
7 and/or PAGA Group Member's number of Workweeks and/or Pay Periods and that determination
8 will be final, binding on the Parties and the Class Member and/or PAGA Group Member, and is not
9 appealable.

10 **49. No Solicitation of Objection; Right to Void.** Neither the Parties, nor their
11 respective counsel, will directly or indirectly solicit or otherwise encourage any Class Member to
12 exclude him or herself from the Settlement, object to the Settlement, and/or appeal from the
13 Judgment. If ten percent (10%) or more of the Class Members submit a complete, valid, and timely
14 request to be excluded from the Settlement and are deemed to be Non-Participating Class Members,
15 then Defendant shall have the unilateral right to void this Settlement. Defendant may do so by
16 giving notice to Plaintiff and the Court of its election to void the Settlement not later than fourteen
17 (14) days after the Settlement Administrator issues its report identifying the number of Participating
18 Class Members, the number of Non-Participating Class Members, and the number of Class
19 Members who objected to the settlement as described in Paragraph 46(c). Notwithstanding any
20 other provisions in this Settlement, no sums shall be payable by Defendant in the event that this
21 Settlement is voided as provided for herein.

22 **50. Additional Briefing and Final Approval.**

23 (a) Not later than sixteen (16) court days before the Final Approval Hearing, the
24 Plaintiff will prepare and file with the Superior Court a Motion for Final Approval of the
25 Settlement, including payment of the Class Representative Payment, Class Counsel Fees Payment,
26 Class Counsel Litigation Expenses Payment, the Settlement Administrator's Payment, a
27 memorandum in support of their motion, a request for approval of the PAGA settlement under
28 Labor Code section 2699, subd. (l), a Proposed Final Approval Order, and a proposed Judgment

(collectively, "Motion for Final Approval"). Absent the escalator provisions outlined in Paragraph 18, if applicable, Plaintiff will not seek additional fees from Defendant or an increase in the Maximum Settlement Amount as part of the Motion for awards of the Class Representative Payment, Class Counsel Fees Payment, and the Class Counsel Litigation Expenses Payment.

(b) Not later than five (5) court days before the Final Approval Hearing, the Parties shall be entitled to file and serve a response to any Class Member's objection to the Settlement and/or reply in support of their Motion for Final Approval, to the extent that any opposition to said Motion is filed.

(c) If the Court does not grant Final Approval or conditions Final Approval on any material change to the Settlement (including, but not limited to, the scope of release to be granted by Class Members), the Parties will expeditiously work together in good faith to address the Court's concerns by revising the Agreement as necessary to obtain Final Approval. S An award by the Superior Court of a lesser amount than that sought by Plaintiff and Class Counsel for the Class Representative Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and/or the Settlement Administrator's Payment, will not constitute a material change to the Settlement within the meaning of this Paragraph.

(d) Upon final approval of the Settlement by the Superior Court at or after the Final Approval Hearing, the Parties will present for the Superior Court's approval and entry a Proposed Final Order and Judgment. The entry of the Final Order and Judgment shall permanently bar all Participating Class Members from prosecuting against Defendant any claims or causes of action found in Section V of this Agreement through the date of Final Approval, which were or could have been brought in this Action, whether known or unknown.,.

(e) After entry of the Judgment, the Superior Court will have continuing jurisdiction over the Action and the Settlement solely for purposes of (i) enforcing this Settlement, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as may be appropriate under court rules or applicable law.

51. **Waiver of Right to Appeal.** Provided that the Judgment is consistent with the terms and conditions of this Settlement, Plaintiff, Participating Class Members, Defendant, and their

1 respective counsel hereby waive any and all rights to appeal from the Judgment, including all rights
2 to any post-judgment proceeding and appellate proceeding, such as a motion to vacate judgment, a
3 motion for new trial, a motion under Code of Civil Procedure Section 473, and any extraordinary
4 writ, and the Judgment therefore will become non-appealable by them at the time it is entered. The
5 waiver of appeal does not include any waiver of the right to oppose any appeal, appellate
6 proceedings, or post-judgment proceedings. If an appeal is taken from the Judgment, the time for
7 consummation of the Settlement (including making payments under the Settlement) will be
8 suspended until such time as the appeal is finally resolved and the Judgment, consistent with the
9 terms of this Settlement, becomes Final.

10 **52. Vacating, Reversal, or Material Modification of Judgment on Appeal or**
11 **Review.** If, after a notice of appeal, a petition for review, or a petition for *certiorari*, or any other
12 motion, petition, writ, or application, the reviewing court vacates, reverses, or modifies the
13 Judgment such that there is a material modification to the Settlement, and that court's decision is
14 not completely reversed and the Judgment is not fully affirmed on review by a higher court, then the
15 agreement shall be null and void. The Parties shall nevertheless expeditiously work together in good
16 faith to address the appellate court's concerns and to obtain Final Approval and entry of Judgment,
17 sharing, on a 50-50 basis, any additional Administration Expenses reasonably incurred after
18 remittitur. A vacation, reversal, or modification of the Superior Court's award of the Class
19 Representative Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses
20 Payment, and/or the Settlement Administrator's Payment will not constitute a vacation, reversal, or
21 material modification of the Judgment within the meaning of this Paragraph.

22 **53. Establishment of Settlement Account.** The Settlement Administrator shall
23 establish a Settlement Account within ten (10) days of the Effective Date and notify the Parties
24 when the Settlement Account has been established. The Settlement Administrator shall also
25 provide Defendant with an itemized statement for the total amount to be deposited into the
26 Settlement Account, which shall equal the Maximum Settlement Amount ("Settlement Account
27 Deposit") plus applicable payroll taxes. Within ten (10) days after receiving notification of the
28 Settlement Account and statement for the Settlement Account Deposit, Defendant shall pay into the

1 Settlement Account an amount equal to the Settlement Account Deposit. Defendant shall have no
2 obligation to pay any additional funds into the Settlement Account.

3 **54. Payment of Settlement Shares.** The Settlement Administrator shall pay to each
4 Participating Class Member his or her Settlement Share from the Settlement Account. The
5 Settlement Administrator shall pay each Settlement Share by sending a check in the appropriate
6 amount after withholdings to the Participating Class Member at the address indicated in the Class
7 Member's Data. Such payment shall be sent by the Settlement Administrator via U.S. Mail within
8 fourteen (14) days of its receipt of the Settlement Account Deposit from Defendant.

9 **55. Payment of PAGA Payment Shares.** The Settlement Administrator shall pay to
10 each PAGA Group Member his or her PAGA Payment Share from the Settlement Account. The
11 Settlement Administrator shall pay each PAGA Payment Share by sending a check in the
12 appropriate amount to the PAGA Group Member at the address indicated in the PAGA Group
13 Member's Data. Such payment shall be sent by the Settlement Administrator via U.S. Mail within
14 fourteen (14) days of its receipt of the Settlement Account Deposit from Defendant.

15 **56. Uncashed Settlement Share and PAGA Payment Share Checks.** Any checks
16 paid to Participating Class Members and/or PAGA Group Members shall be negotiable for one
17 hundred and eighty (180) calendar days from the date of their issuance. A Participating Class
18 Member must cash his or her Settlement Share check within one hundred and eighty (180) calendar
19 days after it is mailed to him or her. A PAGA Group Member must cash his or her PAGA Payment
20 Share check within one hundred and eighty (180) calendar days after it is mailed to him or her. If a
21 check remains uncashed after one hundred and eighty (180) calendar days from the initial mailing,
22 or if a check is returned to the Settlement Administrator as undeliverable during the one hundred
23 eighty-day period, the Settlement Administrator shall take all reasonable efforts to identify the
24 Participating Class Member's and/or PAGA Group Member's correct address, including the
25 performance of a "skip-trace." Within 7 days of receiving a returned check the Administrator must
26 re-mail checks to the USPS forwarding address provided or to an address ascertained through the
27 Class Member Address Search. If an updated address for the Participating Class Member and/or
28 PAGA Group Member cannot be identified, if a reissued check is once again returned to the

1 Settlement Administrator as undeliverable, or if the reissued check remains uncashed after one
2 hundred eighty (180) calendar days, the Settlement Administrator will keep an accounting of such
3 funds and shall give notice to the Parties of the total balance of uncashed Settlement Shares and/or
4 PAGA Payment Shares. A Participating Class Member who fails to negotiate or receive their
5 Settlement Share check despite the procedures described above shall nevertheless remain bound by
6 the Settlement and the releases contained herein. A PAGA Group Member who fails to negotiate or
7 receive their PAGA Payment Share check despite the procedures described above shall nevertheless
8 remain bound by the Settlement and the releases contained herein.

9 57. The funds represented by Settlement Share and/or PAGA Payment Share checks
10 remaining uncashed for more than one hundred and eighty (180) calendar days after issuance shall
11 be voided and then shall be transmitted to the Controller of the State of California to be held
12 pursuant to the Unclaimed Property Law, California Civil Code Section 1500, *et seq.*, in the names
13 of those Participating Class Members and/or PAGA Group Members who did not cash their checks
14 until such time they claim their property. The Parties agree that this disposition results in no “unpaid
15 residue” under California Civil Procedure Code § 384, as the entire Net Settlement Amount will be
16 paid out to Participating Class Members, whether or not they all cash their settlement checks.
17 Therefore, Defendant will not be required to pay any interest on such amounts.

18 58. **Final Report by Settlement Administrator to Superior Court.** Within ten (10)
19 days after final disbursement of all funds from the Settlement Account, the Settlement
20 Administrator will serve on the Parties and file with the Superior Court a declaration providing a
21 final summary report on the disbursements of all funds from the Settlement Account. Within ten
22 (10) days after transmission of any remaining unclaimed funds to the Controller of the State of
23 California, the Settlement Administrator will serve on the Parties and file with the Superior Court a
24 declaration providing a final summary report on the transmission of any remaining unclaimed funds
25 to the Controller of the State of California as outlined Paragraph 57.

26 **IV. SETTLEMENT TERMS AND CONDITIONS**

27 59. **Conditional Certification for Settlement Purposes.** Solely for the purposes of
28 effectuating this Settlement, and subject to Court approval, the Parties hereby stipulate to the

1 conditional certification of the following Settlement Class: “all hourly-paid, non-exempt employees
2 who, during the Class Period, have previously been or currently are employed in California by
3 Defendant, as an hourly-paid, non-exempt employee.” The Parties agree that if for any reason the
4 Settlement is not preliminarily and/or finally approved, the conditional certification of the
5 Settlement Class will be of no force or effect, does not constitute an admission by Defendant that
6 class certification is proper, and will not be deemed admissible in this or any other proceeding, and
7 that the Parties will litigate the issue of class certification.

8 **60. Settlement Shares.** Subject to the terms and conditions of this Settlement, the
9 Settlement Administrator will calculate the Settlement Shares for each Class Member within ten
10 (10) days after Defendant provides the Settlement Administrator with the Class Members’ Data.
11 The Settlement Share for each Class Member will be calculated as follows, understanding that the
12 formulas below do not constitute an admission by either Party, and are intended only to provide a
13 practical means to simplify and administer the claims process:

14 **(a) Number of Class Members and Workweeks.** Defendant shall determine
15 the total number of Class Members and the aggregate number of Workweeks for those Class
16 Members as of the time of Preliminary Approval. This information shall be provided to the
17 Settlement Administrator along with the Class Members’ Data as described in Paragraph 45(a)
18 above.

19 **(b) Calculation of the Workweek Value.** The Settlement Administrator shall
20 determine the value of a Workweek (“Workweek Value”) by taking the Net Settlement Amount and
21 dividing it by the sum of all Class Members’ Workweeks who do not opt out of the Settlement.

22 **(c) Calculation of Settlement Shares.** The Settlement Administrator shall
23 assign to each Participating Class Member a Settlement Share which shall be equal to the
24 Workweek Value multiplied by each Participating Class Member’s Individual Workweeks. Upon
25 calculation of the Participating Class Members’ Settlement Shares, the Settlement Administrator
26 shall furnish to Class Counsel and Defense Counsel a worksheet containing a list of employee
27 identification numbers for the Class Members with their corresponding Individual Workweeks and
28 Settlement Shares.

