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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

LUCERO NORIEGA, as an aggrieved
employee, and on behalf of all other
aggrieved employees under the Labor Code
Private Attorneys' General Act of 2004,

Plaintiff,

v.

PACIRA PHARMACEUTICALS, INC., a
California corporation; and DOES 1 through
100, inclusive,

Defendants.

CASE NO.: 37-2023-00031173-CU-OE-CTL

[Assigned for all purpose to the Hon.
James A. Mangione, in Dept C-75]

**JOINT STIPULATION RE: PAGA
SETTLEMENT**

ACTION FILED: July 24, 2023
TRIAL DATE: None Set

This Joint Stipulation re: PAGA Settlement (“Settlement” or “Agreement” or “Settlement Agreement”) is made by and between Plaintiff Lucero Noriega (“Plaintiff”) and Defendant PACIRA PHARMACEUTICALS, INC. (“Defendant”). The Agreement refers to Plaintiff and Defendant collectively as “Parties,” or individually as “Party.”

1. DEFINITIONS

1.1. “**Action**” means the Plaintiff’s PAGA lawsuit alleging wage and hour violations against Defendant, captioned *Lucero Noriega v. Pacira Pharmaceuticals, Inc., et al.*, Case No. 37-2023-00031173-CU-OE-CTL initiated on July 24, 2023 and pending in the Superior Court of the State of California, County of San Diego.

1.2. “**Administrator**” means Phoenix Class Action Administration Solutions (“Phoenix”) the neutral entity the Parties have selected to administer the Settlement.

1.3. “**Administration Expenses Payment**” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with approval of this Settlement.

1.4. “**Aggrieved Employees**” means all persons currently or formerly employed by Defendant, either directly or through any subsidiary, affiliated companies, staffing agency, or professional employer organization, as non-exempt, hourly-paid employees in the State of California during the PAGA Period.

1.5. “**Aggrieved Employee Data**” means Aggrieved Employee identifying information in Defendant’s possession including the Aggrieved Employee’s name, last-known mailing address, Social Security number, and number of PAGA Pay Periods.

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

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1 1.7. “**Approval Order**” means the proposed Court Order Granting Approval of PAGA
2 Settlement.

3 1.8. “**Court**” means the Superior Court of California, County of San Diego.

4 1.9. “**Defense Counsel**” means Javier F. Garcia and Brittany A. Sachs of Perkins
5 Coie LLP.

6 1.10. “**Effective Date**” means the date by when both of the following have occurred:
7 (a) the Court enters a Judgment on its Approval Order; and (b) the Judgment is final. The
8 Judgment is final as of the latest of the following occurrences: (i) if no objections to the settlement
9 are filed, no third party intervenes, and the LWDA does not comment on the settlement, the day
10 the Court enters Judgment; (ii) if any objection to the Settlement is filed, any party intervenes, or
11 the LWDA comments on the settlement, but no appeal of the Judgment is filed, the day after the
12 deadline for filing a notice of appeal from the Judgment; (iii) if there is an appeal of the Court’s
13 Judgment, the latest of the date the Judgment is affirmed on appeal and a remittitur is issued, the
14 date of dismissal of such appeal, or the expiration of the time to file a petition for writ of certiorari
15 to the California Supreme Court; or (iv) if a petition for writ of certiorari to the California
16 Supreme Court is filed, the date of denial of the petition for writ of certiorari, or the date the
17 Judgment is affirmed in the event the petition is granted.

18 1.11. “**Gross Settlement Amount**” means \$450,000.00 which is the total amount
19 Defendant agrees to pay under the Settlement except as provided in Paragraph 8.1 below. The
20 Gross Settlement Amount will be used to pay Individual PAGA Payments, the LWDA PAGA
21 Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, and the
22 Administrator’s Expenses Payment.

23 1.12. “**Individual PAGA Payment**” means the Aggrieved Employee’s pro rata share
24 of 25% of the PAGA Penalties calculated according to the number of Pay Periods the Aggrieved
25 Employee worked during the PAGA Period.

26 1.13. “**Judgment**” means the judgment entered by the Court based upon the Final
27 Approval.

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1.14. “**LWDA**” means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).

1.15. “**LWDA PAGA Payment**” means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).

1.16. “**Net Settlement Amount**” means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: the LWDA PAGA Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to Aggrieved Employees as Individual PAGA Payments.

1.17. “**PAGA Counsel**” means David B. Bibiyan and Vedang J. Patel of Bibiyan Law Group, P.C., the attorneys representing the Plaintiff in the Action.