1 **61. PAGA Payment Shares.** Subject to the terms and conditions of this Settlement, the
2 Settlement Administrator will calculate the PAGA Payment Shares for each PAGA Group Member
3 within ten (10) days after Defendant provides the Settlement Administrator with the PAGA Group
4 Members' Data. The PAGA Payment Share for each PAGA Group Member will be calculated as
5 follows, understanding that the formulas below do not constitute an admission by either Party, and
6 are intended only to provide a practical means to simplify and administer the claims process:

7 **(a) Number of PAGA Group Members and Pay Periods.** Defendant shall
8 determine the total number of PAGA Group Members and the aggregate number of Pay Periods for
9 those PAGA Group Members as of the time of Preliminary Approval. This information shall be
10 provided to the Settlement Administrator along with the Class Members' Data as described in
11 Paragraph 45(a) above.

12 **(b) Calculation of the Pay Period Value.** The Settlement Administrator shall
13 determine the value of a Pay Period ("Pay Period Value") by taking the PAGA Payment amount
14 and dividing it by the sum of all PAGA Group Members' Pay Periods.

15 **(c) Calculation of PAGA Payment Shares.** The Settlement Administrator shall
16 assign to each PAGA Group Member a PAGA Payment Share which shall be equal to the Pay
17 Period Value multiplied by each PAGA Group Member's Individual Pay Periods. Upon calculation
18 of the PAGA Group Members' PAGA Payment Shares, the Settlement Administrator shall furnish
19 to Class Counsel and Defense Counsel a worksheet containing a list of employee identification
20 numbers for the PAGA Group Members with their corresponding Individual Pay Periods and
21 PAGA Payment Shares.

22 **62. Taxes and Withholdings.** Each Settlement Share is intended to settle the Class
23 Members' claims for unpaid wages and penalties. Accordingly, fifteen percent (15%) of each
24 Settlement Share shall represent unpaid wages and the remaining eighty-five percent (85%) of each
25 Settlement Share shall represent penalties and interest. The portion of the Settlement Share
26 representing unpaid wages shall be paid to each Participating Class Member subject to any
27 applicable employee-side tax withholdings and deductions, and the Settlement Administrator shall
28 issue an IRS Form W-2 to each Participating Class Member for that amount. The portion of the

1 Settlement Share representing penalties shall be paid to the Participating Class Member in full
2 without deductions or withholdings, and the Settlement Administrator shall issue an IRS Form 1099
3 to each Participating Class Member for that amount. Each Participating Class Member shall be
4 individually responsible for their own share of applicable income tax withholdings and deductions
5 from the Settlement Share attributable to the portion of the settlement for which an IRS Form 1099
6 will be issued. Defendant's payment of the Employer Payroll Tax attributable to the Settlement
7 Share payments constituting wages will be made separately and shall not come from the Maximum
8 Settlement Amount. The Parties agree and understand that Defendant has not made any
9 representations regarding the tax obligations or consequences, if any, related to this Settlement. The
10 Parties agree that Defendant and each Participating Class Member are solely responsible for
11 determining the tax consequences of payments made pursuant to this Settlement and for paying
12 taxes, if any, which are determined to be owed by each of them on such payments (including
13 penalties and interest related thereto) by any taxing authority, whether state, local, or federal.

14 63. Each PAGA Payment Share is intended to settle the PAGA Group Members' claims
15 for civil penalties. Accordingly, one hundred percent (100%) of each PAGA Payment Share shall
16 represent civil penalties. The PAGA Payment Share shall be paid to the PAGA Group Member in
17 full without deductions or withholdings, and the Settlement Administrator shall issue an IRS Form
18 1099 to each PAGA Group Member for that amount, to the extent the PAGA Group Member's
19 PAGA Payment Share is Six Hundred Dollars and Zero Cents (\$600.00) or more. Each PAGA
20 Group Member shall be individually responsible for their own share of applicable income tax
21 withholdings and deductions for his or her PAGA Payment Share.

22 64. **Total Payment Amount.** In no event will Defendant be required to pay more than
23 the Maximum Settlement Amount (unless that amount is increased pursuant to Paragraph 18 above)
24 for distribution to the Plaintiff, Class Counsel, Participating Class Members, PAGA Group
25 Members, LWDA, Settlement Administrator, or for any other costs or expenses not otherwise
26 enumerated. However, Defendant's payment of the Employer Payroll Tax attributable to the
27 Settlement Share payments constituting wages will be made separately and shall not come from the
28 Maximum Settlement Amount.

1 **65. Payments to Plaintiff and Class Counsel and Others.** Subject to the terms and
2 conditions of this Settlement, the Settlement Administrator will make the following payments out of
3 the Maximum Settlement Amount as follows:

4 (a) **To Plaintiff:** In addition to their respective Settlement Shares, Plaintiff will
5 apply to the Superior Court for a Class Representative Payment in an amount not to exceed Ten
6 Thousand Dollars and Zero Cents (\$10,000.00). Defendant will not oppose this Class
7 Representative Payment. The Settlement Administrator will pay the Class Representative Payment
8 approved by the Superior Court out of the Maximum Settlement Amount. Payroll tax withholding
9 and deductions will not be taken from the Class Representative Payment and an IRS Form 1099 will
10 be issued to Plaintiff for this payment.

11 (b) **To Class Counsel:** Class Counsel will apply to the Superior Court for the
12 Class Counsel Fees Payment in an amount not to exceed 33 1/3% of the Maximum Settlement
13 Amount (currently estimated to be Ninety-One Thousand Six Hundred and Sixty-Six Dollars and
14 Sixty-Seven Cents (\$91,666.67)). Class Counsel will also submit to the Superior Court a
15 memorandum of costs for the Class Counsel Litigation Expenses Payment in an amount not to
16 exceed Twenty Thousand Dollars and Zero Cents (\$20,000.00) as request for reasonable costs of
17 suit to be paid from the Maximum Settlement Amount. Defendant will not oppose these requests.
18 The Settlement Administrator will pay the amounts approved by the Superior Court out of the
19 Maximum Settlement Amount. Withholding and deductions will not be taken from the Class
20 Counsel Fees Payment or Class Counsel Litigation Expenses Payment and one or more IRS Forms
21 1099 will be issued to Class Counsel with respect to those payments.

22 (c) **To the LWDA:** As part of its Motions for Preliminary and Final Approval,
23 the Plaintiff will apply to the Superior Court for approval of the LWDA Payment in the amount of
24 Fifteen Thousand Dollars and Zero Cents (\$15,000.00), which shall constitute the LWDA's
25 seventy-five percent (75%) share of Twenty Thousand Dollars and Zero Cents (\$20,000.00) in civil
26 penalties paid under this Settlement. The remaining Five Thousand Dollars and Zero Cents
27 (\$5,000.00) in civil penalties shall be distributed on a *pro rata* basis based upon the number of pay
28 periods worked by each PAGA Group Member ("PAGA Payment").

1 (d) **To the Settlement Administrator:** The Settlement Administrator will be
2 paid from the Maximum Settlement Amount its reasonable fees and expenses as approved by the
3 Superior Court, which are estimated not to exceed Six Thousand Five Hundred Dollars and Zero
4 Cents (\$6,500.00).

5 66. **Appointment of Settlement Administrator.** The Parties will ask the Superior
6 Court to appoint Phoenix Class Action Administrators, a qualified and experienced administrator
7 based in California where the Action is venued, to serve as the Settlement Administrator, which, as
8 a condition of appointment, will agree to be bound by this Agreement with respect to the
9 performance of its duties and its compensation. The Settlement Administrator's duties will include
10 (i) calculating Settlement Shares and PAGA Payment Shares; (ii) preparing, printing, and mailing
11 the Class Notice to all Class Members; (iii) using reasonable measures to contact all Class
12 Members, including conducting a National Change of Address search on all Class Members before
13 mailing the Class Notice to each Class Member's address; (iv) re-mailing the Class Notice to the
14 Class Member's new address for those Class Members whose address had changed; (v) setting up a
15 toll-free telephone number to receive calls from Class Members; (vi) receiving requests for
16 exclusion and objections to the Settlement; (vii) providing the Parties with weekly status reports
17 about the delivery of Class Notices and any requests for exclusion and objections; (viii) issuing the
18 checks to effectuate the payments due under the Settlement; (ix) using reasonable measures to
19 deliver issued checks to Participating Class Members, including use of a "skip-trace" for
20 undeliverable checks; and (x) otherwise administering the Settlement pursuant to this Agreement
21 including paying and reporting the employer's share of the payroll taxes to the appropriate taxing
22 agency. The Settlement Administrator will have the final authority to resolve all disputes
23 concerning the calculation of a Participating Class Member's Settlement Share and/or PAGA Group
24 Member's PAGA Payment Share, subject to the terms set forth in this Agreement. The Settlement
25 Administrator's reasonable fees and expenses are estimated to not exceed Six Thousand Five
26 Hundred Dollars and Zero Cents (\$6,500.00) and will be paid out of the Maximum Settlement
27 Amount, as set forth herein, subject to Court approval.

1 **V. RELEASE OF CLAIMS**

2 67. **Plaintiff's Released Claims.** Upon Defendant fully funding the Settlement as
3 described in this Agreement, Plaintiff, individually and on behalf of Plaintiff's heirs, executors,
4 administrators, representatives, attorneys, successors and assigns knowingly and voluntarily
5 releases and forever discharges Defendant, including any and all parent corporation, affiliates,
6 subsidiaries, managers, divisions, predecessors, insurers, franchisors, successors and assigns,
7 including but not limited to each of their current and former employees, attorneys, officers, directors
8 and agents thereof, both individually and in their business capacities, and their employee benefit
9 plans and programs and the trustees, administrators, fiduciaries and insurers of such plans and
10 programs (collectively, "Plaintiff's Released Parties"), to the fullest extent permitted by law, of and
11 from any and all claims, known and unknown, asserted and unasserted, which Plaintiff has or may
12 have against the Plaintiff's Released Parties as of the date of execution of this Settlement
13 Agreement. Plaintiff is not waiving any rights Plaintiff may have to: (i) Plaintiff's own vested
14 accrued employee benefits under the Defendant's health, welfare or retirement benefits plans, if
15 any, as of the date of execution of this Settlement Agreement; (ii) benefits or rights to seek benefits
16 under applicable workers' compensation (except as to claims under Labor Code §§ 132a and 4553
17 which are expressly released herein) or unemployment insurance or indemnification statutes; (iii)
18 pursue claims which by law cannot be waived by signing this Settlement Agreement; and (iv)
19 enforce this Settlement Agreement.

20 68. To affect a full and complete general release as described above, Plaintiff expressly
21 waives and relinquishes all rights and benefits of § 1542 of the Civil Code of the State of California
22 and does so understanding and acknowledging the significance and consequence of specifically
23 waiving § 1542. Thus, notwithstanding the provisions of § 1542, and to implement a full and
24 complete release and discharge of all parties, Plaintiff expressly acknowledges this Settlement
25 Agreement is intended to include in its effect, without limitation, all claims Plaintiff does not know
26 or suspect to exist in Plaintiff's favor at the time of signing this Settlement Agreement, and that this
27 Settlement Agreement contemplates the extinguishment of any such claims. Plaintiff warrants
28 Plaintiff has read this Settlement Agreement, including this waiver of California Civil Code § 1542,

1 and that Plaintiff has consulted with or had the opportunity to consult with counsel of Plaintiff's
2 choosing about this Settlement Agreement and specifically about the waiver of § 1542, and that
3 Plaintiff understands this Settlement Agreement and the § 1542 waiver, and so Plaintiff freely and
4 knowingly enters into this Settlement Agreement. Plaintiff further acknowledges that Plaintiff later
5 may discover facts different from or in addition to those Plaintiff now knows or believes to be true
6 regarding the matters released or described in this Settlement Agreement, and even so Plaintiff
7 agrees that the releases and agreements contained in this Settlement Agreement shall remain
8 effective in all respects notwithstanding any later discovery of any different or additional facts.
9 Plaintiff expressly assume any and all risk of any mistake in connection with the true facts involved
10 in the matters, disputes or controversies released or described in this Settlement Agreement or with
11 regard to any facts now unknown to Plaintiff relating thereto.

12 **69. Participating Class Members Released Claims.** Upon Defendant fully funding the
13 Settlement as described in this Agreement, each Participating Class Member, and without the need
14 to manually sign a release document, shall release the Released Parties from all causes of action and
15 claims that were alleged in the Action or reasonably could have been alleged based on the facts
16 contained in the Action, including all of the following claims for relief: (i) failure to pay all regular
17 wages, minimum wages and overtime wages due (Lab. Code §§ 204, 510, 558, 1194, 1194.2, 1197,
18 1197.1, & 1198); (ii) failure to provide compliant meal periods (Lab. Code §§ 226.7 & 512); (iii)
19 failure to provide compliant rest breaks (Lab. Code § 226.7); (iv) failure to timely pay wages during
20 employment (Lab. Code §§ 204 & 210); (v) failure to provide complete, accurate wage statements
21 (Lab. Code § 226); (vi) failure to pay wages timely at time of termination or resignation (Lab. Code
22 §§ 201-203); (vii) failure to indemnify all necessary business expenses (Lab. Code § 2802.); (viii)
23 unfair business practices that reasonably could have been alleged based on the facts contained in the
24 Action (Cal. Bus. & Prof. Code § 17200, *et seq.*); (ix) any claim for costs and attorneys' fees and
25 expenses; and (x) any claim arising from the claims described above under applicable federal, state,
26 local or territorial law as well as applicable regulations and Wage Orders (collectively, the
27 "Released Claims"). Participating Class Members who cash their checks are deemed to have
28 waived all Released Claims inclusive of claims under the Fair Labor Standards Act. Participating

1 Class Members who do not cash their checks shall be deemed to waive all Released Claims except
2 for a claim under the Fair Labor Standards Act. Released Claims for Class Members who worked
3 for Defendant in California during the Class Period shall have their claims released during the Class
4 Period.

5 70. **PAGA Group Released Claims.** Upon Defendant fully funding the Settlement as
6 described in this Agreement,, each PAGA Group Member, and without the need to manually sign a
7 release document, shall release the Released Parties for claims for civil penalties pursuant to PAGA
8 based upon all causes of action and claims that were alleged in the Action or reasonably could have
9 been alleged based on the facts contained in the Action, and/or the LWDA Exhaustion Letter
10 including all of the following claims for relief: (i) failure to pay all regular wages, minimum wages
11 and overtime wages due (Lab. Code §§ 204, 510, 558, 1194, 1194.2, 1197, 1197.1, & 1198); (ii)
12 failure to provide compliant meal periods (Lab. Code §§ 226.7 & 512); (iii) failure to provide
13 compliant rest breaks (Lab. Code § 226.7); (iv) failure to timely pay wages during employment
14 (Lab. Code §§ 204 & 210); (v) failure to provide complete, accurate wage statements (Lab. Code §
15 226); (vi) failure to maintain accurate employment and payroll records (Lab. Code §§ 1174 &
16 1174.5); (vii) failure to pay wages timely at time of termination or resignation (Lab. Code §§ 201-
17 203); (viii) failure to indemnify all necessary business expenses (Lab. Code § 2802.); (ix) all claims
18 under the California Labor Code Private Attorneys General Act of 2004 that could have reasonably
19 been alleged based on the facts contained in the Action; and (x) any claim for costs and attorneys'
20 fees and expenses (collectively, the "PAGA Released Claims"). PAGA Group Members who
21 worked for Defendant in California during the PAGA Period shall have their PAGA Released
22 Claims released during the PAGA Period.

23 71. Released Parties includes Defendant and their past, present and/or future, direct
24 and/or indirect, officers, directors, members, managers, employees, agents, representatives,
25 attorneys, including but not limited to insurers, partners, investors, shareholders, administrators,
26 parent companies, subsidiaries, affiliates, divisions, predecessors, successors, assigns, and joint
27 venturers.

28 72. In light of the binding nature of a PAGA judgment on non-party employees pursuant

1 to *Arias v. Sup. Ct. (Angelo Dairy)* (2009) 46 Cal.4th 969 and *Cardenas v. McLane Foodservice,*
2 *Inc.* (2011) 796 F.Supp.2d 1246, individuals otherwise meeting the definition of a Class Member
3 who exclude themselves from the Settlement shall nonetheless receive a payment for the amount of
4 each such individual's estimated share of the PAGA Payment and shall have released PAGA
5 claims, as outlined in Paragraph 70.

6 73. The Released Claims and PAGA Released Claims described in Paragraphs 69 and 70
7 expressly exclude all claims made by a Participating Class Member and/or PAGA Group Member
8 for vested benefits, wrongful termination, unemployment insurance, disability, social security,
9 workers' compensation, claims while classified as exempt, and claims outside of the Class Period
10 and/or PAGA Period.

11 74. **Class Counsel.** As of the Effective Date, and except as otherwise provided by this
12 Settlement, Class Counsel and any counsel associated with Class Counsel waive any further claims
13 to costs and attorneys' fees and expenses against Defendant or the Released Parties arising from or
14 related to the Action, including but not limited to claims based on the Labor Code, the Code of Civil
15 Procedure, PAGA, the Fair Labor and Standards Act, the Business and Professions Code, or any
16 other contract, statute or law ("Class Counsel Released Claims").

17 75. **No Effect on Other Benefits.** The payment of Settlement Shares and/or PAGA
18 Payment Shares will not result in any additional employee benefit payments (such as 401(k),
19 vacation, or bonus) and shall not have any effect on the eligibility for, or calculation of, any
20 employee benefit.

21 **VI. DUTIES OF THE PARTIES**

22 76. **Mutual Full Cooperation.** The Parties agree to cooperate fully with one another to
23 accomplish and implement the terms of this Stipulation. Such cooperation shall include, but not be
24 limited to, execution of such other documents and the taking of such other actions as may
25 reasonably be necessary to fulfill the terms of this Settlement unless the Court denies the Settlement
26 with prejudice. The Parties shall use their best efforts, including all efforts contemplated by this
27 Stipulation and any other efforts that may become necessary by court order or otherwise, to
28 effectuate this Stipulation and the terms set forth herein. As soon as practicable after execution of

1 this Stipulation, Class Counsel, with the cooperation of Defendant and Defense Counsel, shall take
2 all necessary and reasonable steps to secure the Court's approval of this Stipulation. The Parties will
3 work together to make any non-material modifications of the Settlement requested by the Court to
4 obtain approval of the Parties' Settlement.

5 **77. Duty to Support and Defend the Class Settlement.** The Parties agree to abide by
6 all of the terms of the Settlement in good faith and to support the Settlement fully and to use their
7 best efforts to defend this Settlement from any legal challenge, whether by appeal or collateral
8 attack.

9 **78. Duties Prior to Court Approval.** Class Counsel shall promptly submit this
10 Stipulation to the Court for preliminary approval and determination by the Court as to its fairness,
11 adequacy, and reasonableness. Promptly upon execution of this Stipulation, Class Counsel shall
12 apply to the Court for the entry of a preliminary order, scheduling a hearing on the question of
13 whether the proposed Class Settlement should be approved as fair, reasonable, and adequate as to
14 the Class Members, approving as to form and content the proposed Class Notice attached hereto as
15 Exhibit "A", respectively, and directing the mailing of the Class Notice to Settlement Class
16 Members.

17 **79. Non-Monetary Relief and Catalyzation of Policy Change.** Although Defendant
18 denies any liability of any kind associated with the claims alleged in the Lawsuit, denies any
19 liability or intentional wrongdoing, Defendant revised and updated their wage and hour policies and
20 practices, including but not limited to their timekeeping and meal period and rest break policies and
21 procedures.

22 **VII. MISCELLANEOUS TERMS**

23 **80. No Admission of Liability.** Defendant denies that it has engaged in any unlawful
24 activity, has failed to comply with the law in any respect, or has any liability to anyone under the
25 claims asserted in the Action. This Settlement is entered into solely for the purpose of
26 compromising highly disputed claims. Nothing in this Settlement is intended or will be construed
27 as an admission of liability or wrongdoing by Defendant, an admission by Plaintiff that any of his
28 claims were non-meritorious, or any defense asserted by Defendant was meritorious. This

1 Settlement and the fact that Plaintiff and Defendant were willing to settle the Action will have no
2 bearing on, and will not be admissible in connection with, any litigation (other than solely in
3 connection with the Settlement).

4 81. The Parties also agree that this release constitutes a resolution of a good faith dispute
5 concerning wages and complies with Labor Code Section 206.5, which reads in part:

6
7 “Execution of release of claim or right on account of wages due.

8 No employer shall require the execution of any release of any
9 claim or right on account of wages due, or to become due, or made,
10 or made as an advance on wages to be earned, unless payment of
11 those wages has been made.”

12 82. Whether or not the Judgment becomes Final, neither the Settlement, any document,
13 statement, proceeding or conduct related to the Settlement, nor any reports or accounting of those
14 matters, will be (i) construed as, offered or admitted in evidence as, received as, or deemed to be
15 evidence for any purpose adverse to Defendant or any of the Released Parties, including, but not
16 limited to, evidence of a presumption, concession, indication or admission by any of the Released
17 Parties of any liability, fault, wrongdoing, omission, concession or damage; or (ii) disclosed,
18 referred to or offered in evidence against any of the Released Parties, or any other civil, criminal or
19 administrative action or proceeding except for purposes of effectuating this Settlement.

20 83. Notwithstanding Paragraph 82 of this Settlement, any and all provisions of this
21 Settlement may be admitted in evidence and otherwise used in any and all proceedings to enforce
22 any or all terms of this Settlement, or in defense of any claims released or barred by this Settlement.

23 84. **Non-Disparagement.** Plaintiff and Class Counsel agree not to make any untruthful,
24 malicious, disparaging or defamatory statements, allegations, comments or communications,
25 regardless of form (whether written, oral, electronic, including but not limited to Glassdoor, Yelp,
26 or otherwise), regarding the Released Parties. Plaintiff and Class Counsel further agree not to
27 encourage authorize or permit any such statements, allegations, comments or communications to be
28 made by others on their behalf. To the extent Plaintiff and/or Class Counsel have posted any

1 negative comments about the Released Parties on Glassdoor, Yelp, or other websites, Plaintiff
2 and/or Class Counsel agree to request that these comments be removed and to provide a copy of
3 such request to Defense Counsel within 30 days of the execution of this Agreement.

4 85. **Waiver of Reemployment.** Plaintiff acknowledges that she has no intent to apply
5 for employment and/or re-employment with Defendant. Plaintiff further acknowledges that
6 Defendant or any related, successor, parent, or subsidiary companies has the right to refuse rehiring
7 Plaintiff for non-discriminatory and non-retaliatory reasons and Plaintiff acknowledges that
8 Defendant's position is that such legitimate non-discriminatory and non-retaliatory reasons exist.

9 86. **Integrated Agreement.** After this Settlement is signed and delivered by all Parties
10 and their counsel, this Settlement and its exhibits will constitute the entire agreement between the
11 Parties relating to the Settlement, and it will then be deemed that no oral representations, warranties,
12 covenants, or inducements have been made to any Party concerning this Settlement or its exhibits
13 other than the representations, warranties, covenants, and inducements expressly stated in this
14 Settlement and its exhibits.

15 87. **Attorney Authorization.** Class Counsel and Defense Counsel warrant and represent
16 that they are authorized by Plaintiff and Defendant, respectively, to take all appropriate action
17 required or permitted to be taken by such Parties pursuant to this Settlement to effectuate its terms,
18 and to execute any other documents required to effectuate the terms of this Settlement. The Parties
19 and their counsel will cooperate with each other and use their best efforts to affect the
20 implementation of the Settlement. In the event the Parties are unable to reach agreement on the
21 form or content of any document needed to implement the Settlement, or on any supplemental
22 provisions that may become necessary to effectuate the terms of this Settlement, the Parties will
23 seek the assistance of mediator Steve Rottman, Esq., and if no resolution is reached the Superior
24 Court, and in all cases all such documents, supplemental provisions and assistance of the court will
25 be consistent with this Settlement.

26 88. **Modification of Agreement.** This Agreement, and any and all parts of it, may be
27 amended, modified, changed, or waived only by an express written instrument signed by all Parties,
28 their successors-in-interest, and/or the Parties' respective counsel, as authorized.

89. **Settlement Binding on Successors.** This Settlement Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.

90. **Applicable Law.** All terms and conditions of this Settlement and its exhibits will be governed by and interpreted according to the laws of the State of California, without giving effect to any conflict of law principles or choice of law principles.

91. **Cooperation in Drafting.** The Parties have cooperated in the drafting and preparation of this Settlement. This Settlement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.

92. **Fair Settlement.** The Parties and their respective counsel believe and warrant that this Settlement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at this Settlement through arms-length negotiations, taking into account all relevant factors, current and potential.

93. **Headings.** The descriptive heading of any section or Paragraph of this Settlement is inserted for convenience of reference only and does not constitute a part of this Settlement.

94. **Notice.** All notices, demands or other communications given under this Settlement will be in writing and deemed to have been duly given as of the third business day after mailing by U.S. Mail, addressed as follows:

To Class Counsel:

Justin F. Marquez, Esq.
Benjamin H. Haber, Esq.
Daniel J. Kramer, Esq.
WILSHIRE LAW FIRM
3055 Wilshire Blvd., 12th Floor
Los Angeles, California 90010
Telephone: (213) 784-3830
Facsimile: (213) 381-9989
justin@wilshirelawfirm.com
benjamin@wilshirelawfirm.com
dkramer@wilshirelawfirm.com

To the Defendant's Counsel:

Matthew C. Sgnilek, Esq.
Andrea Rosenkranz, Esq.
Carla Vasques dos Santos-Moore, Esq.
O'HAGAN MEYER
3200 Park Center Drive, Suite 700
Costa Mesa, California 92626
Telephone: (949) 942-8500
Facsimile: (949) 942-8510

msgnilek@ohaganmeyer.com
arosenkranz@ohaganmeyer.com
cmoore@ohaganmeyer.com

95. **Execution in Counterpart.** This Settlement may be executed in one or more counterparts. All executed counterparts and each of them will be deemed to be one and the same instrument provided that counsel for the Parties will exchange between themselves original signed counterparts. Facsimile signatures, scanned PDF signatures, and electronic signatures will be presumptive evidence of execution of the original, which shall be produced on reasonable request. Any executed counterpart will be admissible to prove the existence and contents of this Settlement.

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

DATED: 4/30/2024 _____

DULCE MAGALLANES

DocuSigned by:
Dulce Magallanes
95153BEC85F7470...

DATED: _____

BIOCAIR, INC.

By: _____

Its: _____

1 DATED: April 30, 2024
2
3

WILSHIRE LAW FIRM

4 By: 
5 Justin F. Marquez, Esq.
6 Benjamin H. Haber, Esq.
7 Daniel J. Kramer, Esq.

Attorneys for Plaintiff
DULCE MAGALLANES

8
9 DATED:
10

O'HAGAN MEYER

11
12 By: _____
13 Matthew C. Sgnilek, Esq.
14 Andrea Rosenkranz, Esq.
15 Carla Vasques dos Santos-Moore, Esq.

Attorneys for Defendant
BIOCAIR, INC.

msgnilek@ohaganmeyer.com
arosenkranz@ohaganmeyer.com
cmoore@ohaganmeyer.com

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DATED: _____

DULCE MAGALLANES

DATED: 05/01/2024

BIOCAIR, INC.

By: _____

Its: _____

V Howard

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DATED: _____

WILSHIRE LAW FIRM

By: _____

Justin F. Marquez, Esq.
Benjamin H. Haber, Esq.
Daniel J. Kramer, Esq.

Attorneys for Plaintiff
DULCE MAGALLANES

DATED: 5/2/2024

O'HAGAN MEYER

By: _____


Matthew C. Sgnilek, Esq.
Andrea Rosenkranz, Esq.
Carla Vasques dos Santos-Moore, Esq.

Attorneys for Defendant
BIOCAIR, INC.

Exhibit A

EXHIBIT A

COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL

Dulce Magallanes v. Biocair Inc.
Case No. 23STCV07027

***The Superior Court for the State of California authorized this Notice. Read it carefully!
It's not junk mail, spam, an advertisement, or solicitation by a lawyer. You are not being sued.***

You may be eligible to receive money from an employee class action and representative action lawsuits (“Action”) against Biocair Inc. (“Defendant”) for alleged wage and hour violations. The Action was filed by former Biocair Inc. employee Dulce Magallanes (“Plaintiff”) and seeks payment of back wages and other relief for a class of non-exempt, hourly-paid employees (“Class Members”) who worked for Defendant in California during the Class Period (March 30, 2019 through February 2, 2024); and (2) penalties under the California Private Attorneys General Act (“PAGA”) for all non-exempt, hourly-paid employees who worked for Defendant in California during the PAGA Period (April 13, 2022 through February 2, 2024) (“Aggrieved Employees”).

The proposed Settlement has two main parts: (1) a Class Settlement requiring Defendant to fund Individual Class Payments, and (2) a PAGA Settlement requiring Defendant to fund Individual PAGA Payments and pay penalties to the California Labor and Workforce Development Agency (“LWDA”).

Based on Defendant’s records, and the Parties’ current assumptions, **your Individual Class Payment is estimated to be \$_____ (less withholding) and your Individual PAGA Payment is estimated to be \$_____**. The actual amount you may receive likely will be different and will depend on a number of factors. (If no amount is stated for your Individual PAGA Payment, then according to Defendant’s records you are not eligible for an Individual PAGA Payment under the Settlement because you didn’t work during the PAGA Period.)

The above estimates are based on Defendant’s records showing that **you worked _____ workweeks** during the Class Period and **you worked _____ workweeks** during the PAGA Period. If you believe that you worked more workweeks during either period, you can submit a challenge by the deadline date. See Section 4 of this Notice.

The Court has already preliminarily approved the proposed Settlement and approved this Notice. The Court has not yet decided whether to grant final approval. Your legal rights are affected whether you act or not act. Read this Notice carefully. You will be deemed to have carefully read and understood it. At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement and how much of the Settlement will be paid to Plaintiff and Plaintiff’s attorneys (“Class Counsel”). The Court will also decide whether to enter a judgment

that requires Defendant to make payments under the Settlement and requires Class Members and Aggrieved Employees to give up their rights to assert certain claims against Defendant.

If you worked for Defendant during the Class Period and/or the PAGA Period, you have two basic options under the Settlement:

- (1) **Do Nothing.** You don't have to do anything to participate in the proposed Settlement and be eligible for an Individual Class Payment and/or an Individual PAGA Payment. As a Participating Class Member, though, you will give up your right to assert Class Period wage claims and PAGA Period penalty claims against Defendant.
- (2) **Opt-Out of the Class Settlement.** You can exclude yourself from the Class Settlement (opt-out) by submitting the written Request for Exclusion or otherwise notifying the Administrator in writing. If you opt-out of the Settlement, you will not receive an Individual Class Payment. You will, however, preserve your right to personally pursue Class Period wage claims against Defendant, and, if you are an Aggrieved Employee, remain eligible for an Individual PAGA Payment. You cannot opt-out of the PAGA portion of the proposed Settlement.

Defendant will not retaliate against you for any actions you take with respect to the proposed Settlement.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

You Don't Have to Do Anything to Participate in the Settlement	If you do nothing, you will be a Participating Class Member, eligible for an Individual Class Payment and an Individual PAGA Payment (if any). In exchange, you will give up your right to assert the wage claims against Defendant that are covered by this Settlement (Released Claims).
You Can Opt-out of the Class Settlement but not the PAGA Settlement The Opt-out Deadline is [date]	If you don't want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. Once excluded, you will be a Non-Participating Class Member and no longer eligible for an Individual Class Payment. Non-Participating Class Members cannot object to any portion of the proposed Settlement. See Section 6 of this Notice. You cannot opt-out of the PAGA portion of the proposed Settlement. Defendant must pay Individual PAGA Payments to all Aggrieved Employees and the Aggrieved Employees must give up their rights to pursue Released Claims (defined below).
Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement	All Class Members who do not opt-out ("Participating Class Members") can object to any aspect of the proposed Settlement. The Court's decision whether to finally approve the Settlement will include a determination of how much will be paid to Class Counsel and Plaintiff who pursued the Action on behalf of the Class. You

Written Objections Must be Submitted by [date]	are not personally responsible for any payments to Class Counsel or Plaintiff, but every dollar paid to Class Counsel and Plaintiff reduces the overall amount paid to Participating Class Members. You can object to the amounts requested by Class Counsel or Plaintiff if you think they are unreasonable. See Section 7 of this Notice.
You Can Participate in the [date] Final Approval Hearing	The Court's Final Approval Hearing is scheduled to take place on [date]. You don't have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court's virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing. See Section 8 of this Notice.
You Can Challenge the Calculation of Your Workweeks/Pay Periods Written Challenges Must be Submitted by [date]	The amount of your Individual Class Payment and PAGA Payment (if any) depend on how many workweeks you worked at least one day during the Class Period and how many Pay Periods you worked at least one day during the PAGA Period, respectively. The number Class Period Workweeks and number of PAGA Period Pay Periods you worked according to Defendant's records is stated on the first page of this Notice. If you disagree with either of these numbers, you must challenge it by [date]. See Section 4 of this Notice.

1. WHAT IS THE ACTION ABOUT?

Plaintiff is a former employee of Defendant. The Action accuses Defendant of violating California labor laws by failing to pay minimum and overtime wages, failing to provide meal periods and rest breaks, failing to pay wages due upon termination, failing to provide accurate itemized wage statements, and failing to indemnify employees for expenditures. Based on the same claims, Plaintiff Dulce Magallanes has also asserted a claim for civil penalties under the California Private Attorneys General Act (Labor Code §§ 2698, *et seq.*) ("PAGA"). Plaintiff is represented by attorneys in the Action: Justin F. Marquez, Benjamin H. Haber, and Daniel J. Kramer of Wilshire Law Firm, PLC ("Class Counsel.").

Defendant strongly denies violating any laws or failing to pay any wages and contends it complied with all applicable laws.

2. WHAT DOES IT MEAN THAT THE ACTION HAS SETTLED?

So far, the Court has made no determination whether Defendant or Plaintiff is correct on the merits. In the meantime, Plaintiff and Defendant hired an experienced, neutral mediator in an effort to resolve the Action by negotiating to end the case by agreement (settle the case) rather than continuing the expensive and time-consuming process of litigation. The negotiations were successful. By signing a lengthy written settlement agreement ("Agreement") and agreeing to jointly ask the Court to enter a judgment ending the Action and enforcing the Agreement,

Plaintiff and Defendant have negotiated a proposed Settlement that is subject to the Court's Final Approval. Both sides agree the proposed Settlement is a compromise of disputed claims. By agreeing to settle, Defendant does not admit any violations or concede the merit of any claims.

Plaintiff and Class Counsel strongly believe the Settlement is a good deal for you because they believe that: (1) Defendant has agreed to pay a fair, reasonable and adequate amount considering the strength of the claims and the risks and uncertainties of continued litigation; and (2) Settlement is in the best interests of the Class Members and Aggrieved Employees. The Court preliminarily approved the proposed Settlement as fair, reasonable and adequate, authorized this Notice, and scheduled a hearing to determine Final Approval.

3. WHAT ARE THE IMPORTANT TERMS OF THE PROPOSED SETTLEMENT?

1. Defendant Will Pay \$275,000 as the Gross Settlement Amount (Gross Settlement). Defendant has agreed to deposit the Gross Settlement into an account controlled by the Administrator of the Settlement. The Administrator will use the Gross Settlement to pay the Individual Class Payments, Individual PAGA Payments, the Class Representative's Service Payment, Class Counsel's attorneys' fees and expenses, the Administrator's expenses, and penalties to be paid to the LWDA. Assuming the Court grants Final Approval, Defendant will fund the Gross Settlement not more than 30 days after the Judgment entered by the Court becomes final. The Judgment will be final on the date the Court enters Judgment, or a later date if Participating Class Members object to the proposed Settlement or the Judgment is appealed.
2. Court Approved Deductions from Gross Settlement. At the Final Approval Hearing, Plaintiff and/or Class Counsel will ask the Court to approve the following deductions from the Gross Settlement, the amounts of which will be decided by the Court at the Final Approval Hearing:
 - A. Up to \$91,666.67 (33 1/3% of the Gross Settlement) to Class Counsel for attorneys' fees and up to \$20,000 for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Action without payment.
 - B. Up to \$10,000 to Plaintiff Dulce Magallanes for filing the Action, working with Class Counsel and representing the Class. The Class Representative's Service Payment will be the only monies Plaintiff will receive other than Plaintiff's Individual Class Payment, payment for her individual release, and any Individual PAGA Payment.
 - C. Up to \$10,000 to the Administrator for services administering the Settlement.
 - D. Up to \$20,000 for PAGA Penalties, allocated 75% to the LWDA PAGA Payment and 25% in Individual PAGA Payments to the Aggrieved Employees based on their PAGA Period Pay Periods.

Participating Class Members have the right to object to any of these deductions. The Court will consider all objections.

3. Net Settlement Distributed to Class Members. After making the above deductions in amounts approved by the Court, the Administrator will distribute the rest of the Gross Settlement (the “Net Settlement”) by making Individual Class Payments to Participating Class Members based on their Class Period Workweeks.
4. Taxes Owed on Payments to Class Members. Plaintiff and Defendant are asking the Court to approve an allocation of 15% of each Individual Class Payment to taxable wages (“Wage Portion”) and 85% to penalties and interest (“Non-Wage Portion.”). The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms. Defendant will separately pay employer payroll taxes it owes on the Wage Portion. The Individual PAGA Payments are counted as penalties rather than wages for tax purposes. The Administrator will report the Individual PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.

Although Plaintiff and Defendant have agreed to these allocations, neither side is giving you any advice on whether your Payments are taxable or how much you might owe in taxes. You are responsible for paying all taxes (including penalties and interest on back taxes) on any Payments received from the proposed Settlement. You should consult a tax advisor if you have any questions about the tax consequences of the proposed Settlement.

5. Need to Promptly Cash Payment Checks. The front of every check issued for Individual Class Payments and Individual PAGA Payments will show the date when the check expires (the void date). If you don’t cash it by the void date, your check will be automatically cancelled, and the monies will be irrevocably lost to you because they will be paid to a non-profit organization, Legal Aid At Work, located at 180 Montgomery Street, #600, San Francisco, California 94104 (“Cy Pres Beneficiary”).
6. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated as a Participating Class Member, participating fully in the Class Settlement, unless you notify the Administrator in writing, not later than [date], that you wish to opt-out. The easiest way to notify the Administrator is to send a written and signed Request for Exclusion by [date]. The Request for Exclusion should be a letter from a Class Member or his/her representative setting forth a Class Member’s name, present address, telephone number, and a simple statement electing to be excluded from the Settlement. Excluded Class Members (i.e., Non-Participating Class Members) will not receive Individual Class Payments, but will preserve their rights to personally pursue wage and hour claims against Defendant.

You cannot opt-out of the PAGA portion of the Settlement. Class Members who exclude themselves from the Class Settlement (Non-Participating Class Members) remain eligible for Individual PAGA Payments and are required to give up their right to assert PAGA claims against Defendant based on the PAGA Period facts alleged in the Action.

7. The Proposed Settlement Will be Void if the Court Denies Final Approval. It is possible the Court will decline to grant Final Approval of the Settlement or decline enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiff and Defendant have agreed that, in either case, the Settlement will be void: Defendant will not pay any money and Class Members will not release any claims against Defendant.
8. Administrator. The Court has appointed a neutral company, Phoenix Class Action Administration Solutions (the “Administrator”) to send this Notice, calculate and make payments, and process Class Members’ Requests for Exclusion. The Administrator will also decide Class Member Challenges over Workweeks, mail and re-mail settlement checks and tax forms, and perform other tasks necessary to administer the Settlement. The Administrator’s contact information is contained in Section 9 of this Notice.
9. Participating Class Members’ Release. After the Judgment is final and Defendant has fully funded the Gross Settlement and separately paid all employer payroll taxes, Participating Class Members will be legally barred from asserting any of the claims released under the Settlement. This means that unless you opted out by validly excluding yourself from the Class Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendant or related entities for wages based on the Class Period facts and PAGA penalties based on PAGA Period facts, as alleged in the Action and resolved by this Settlement.

The Participating Class Members will be bound by the following release:

All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from all claims that were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the Operative Complaint and ascertained in the course of the Action including any and all claims for: (1) failure to pay minimum and straight time wages; (2) failure to pay overtime wages; (3) failure to provide meal periods; (4) failure to authorize and permit rest periods; (5) failure to timely pay final wages at termination; (6) failure to provide accurate itemized wage statements; (7) failure to indemnify employees for expenditures; and (8) violation of California’s Unfair Competition Law, California Business and Professions Code §§ 17200, *et seq.* Except as set forth in Section 5.3 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers’ compensation, or claims based on facts occurring outside the Class Period.

10. Aggrieved Employees’ PAGA Release. After the Court’s judgment is final, and Defendant has paid the Gross Settlement (and separately paid the employer-side payroll taxes), all Aggrieved Employees will be barred from asserting PAGA claims against

Defendant, whether or not they exclude themselves from the Settlement. This means that all Aggrieved Employees, including those who are Participating Class Members and those who opt-out of the Class Settlement, cannot sue, continue to sue, or participate in any other PAGA claim against Defendant or its related entities based on the PAGA Period facts alleged in the Action and resolved by this Settlement.

The Aggrieved Employees' Releases for Participating and Non-Participating Class Members are as follows:

All Non-Participating Class Members who are Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Consolidated Action, and the PAGA Notice and ascertained in the course of the Action, including any and all claims for: (1) failure to pay minimum and straight time wages; (2) failure to pay overtime wages; (3) failure to provide meal periods; (4) failure to authorize and permit rest periods; (5) failure to timely pay final wages at termination; (6) failure to provide accurate itemized wage statements; and (7) failure to indemnify employees for expenditures.

4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?

1. Individual Class Payments. The Administrator will calculate Individual Class Payments by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members, and (b) multiplying the result by the number of Workweeks worked by each individual Participating Class Member.
2. Individual PAGA Payments. The Administrator will calculate Individual PAGA Payments by (a) dividing \$5,000 by the total number of PAGA Pay Periods worked by all Aggrieved Employees and (b) multiplying the result by the number of PAGA Period Pay Periods worked by each individual Aggrieved Employee.
3. Workweek/Pay Period Challenges. The number of Class Workweeks you worked during the Class Period and the number of PAGA Pay Periods you worked during the PAGA Period, as recorded in Defendant's records, are stated in the first page of this Notice. You have until [date] to challenge the number of Workweeks and/or Pay Periods credited to you. You can submit your challenge by signing and sending a letter to the Administrator via mail, email or fax. Section 9 of this Notice has the Administrator's contact information.

You need to support your challenge by sending copies of pay stubs or other records. The Administrator will accept Defendant's calculation of Workweeks and/or Pay Periods based on Defendant's records as accurate unless you send copies of records containing contrary information. You should send copies rather than originals because the documents will not be returned to you. The Administrator will resolve Workweek and/or Pay Period challenges based on your submission and on input from Class Counsel (who will advocate on behalf of Participating Class Members) and Defendant's Counsel. The

Administrator's decision is final. You can't appeal or otherwise challenge its final decision.

5. HOW WILL I GET PAID?

1. Participating Class Members. The Administrator will send, by U.S. mail, a single check to every Participating Class Member (i.e., every Class Member who doesn't opt-out) including those who also qualify as Aggrieved Employees. The single check will combine the Individual Class Payment and the Individual PAGA Payment.
2. Non-Participating Class Members. The Administrator will send, by U.S. mail, a single Individual PAGA Payment check to every Aggrieved Employee who opts out of the Class Settlement (i.e., every Non-Participating Class Member).

Your check will be sent to the same address as this Notice. If you change your address, be sure to notify the Administrator as soon as possible. Section 9 of this Notice has the Administrator's contact information.

6. HOW DO I OPT-OUT OF THE CLASS SETTLEMENT?

Submit a written and signed letter with your name, present address, telephone number, and a simple statement that you do not want to participate in the Settlement. The Administrator will exclude you based on any writing communicating your request be excluded. Be sure to personally sign your request, identify the Action as *Dulce Magallanes v. Biocair Inc.*, and include your identifying information (full name, address, telephone number, approximate dates of employment, and social security number for verification purposes). You must make the request yourself. If someone else makes the request for you, it will not be valid. **The Administrator must be sent your request to be excluded by [date], or it will be invalid.** Section 9 of the Notice has the Administrator's contact information.

7. HOW DO I OBJECT TO THE SETTLEMENT?

Only Participating Class Members have the right to object to the Settlement. Before deciding whether to object, you may wish to see what Plaintiff and Defendant are asking the Court to approve. At least 16 days before the [date] Final Approval Hearing, Class Counsel and/or Plaintiff will file in Court (1) a Motion for Final Approval that includes, among other things, the reasons why the proposed Settlement is fair, and (2) a Motion for Fees, Litigation Expenses and Service Award stating (i) the amount Class Counsel is requesting for attorneys' fees and litigation expenses; and (ii) the amount Plaintiff is requesting as the Class Representative's Service Award. Upon reasonable request, Class Counsel (whose contact information is in Section 9 of this Notice) will send you copies of these documents at no cost to you. You can also view them on the Administrator's Website [need details] or the Court's website [need details].

A Participating Class Member who disagrees with any aspect of the Agreement, the Motion for Final Approval and/or Motion for Fees, Litigation Expenses and Service Award may wish

to object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class Counsel or Plaintiff are too high or too low. **The deadline for sending written objections to the Administrator is [date].** Be sure to tell the Administrator what you object to, why you object, and any facts that support your objection. Make sure you identify the Action as *Dulce Magallanes v. Biocair Inc.*, and include your name, current address, telephone number, and approximate dates of employment for Defendant and sign the objection. Section 9 of this Notice has the Administrator's contact information.

Alternatively, a Participating Class Member can object (or personally retain a lawyer to object at your own cost) by attending the Final Approval Hearing. You (or your attorney) should be ready to tell the Court what you object to, why you object, and any facts that support your objection. See Section 8 of this Notice (immediately below) for specifics regarding the Final Approval Hearing.

8. CAN I ATTEND THE FINAL APPROVAL HEARING?

You can, but don't have to, attend the Final Approval Hearing on [date] at [time] in Department 6 of the Los Angeles County Superior Court, located at 312 North Spring Street, Los Angeles, California 90012. At the Hearing, the judge will decide whether to grant Final Approval of the Settlement and how much of the Gross Settlement will be paid to Class Counsel, Plaintiff, and the Administrator. The Court will invite comment from objectors, Class Counsel and Defense Counsel before making a decision. You can attend (or hire a lawyer to attend) personally. Check the Court's website for the most current information (fresno.courts.ca.gov).

It's possible the Court will reschedule the Final Approval Hearing. You should check the Administrator's website [need details] beforehand or contact Class Counsel to verify the date and time of the Final Approval Hearing.

9. HOW CAN I GET MORE INFORMATION?

The Agreement sets forth everything Defendant and Plaintiff have promised to do under the proposed Settlement. The easiest way to read the Agreement, the Judgment or any other Settlement documents is to go to [specify whose] website at [URL of website]. You can also telephone or send an email to Class Counsel or the Administrator using the contact information listed below, or consult the Superior Court website by going to (<https://www.lacourt.org/casesummary/ui/>) and entering the Case Number for the Action, Case No. 23STCV07027.

DO NOT TELEPHONE THE SUPERIOR COURT TO OBTAIN INFORMATION ABOUT THE SETTLEMENT.

Class Counsel:
Justin F. Marquez
justin@wilshirelawfirm.com
Benjamin H. Haber
benjamin@wilshirelawfirm.com

Settlement Administrator:
Name of Company:
Email Address:
Mailing Address:
Telephone:

Daniel J. Kramer
dkramer@wilshirelawfirm.com
WILSHIRE LAW FIRM
3055 Wilshire Blvd., 12th Floor
Los Angeles, CA 90010
Telephone: (213) 784-3830
Facsimile: (213) 381-9989

Fax Number:

10. WHAT IF I LOSE MY SETTLEMENT CHECK?

If you lose or misplace your settlement check before cashing it, the Administrator will replace it as long as you request a replacement before the void date on the face of the original check. If your check is already void you should consult the Unclaimed Property Fund website for instructions on how to retrieve the funds.

11. WHAT IF I CHANGE MY ADDRESS?

To receive your check, you should immediately notify the Administrator if you move or otherwise change your mailing address.

Exhibit 2



CLASS ACTION ADMINISTRATION SOLUTIONS

CASE ASSUMPTIONS

Class Members	75
Opt Out Rate	1%
Opt Outs Received	1
Total Class Claimants	74
Subtotal Admin Only	\$6,500.00

Not-to-Exceed Total \$6,500.00

For 75 Members

Pricing Good for Scope of Estimate Only

January 25, 2024

Case: Magallanes v. Biocair Opt-Out wLanguage

Phoenix Contact: Jodey Lawrence
Contact Number: 949.566.1455
Email: Jodey@phoenixclassaction.com

Requesting Attorney: Justin Marquez
Firm: Wilshire Law Firm, PLC
Contact Number: (213) 381-9988, Ext. 345
Email: justin@wilshirelawfirm.com

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

Estimate is based on 75 Class Members. Class data Must be sent in Microsoft Excel or uploaded in the same format. Class Data Must be sent in one spreadsheet, with no additional programming needed. A rate of \$150 per hour will be charged for any additional analysis or programming. Pricing good for 90 days.

Case & Database Setup / Toll Free Setup & Call Center / NCOA (USPS)			
Administrative Tasks:	Rate	Hours/Units	Line Item Estimate
Programming Manager	\$125.00	2	\$250.00
Programming Database & Setup	\$125.00	2	\$250.00
Toll Free Setup*	\$149.47	1	\$149.47
Call Center & Long Distance	\$2.00	16	\$32.00
NCOA (USPS)	\$35.00	2	\$70.00
Total			\$751.47

* Up to 120 days after disbursement

Data Merger & Scrub / Notice Packet, Opt-Out Form & Postage / Spanish Translation / Reporting			
Project Action	Rate	Hours/Units	Line Item Estimate
Notice Packet Formatting	\$125.00	2	\$250.00
Data Merge & Duplication Scrub	\$0.50	75	\$37.50
Notice Packet & Opt-Out Form	\$1.25	75	\$93.75
Estimated Postage (up to 2 oz.)*	\$0.87	75	\$65.25
Static Website	\$200.00	1	\$200.00
Language Translation	\$1,000.00	1	\$1,000.00
Total			\$1,646.50

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



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

Skip Tracing & Remailing Notice Packets / Tracking & Programming Undeliverables

Project Action:	Rate	Hours/Units	Line Item Estimate
Case Associate	\$55.00	2	\$110.00
Skip Tracing Undeliverables	\$1.25	8	\$9.38
Remail Notice Packets	\$1.25	8	\$9.38
Estimated Postage	\$0.87	8	\$6.53
Programming Undeliverables	\$50.00	1	\$50.00
Total			\$185.28

Database Programming / Processing Opt-Outs, Deficiencies or Disputes

Project Action:	Rate	Hours/Units	Line Item Estimate
Programming Claims Database	\$135.00	2	\$270.00
Non Opt-Out Processing	\$100.00	1	\$100.00
Case Associate	\$55.00	2	\$110.00
Opt-Outs/Deficiency/Dispute Letters	\$10.00	2	\$18.75
Case Manager	\$85.00	2	\$170.00
Total			\$668.75

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

Project Action:	Rate	Hours/Units	Line Item Estimate
Programming Calculations	\$125.00	2	\$250.00
Disbursement Review	\$125.00	2	\$250.00
Programming Manager	\$95.00	2	\$190.00
QSF Bank Account & EIN	\$100.00	2	\$200.00
Check Run Setup & Printing	\$125.00	1	\$125.00
Mail Class Checks *	\$1.50	75	\$112.50
Estimated Postage	\$0.64	75	\$48.00
Total			\$1,175.50

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



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

Tax Reporting & Reconciliation / Re-Issuance of Checks / Conclusion Reports and Declarations			
Project Action:	Rate	Hours/Units	Line Item Estimate
Case Supervisor	\$125.00	2	\$250.00
Remail Undeliverable Checks (Postage Included)	\$1.50	15	\$22.50
Case Associate	\$50.00	2	\$100.00
Reconcile Uncashed Checks	\$70.00	2	\$140.00
Conclusion Reports	\$75.00	2	\$150.00
Case Manager Conclusion	\$80.00	2	\$160.00
Final Reporting & Declarations	\$125.00	2	\$250.00
IRS & QSF Annual Tax Reporting * (1 State Tax Reporting Included)	\$1,000.00	1	\$1,000.00
Total			\$2,072.50

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

Estimate Total: \$6,500.00



CLASS ACTION ADMINISTRATION SOLUTIONS

TERMS AND CONDITIONS

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

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

Claims: PSA's general policy is to not accept claims via facsimile. However, in the event that facsimile filing of claims must be accepted, PSA will not be held responsible for any issues and/or errors arising out of said filing. Furthermore, PSA will require disclaimer language regarding facsimile transmissions. PSA will not be responsible for any acts or omissions caused by the USPS. PSA shall not make payments to any claimants without verified, valid Social Security Numbers. All responses and class member information are held in strict confidentiality. Additional class members are \$10.00 per opt-out.

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

Tax Reporting Requirements

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

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

Exhibit 3



ELM Solutions

2022 Real Rate Report[®]

The industry's leading
analysis of law firm rates,
trends, and practices

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Report Use Considerations

2022 Real Rate Report

- Examines law firm rates over time
- Identifies rates by location, experience, firm size, areas of expertise, industry, and timekeeper role (i.e., partner, associate, and paralegal)
- Itemizes variables that drive rates up or down

All the analyses included in the report derive from the actual rates charged by law firm professionals as recorded on invoices submitted and approved for payment.

Examining real, approved rate information, along with the ranges of those rates and their changes over time, highlights the role these variables play in driving aggregate legal cost and income. The analyses can energize questions for both corporate clients and law firm principals.

Clients might ask whether they are paying the right amount for different types of legal services, while law firm principals might ask whether they are charging the right amount for legal services and whether to modify their pricing approach.

Some key factors¹ that drive rates²:

Attorney location - Lawyers in urban and major metropolitan areas tend to charge more when compared with lawyers in rural areas or small towns.

Litigation complexity - The cost of representation will be higher if the case is particularly complex or time-consuming; for example, if there are a large number of documents to review, many witnesses to depose, and numerous procedural steps, the case is likely to cost more (regardless of other factors like the lawyer's level of experience).

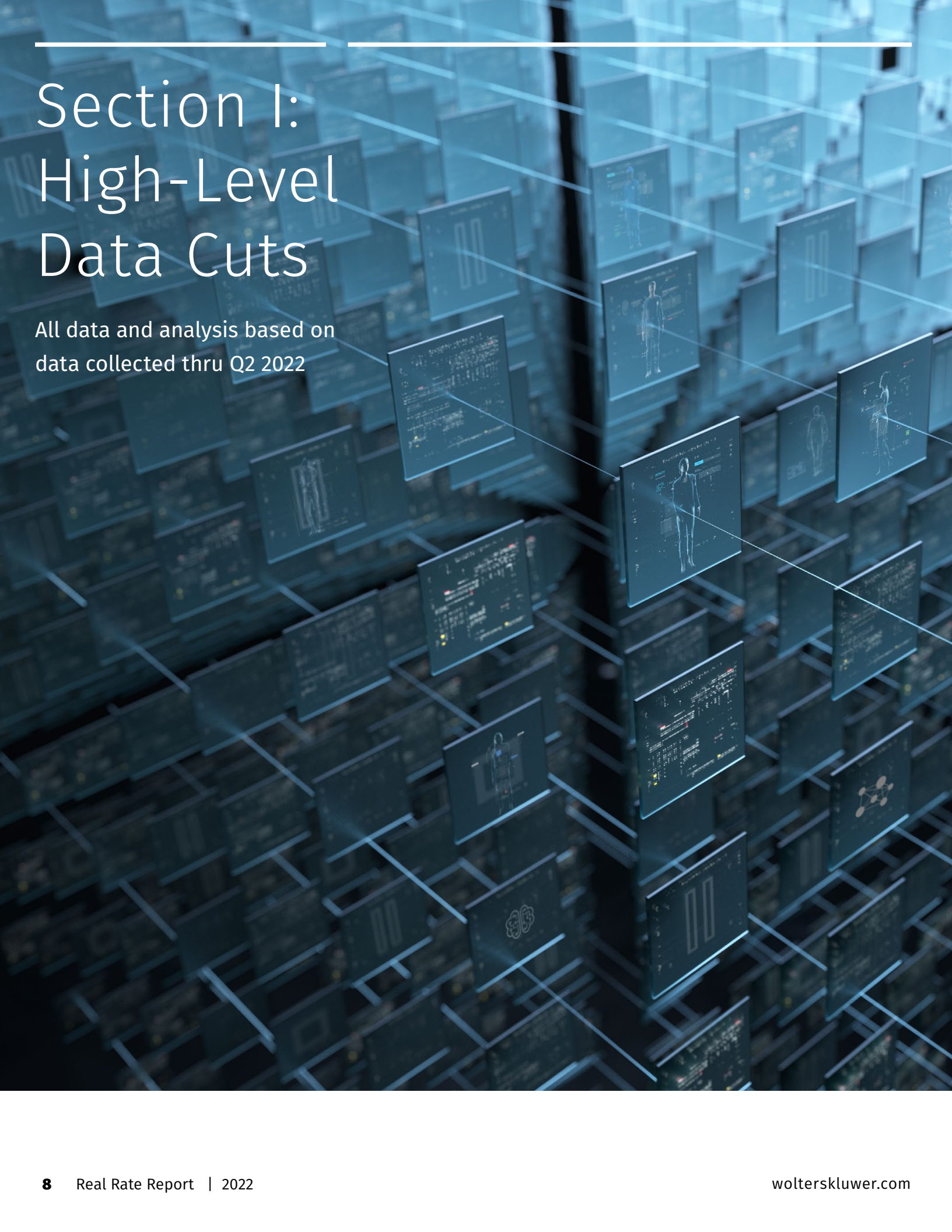
Years of experience and reputation - A more experienced, higher-profile lawyer is often going to charge more, but absorbing this higher cost at the outset may make more sense than hiring a less expensive lawyer who will likely take time and billable hours to come up to speed on unfamiliar legal and procedural issues.

Overhead - The costs associated with the firm's support network (paralegals, clerks, and assistants), document preparation, consultants, research, and other expenses.

Firm size - The rates can increase if the firm is large and has various timekeeper roles at the firm. For example, the cost to work with an associate or partner at a larger firm will be higher compared to a firm that has one to two associates and a paralegal.

¹ David Goguen, J.D., University of San Francisco School of Law (2020) Guide to Legal Services Billing Retrieved from: <https://www.lawyers.com/legal-info/research/guide-to-legal-services-billing-rates.html>

² Source: 2018 RRR. Factor order validated in multiple analyses since 2010



Section I: High-Level Data Cuts

All data and analysis based on
data collected thru Q2 2022

Section I: High-Level Data Cuts

Cities

By Matter Type

2022 - Real Rates for Associate and Partner

Trend Analysis - Mean

City	Matter Type	Role	n	First Quartile	Median	Third Quartile	2022	2021	2020
Jackson MS	Litigation	Associate	56	\$55	\$225	\$250	\$178	\$203	\$175
	Non-Litigation	Partner	24	\$315	\$420	\$485	\$418	\$394	\$375
		Associate	25	\$55	\$126	\$255	\$155	\$125	\$259
Kansas City MO	Litigation	Partner	74	\$413	\$450	\$556	\$472	\$450	\$450
		Associate	50	\$252	\$329	\$385	\$319	\$316	\$305
	Non-Litigation	Partner	101	\$411	\$487	\$615	\$519	\$487	\$464
		Associate	73	\$250	\$320	\$385	\$322	\$312	\$285
Las Vegas NV	Non-Litigation	Partner	20	\$350	\$425	\$525	\$440	\$422	\$432
		Associate	11	\$238	\$267	\$368	\$301	\$297	\$282
Little Rock AR	Non-Litigation	Partner	11	\$215	\$215	\$308	\$264	\$256	\$298
Los Angeles CA	Litigation	Partner	322	\$516	\$725	\$1,045	\$799	\$739	\$702
		Associate	408	\$400	\$615	\$855	\$642	\$606	\$564
	Non-Litigation	Partner	521	\$596	\$868	\$1,201	\$903	\$902	\$858
		Associate	667	\$441	\$603	\$845	\$653	\$712	\$648

Section I: High-Level Data Cuts

Cities

By Matter Type

2022 - Real Rates for Associate and Partner

Trend Analysis - Mean

City	Matter Type	Role	n	First Quartile	Median	Third Quartile	2022	2021	2020
Minneapolis MN	Non-Litigation	Associate	83	\$340	\$421	\$528	\$425	\$408	\$384
Nashville TN	Litigation	Partner	24	\$275	\$320	\$456	\$363	\$378	\$403
	Non-Litigation	Partner	78	\$412	\$484	\$576	\$505	\$481	\$470
		Associate	59	\$270	\$330	\$384	\$340	\$315	\$285
New Orleans LA	Litigation	Partner	47	\$290	\$332	\$412	\$343	\$330	\$340
		Associate	42	\$231	\$243	\$340	\$278	\$290	\$275
	Non-Litigation	Partner	32	\$295	\$347	\$405	\$419	\$380	\$391
		Associate	21	\$244	\$250	\$278	\$273	\$303	\$258
New York NY	Litigation	Partner	614	\$475	\$675	\$1,088	\$808	\$784	\$746
		Associate	631	\$323	\$460	\$729	\$545	\$527	\$509
	Non-Litigation	Partner	1,376	\$765	\$1,235	\$1,638	\$1,189	\$1,139	\$1,090
		Associate	1,809	\$550	\$776	\$1,050	\$796	\$766	\$716
Oklahoma City OK	Non-Litigation	Partner	14	\$235	\$338	\$393	\$337	\$319	\$311
Omaha NE	Litigation	Partner	12	\$293	\$339	\$353	\$329	\$338	\$341

Section I: High-Level Data Cuts

Cities

By Matter Type

2022 - Real Rates for Associate and Partner

Trend Analysis - Mean

City	Matter Type	Role	n	First Quartile	Median	Third Quartile	2022	2021	2020
Rochester NY	Non-Litigation	Partner	12	\$270	\$360	\$488	\$386	\$341	\$446
		Associate	13	\$220	\$310	\$375	\$314	\$278	\$287
Sacramento CA	Non-Litigation	Partner	11	\$381	\$437	\$682	\$534	\$559	\$516
Salt Lake City UT	Litigation	Partner	14	\$246	\$353	\$468	\$363	\$333	\$379
	Non-Litigation	Partner	42	\$297	\$371	\$447	\$391	\$363	\$353
		Associate	22	\$220	\$240	\$270	\$248	\$247	\$228
San Diego CA	Litigation	Associate	23	\$151	\$225	\$300	\$255	\$258	\$264
	Non-Litigation	Partner	89	\$332	\$540	\$1,066	\$699	\$667	\$649
		Associate	71	\$250	\$325	\$424	\$373	\$378	\$351
San Francisco CA	Litigation	Partner	143	\$423	\$675	\$995	\$742	\$711	\$691
		Associate	98	\$325	\$430	\$731	\$525	\$517	\$470
	Non-Litigation	Partner	221	\$475	\$750	\$950	\$758	\$746	\$741
		Associate	151	\$338	\$486	\$702	\$545	\$563	\$507
San Jose CA	Litigation	Partner	33	\$654	\$921	\$1,133	\$916	\$907	\$864

Section I: High-Level Data Cuts

Cities

By Matter Type

2022 - Real Rates for Associate and Partner

Trend Analysis - Mean

City	Matter Type	Role	n	First Quartile	Median	Third Quartile	2022	2021	2020
San Jose CA	Litigation	Associate	22	\$461	\$580	\$745	\$608	\$593	\$498
	Non-Litigation	Partner	50	\$660	\$864	\$1,303	\$969	\$985	\$887
		Associate	46	\$380	\$460	\$775	\$616	\$639	\$567
Seattle WA	Litigation	Partner	76	\$497	\$655	\$760	\$635	\$567	\$510
		Associate	61	\$394	\$468	\$530	\$447	\$453	\$395
	Non-Litigation	Partner	148	\$410	\$526	\$760	\$571	\$547	\$547
		Associate	113	\$310	\$395	\$502	\$422	\$401	\$377
St. Louis MO	Litigation	Partner	46	\$260	\$350	\$435	\$376	\$373	\$388
		Associate	17	\$197	\$225	\$250	\$228	\$237	\$232
	Non-Litigation	Partner	57	\$352	\$419	\$540	\$451	\$446	\$473
Tampa FL	Litigation	Partner	31	\$369	\$508	\$595	\$490	\$467	\$452
		Associate	15	\$269	\$298	\$368	\$316	\$302	\$306
Trenton NJ	Non-Litigation	Partner	21	\$408	\$600	\$700	\$569	\$620	\$581
		Associate	12	\$480	\$495	\$500	\$448	\$376	\$387

Section I: High-Level Data Cuts

Cities

By Years of Experience

2022 - Real Rates for Associate

Trend Analysis - Mean

City	Years of Experience	n	First Quartile	Median	Third Quartile	2022	2021	2020
Kansas City MO	3 to Fewer Than 7 Years	15	\$270	\$325	\$360	\$318	\$295	\$283
	7 or More Years	28	\$292	\$334	\$391	\$333	\$312	\$302
Los Angeles CA	Fewer Than 3 Years	63	\$429	\$595	\$654	\$556	\$524	\$488
	3 to Fewer Than 7 Years	144	\$486	\$688	\$838	\$662	\$626	\$530
	7 or More Years	171	\$351	\$550	\$840	\$600	\$634	\$586
Miami FL	3 to Fewer Than 7 Years	19	\$300	\$360	\$457	\$380	\$331	\$313
	7 or More Years	36	\$295	\$450	\$595	\$460	\$433	\$385
Minneapolis MN	Fewer Than 3 Years	11	\$374	\$405	\$446	\$408		\$230
	3 to Fewer Than 7 Years	27	\$340	\$451	\$510	\$421	\$358	\$356
	7 or More Years	27	\$423	\$468	\$585	\$478	\$438	\$392
Nashville TN	7 or More Years	12	\$219	\$245	\$345	\$282	\$266	\$262
New Orleans LA	3 to Fewer Than 7 Years	12	\$232	\$243	\$265	\$261	\$242	\$245
	7 or More Years	18	\$243	\$312	\$343	\$306	\$318	\$294
New York NY	Fewer Than 3 Years	142	\$443	\$622	\$775	\$629	\$600	\$652

Section I: High-Level Data Cuts

Cities

By Years of Experience

2022 - Real Rates for Partner

Trend Analysis - Mean

City	Years of Experience	n	First Quartile	Median	Third Quartile	2022	2021	2020
Kansas City MO	Fewer Than 21 Years	46	\$400	\$450	\$537	\$473	\$411	\$397
	21 or More Years	68	\$440	\$553	\$658	\$539	\$497	\$491
Las Vegas NV	Fewer Than 21 Years	12	\$284	\$381	\$495	\$389	\$349	\$343
	21 or More Years	13	\$350	\$425	\$515	\$468	\$456	\$472
Los Angeles CA	Fewer Than 21 Years	183	\$533	\$801	\$1,075	\$804	\$797	\$682
	21 or More Years	333	\$550	\$765	\$1,133	\$863	\$842	\$808
Memphis TN	Fewer Than 21 Years	14	\$288	\$331	\$380	\$345	\$317	\$328
	21 or More Years	15	\$355	\$415	\$425	\$394	\$382	\$375
Miami FL	Fewer Than 21 Years	57	\$370	\$450	\$598	\$490	\$498	\$443
	21 or More Years	104	\$388	\$581	\$749	\$584	\$580	\$536
Milwaukee WI	21 or More Years	16	\$302	\$454	\$613	\$589	\$515	\$530
Minneapolis MN	Fewer Than 21 Years	36	\$470	\$530	\$607	\$532	\$486	\$499
	21 or More Years	84	\$507	\$675	\$796	\$656	\$620	\$589
Nashville TN	Fewer Than 21 Years	28	\$375	\$405	\$535	\$449	\$405	\$397

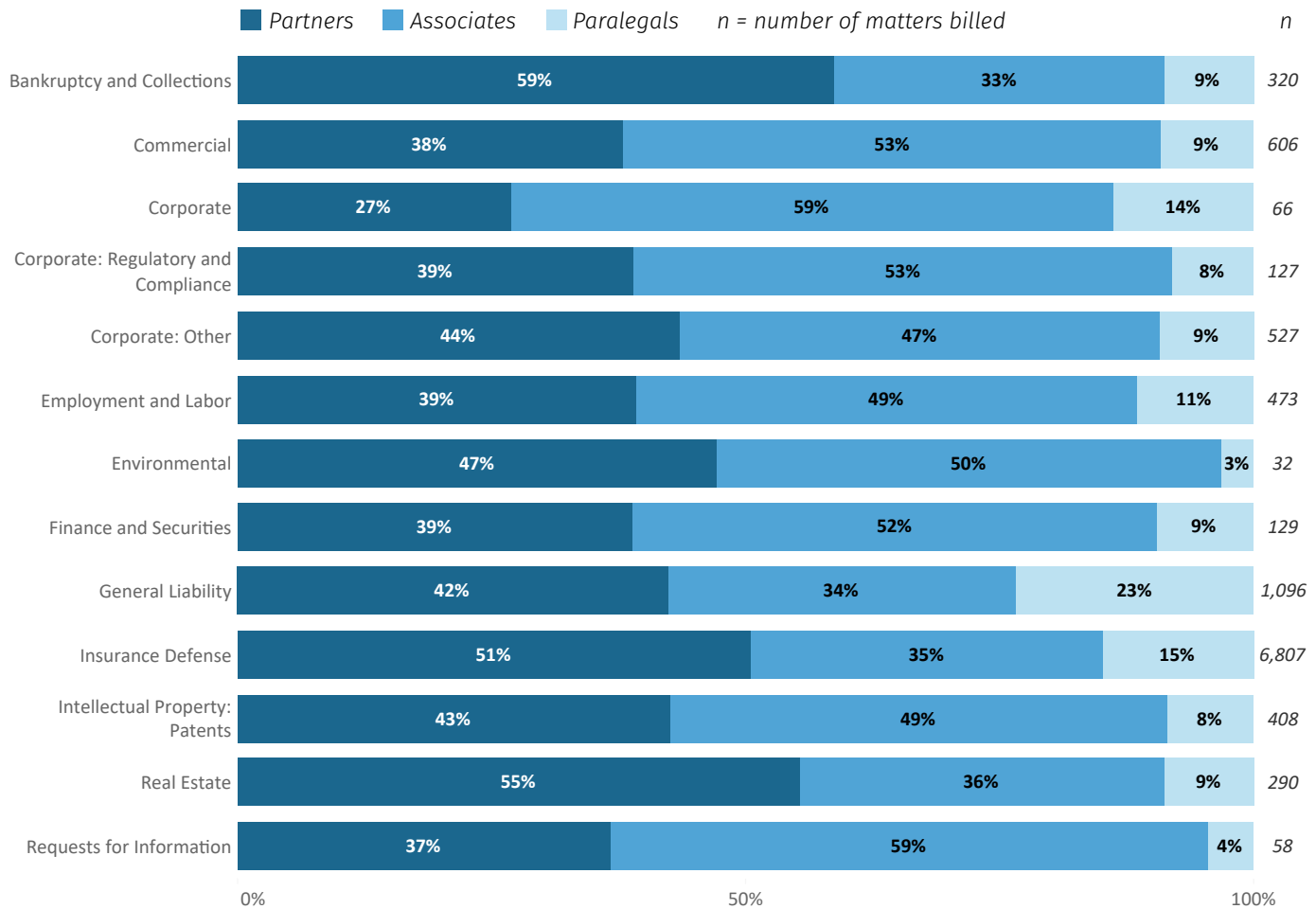
Section VI: Matter Staffing Analysis

All data and analysis based on
data collected thru Q2 2022

Section VI: Matter Staffing Analysis

Long Litigation Matters, More Than 100 Total Hours Billed

2019 to 2022 -- Percentage of Hours Billed per Matter



Section VII: Data Methodology

All data and analysis based on
data collected thru Q2 2022

Appendix: Data Methodology

Invoice Information

Data in Wolters Kluwer ELM Solutions' reference database and the 2022 Real Rate Report were taken from invoice line-item entries contained in invoices received and approved by participating companies.

Invoice data were received in the Legal Electronic Data Exchange Standard (LEDES) format (LEDES.org). The following information was extracted from those invoices and their line items:

- Law firm (which exists as a random number in the ELM Solutions reference database)
- Timekeeper ID (which exists as a random number in the ELM Solutions reference database)
- Matter ID (which exists as a random number in the ELM Solutions reference database)
- Timekeeper's position (role) within the law firm (partner, associate, paralegal, etc.)
- Uniform Task-Based Management System Code Set, Task Codes, and Activity Codes (UTBMS.com)
- Date of service
- Hours billed
- Hourly rate billed
- Fees billed

Non-Invoice Information

To capture practice area details, the matter ID within each invoice was associated with matter profiles containing areas of work in the systems of each company. The areas of work were then systematically categorized into legal practice areas. Normalization of practice areas was done based on company mappings to system-level practice areas available in the ELM Solutions system and by naming convention.

The majority of analyses included in this report have been mapped to one of 11 practice areas, further divided into sub-areas and litigation/non-litigation (for more information on practice areas and sub-areas, please refer to pages 232-234).

To capture location and jurisdiction details, law firms and timekeepers were systematically mapped to the existing profiles within ELM Solutions systems, as well as with publicly available data sources for further validation and normalization. Where city location information is provided, it includes any address within that city's defined Core-Based Statistical Area (CBSA) as defined by the Office of Management and Budget (OMB). The CBSAs are urban centers with populations of 10,000 or more and include all adjacent counties that are economically integrated with that urban center.

Where the analyses focus on partners, associates, and paralegals, the underlying data occasionally included some sub-roles, such as "senior partner" or "junior associate." In such instances, those timekeeper sub-roles were placed within the broader partner, associate, and paralegal segments.

Demographics regarding law firm size, location, and lawyer years of experience were augmented by incorporating publicly available information.

Appendix: Data Methodology

A Note on US Cities

Principal City	CBSA Name
Hartford, CT	Hartford-East Hartford-Middletown, CT
Honolulu, HI	Urban Honolulu HI
Houston, TX	Houston-The Woodlands-Sugar Land, TX
Indianapolis, IN	Indianapolis-Carmel-Anderson, IN
Jackson, MS	Jackson, MS
Jacksonville, FL	Jacksonville, FL
Kansas City, MO	Kansas City, MO-KS
Lafayette, LA	Lafayette, LA
Las Vegas, NV	Las Vegas-Henderson-Paradise, NV
Lexington, KY	Lexington-Fayette, KY
Little Rock, AR	Little Rock-North Little Rock-Conway, AR
Los Angeles, CA	Los Angeles-Long Beach-Anaheim, CA
Louisville, KY	Louisville/Jefferson County, KY-IN
Madison, WI	Madison, WI
Memphis, TN	Memphis-Forrest City, TN-MS-AR
Miami, FL	Miami-Fort Lauderdale-Pompano Beach, FL
Milwaukee, WI	Milwaukee-Waukesha, WI
Minneapolis, MN	Minneapolis-St. Paul-Bloomington, MN-WI
Nashville, TN	Nashville-Davidson-Murfreesboro-Franklin, TN
New Haven, CT	New Haven-Milford, CT
New Orleans, LA	New Orleans-Metairie, LA
New York, NY	New York-Newark-Jersey City, NY-NJ-PA
Oklahoma City, OK	Oklahoma City, OK
Omaha, NE	Omaha-Council Bluffs, NE-IA
Orlando, FL	Orlando-Kissimmee-Sanford, FL
Philadelphia, PA	Philadelphia-Camden-Wilmington, PA-NJ-DE-MD
Phoenix, AZ	Phoenix-Mesa-Chandler, AZ
Pittsburgh, PA	Pittsburgh, PA
Portland, ME	Portland-South Portland, ME
Portland, OR	Portland-Vancouver-Hillsboro, OR-WA
Providence, RI	Providence-Warwick, RI-MA
Raleigh, NC	Raleigh-Cary, NC
Reno, NV	Reno-Carson City-Fernley, NV

Appendix: Data Methodology

Bankruptcy and Collections

Chapter 11
Collections

General/Other
Workouts and Restructuring

Commercial (Commercial Transactions and Agreements)

Contract Breach or Dispute
General, Drafting, and Review
General/Other

Corporate¹

Antitrust and Competition
Corporate Development
General/Other
Governance
Information and Technology
Mergers, Acquisitions, and Divestitures

Partnerships and Joint Ventures
Regulatory and Compliance
Tax
Treasury
White Collar/Fraud/Abuse

Employment and Labor

ADA
Agreements
Compensation and Benefits
Discrimination, Retaliation, and Harassment/EEO
Employee Dishonesty/Misconduct
ERISA

General/Other
Immigration
Union Relations and Negotiations/NLRB
Wages, Tips, and Overtime
Wrongful Termination

Environmental

General/Other
Health and Safety

Superfund
Waste/Remediation

Finance and Securities

Commercial Loans and Financing
Debt/Equity Offerings
Fiduciary Services
General/Other

Investments and Other Financial Instruments
Loans and Financing
SEC Filings and Financial Reporting
Securities and Banking Regulations

General Liability

Asbestos/Mesothelioma
Auto and Transportation
Consumer Related Claims
Crime, Dishonesty and Fraud
General/Other

Personal Injury/Wrongful Death
Premises
Product and Product Liability
Property Damage
Toxic Tort

¹ All references to “Corporate: General/Other” in the Real Rate Report are the aggregation of all Corporate sub-areas excluding the Mergers, Acquisitions, and Divestitures sub-area and the Regulatory and Compliance sub-area.

Exhibit 4

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Business & Practice

Big Law Rates Topping \$2,000 Leave Value ‘In Eye of Beholder’

By Roy Strom

Column

June 9, 2022, 2:30 AM

Welcome back to the Big Law Business column on the changing legal marketplace written by me, Roy Strom. Today, we look at a new threshold for lawyers' billing rates and why it's so difficult to put a price on high-powered attorneys. Sign up to receive this column in your inbox on Thursday mornings. Programming note: Big Law Business will be off next week.

Some of the nation's top law firms are charging more than \$2,000 an hour, setting a new pinnacle after a two-year burst in demand.

Partners at Hogan Lovells and Latham & Watkins have crossed the threshold, according to court documents in bankruptcy cases filed within the past year.

Other firms came close to the mark, billing more than \$1,900, according to the documents. They include Kirkland & Ellis, Simpson Thacher & Bartlett, Boies Schiller Flexner, and Sidley Austin.

Simpson Thacher & Bartlett litigator Bryce Friedman, who helps big-name clients out of jams, especially when they're accused of fraud, charges \$1,965 every 60 minutes, according to a court document.

In need of a former acting US Solicitor General? Hogan Lovells partner Neal Katyal bills time at \$2,465 an hour. Want to hire famous litigator David Boies? That'll cost \$1,950 an hour (at least). Reuters was first to report their fees.

Eye-watering rates are nothing new for Big Law firms, which typically ask clients to pay higher prices at least once a year, regardless of broader market conditions.

"Value is in the eye of the beholder," said John O'Connor, a San Francisco-based expert on legal fees. "The perceived value of a good lawyer can reach into the multi-billions of dollars."

Kirkland & Ellis declined to comment on its billing rates. None of the other firms responded to requests to comment.

Charge It Up

Big Law firms are crossing the \$2,000-an-hour threshold after two years of surging rates driven by an increase in demand for lawyers.

Firm	Highest Billing Rate
Hogan Lovells	\$2,465
Latham & Watkins	\$2,075
Kirkland & Ellis	\$1,995
Simpson Thacher & Bartlett	\$1,965
Boies Schiller Flexner	\$1,950
Sidley Austin	\$1,900

Source: Court documents

Bloomberg Law

Law firms have been more successful raising rates than most other businesses over the past 15 years.

Law firm rates rose by roughly 40 percent from 2007 to 2020, or just short of 3 percent per year, Thomson Reuters Peer Monitor data show. US inflation rose by about 28% during that time.

The 100 largest law firms in the past two years achieved their largest rate increases in more than a decade, Peer Monitor says. The rates surged more than 6% in 2020 and grew another 5.6% through November of last year. Neither level had been breached since 2008.

The price hikes occurred during a once-in-a-decade surge in demand for law services, which propelled profits at firms to new levels. Fourteen law firms reported average profits per equity partner in 2021 over \$5 million, according to data from The American Lawyer. That was up from six the previous year.

The highest-performing firms, where lawyers charge the highest prices, have outperformed their smaller peers. Firms with leading practices in markets such as mergers and acquisitions, capital markets, and real estate were forced to turn away work at some points during the pandemic-fueled surge.

Firms receive relatively tepid pushback from their giant corporate clients, especially when advising on bet-the-company litigation or billion-dollar deals.

The portion of bills law firms collected—a sign of how willingly clients pay full-freight—rose during the previous two years after drifting lower following the Great Financial Crisis. Collection rates last year breached 90% for the first time since 2009, Peer Monitor data show.

Professional rules prohibit lawyers from charging “unconscionable” or “unreasonable” rates. But that doesn’t preclude clients from paying any price they perceive as valuable, said Jacqueline Vinaccia, a San Diego-based lawyer who testifies on lawyer fee disputes.

Lawyers’ fees are usually only contested when they will be paid by a third party.

That happened recently with Hogan Lovells’ Katyal, whose nearly \$2,500 an hour fee was contested in May by a US trustee overseeing a bankruptcy case involving a Johnson & Johnson unit facing claims its talc-based powders caused cancer.

The trustee, who protects the financial interests of bankruptcy estates, argued Katyal’s fee was more than \$1,000 an hour higher than rates charged by lawyers in the same case at Jones Day and Skadden Arps Slate Meagher & Flom.

A hearing on the trustee’s objection is scheduled for next week. Hogan Lovells did not respond to a request for comment on the objection.

Vinaccia said the firm’s options will be to reduce its fee, withdraw from the case, or argue the levy is reasonable, most likely based on Katyal’s extensive experience arguing appeals.

Still, the hourly rate shows just how valuable the most prestigious lawyers’ time can be—even compared to their highly compensated competitors.

“If the argument is that Jones Day and Skadden Arps are less expensive, then you’re already talking about the cream of the crop, the top-of-the-barrel law firms,” Vinaccia said. “I can’t imagine a case in which I might argue those two firms are more reasonable than the rates I’m dealing with.”

Worth Your Time

On Cravath: Cravath Swaine & Moore is heading to Washington, opening its first new office since 1973 by hiring former heads of the U.S. Securities and Exchange Commission and Federal Deposit Insurance Corporation. Meghan Tribe reports the move comes as Big Law firms are looking to add federal government expertise as clients face more regulatory scrutiny.

On Big Law Promotions: It’s rare that associates get promotions to partner in June, but Camille Vasquez is now a Brown Rudnick partner after she shot to fame representing Johnny Depp in his defamation trial against ex-wife Amber Heard.

On Working From Home: I spoke this week with Quinn Emanuel’s John Quinn about why he thinks law firm life is never going back to the office-first culture that was upset by the pandemic. Listen to the podcast [here](#).



That's it for this week! Thanks for reading and please send me your thoughts, critiques, and tips.

To contact the reporter on this story: Roy Strom in Chicago at rstrom@bloomberglaw.com

To contact the editors responsible for this story: Chris Opfer at copfer@bloomberglaw.com; John Hughes at jhughes@bloombergindustry.com

Documents

[Trustee's Objection](#)

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Law Firms

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PROOF OF SERVICE

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23STCV07027

STATE OF CALIFORNIA)
) ss
COUNTY OF LOS ANGELES)

I, Jorge Grimaldy, state that I am employed in the aforesaid County, State of California; I am over the age of eighteen years and not a party to the within action; my business address is 3055 Wilshire Blvd., 12th Floor, Los Angeles, California 90010. My electronic service address is jgrimaldy@wilshirelawfirm.com.

On May 2, 2024, I served the foregoing **DECLARATION OF JUSTIN F. MARQUEZ IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**, on the interested parties by placing a true copy thereof, enclosed in a sealed envelope by following one of the methods of service as follows:

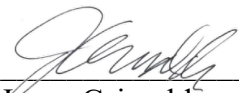
Matthew C. Sgnilek, Esq. (SBN 235299)
msgnilek@ohaganmeyer.com
Andrea Rosenkranz, Esq. (SBN 301559)
arosenkranz@ohaganmeyer.com
Carla Vasques dos Santos-Moore, Esq. (SBN 241883)
cmoore@ohaganmeyer.com
Virginia Tomlinson
vtomlinson@ohaganmeyer.com
O'HAGAN MEYER
3200 Park Center Drive, Suite 700
Costa Mesa, California 92626
Telephone: (949) 942-8500
Facsimile: (949) 942-8510

Attorneys for Defendant

- (X) **BY UPLOAD:** I hereby certify that the documents were uploaded by my office to the State of California Labor and Workforce Development Agency Online Filing Site.
- (X) **BY ELECTRONIC SERVICE:** Based on a court order or an agreement of the parties to accept electronic service, I caused the documents to be sent to the persons at the electronic service addresses listed above via third-party cloud service **CASEANYWHERE.**

I declare under the penalty of perjury under the laws of the State of California, that the foregoing is true and correct.

Executed on May 2, 2024, at Los Angeles, California.


Jorge Grimaldy