1.18. “**PAGA Counsel Fees Payment**” and “**PAGA Counsel Litigation Expenses Payment**” mean the amounts allocated to PAGA Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action as described in paragraph 3.2.1 below.

1.19. “**PAGA Pay Period**” means any pay period during which an Aggrieved Employee worked for Defendant for at least one day during the PAGA Period.

1.20. “**PAGA Period**” means the period from May 18, 2022 through June 23, 2024.

1.21. “**PAGA**” means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).

1.22. “**PAGA Notice**” means the May 18, 2023 letter that Plaintiff sent to Defendant and the LWDA, providing notice pursuant to the Labor Code section 2699.3, subd. (a).

1.23. “**PAGA Penalties**” means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (no less than \$64,737.50) and the 75% to LWDA (no less than \$194,212.50) in settlement of the PAGA claims.

1.24. “**Plaintiff**” means Lucero Noriega, the named Plaintiff in the Action.

1.25. “**Released PAGA Claims**” means the claims being released by the Plaintiff, the Aggrieved Employees and PAGA Counsel and as described in Paragraph 5 below.

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1 1.26. “**Released Parties**” means: Defendant and each of its past, former, present and
2 future parent companies, sister companies, holding companies, directors, officers, shareholders,
3 owners, members, agents, managing agents, investors, partners, tax advisors, attorneys, insurers,
4 trustees, administrators, board members, real or alleged alter egos, real or alleged joint
5 employers, predecessors, successors, transferees, assigns, subsidiaries, affiliates and all other
6 representatives of Defendant, individually and in their corporate/entity or other representative
7 capacity.

8 1.27. “**Settlement**” means the disposition of the Action effected by this Agreement and
9 the Judgment.

10 **2. RECITALS**

11 2.1. On July 24, 2023, Plaintiff commenced this Action by filing a Complaint (the
12 “Operative Complaint”), alleging causes of action against Defendant for civil penalties under
13 PAGA for the Labor Code violations alleged in the PAGA Notice, including, but not limited to,
14 alleged overtime, minimum wage and vacation pay violations, failure to provide meal and rest
15 periods, failure to provide accurate wage statements, failing to provide documents signed to hold
16 or obtain employment, failure to timely pay wages during employment and at termination, failure
17 to reimburse expenses, alleged violation of the Wage Theft Protection Act, purported failure to
18 provide paid sick leave, purported violations of California Business & Professions Code and the
19 Labor Code regarding confidentiality, allegedly preventing disclosure of violations, and
20 purportedly failing to permit lawful off-duty conduct. Defendant denies the allegations in the
21 Operative Complaint and PAGA Notice, denies any failure to comply with the laws identified in
22 the Operative Complaint and the PAGA Notice and denies any and all liability for the causes of
23 action alleged.

24 2.2. Pursuant to Labor Code section 2699.3, subd. (a), Plaintiff gave timely written
25 notice to Defendant and the LWDA by sending the PAGA Notice on May 18, 2023.

26 2.3. On April 24, 2024, the parties participated in an all-day mediation presided over
27 by Hon. Carl J. West, which led to this Agreement to settle the Action.

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1 2.4. Prior to mediation, the Parties engaged in informal discovery with respect to the
2 PAGA claims and Plaintiff obtained, through informal discovery, among other things: (1) a
3 20% sampling of timecard and payroll records for the estimated 207 non-exempt employees
4 through the date of mediation; (2) data points for the aggrieved employees, including but not
5 limited to, the number of aggrieved employees, number of pay periods, number of former
6 aggrieved employees, aggrieved employees' average hourly rate; (3) relevant documents
7 related to Plaintiff; (4) relevant policy documents, including employee handbooks, notice
8 forms, meal break waivers, and others.

9 2.5. Plaintiff filed a separate class action complaint in San Diego County Superior
10 Court, Case No. 37-2023-00021836-CU-OE-CTL. The Parties stipulated and the court ordered
11 Plaintiff to arbitrate her individual claims and dismissed the class claims without prejudice. Other
12 than the aforementioned matter, the Parties, PAGA Counsel and Defense Counsel represent that
13 they are not aware of any other pending matter or action asserting claims that will be extinguished
14 or affected by the Settlement. Plaintiff agreed to an individual settlement to settle her individual
15 non-PAGA claims. Upon payment of her individual settlement, Plaintiff will dismiss her
16 individual claims in Case No. 37-2023-00021836-CU-OE-CTL with prejudice. Plaintiff's
17 execution of her individual settlement agreement does not deprive her standing to obtain approval
18 of this Settlement or her ability to recover her Individual PAGA Payment in this Action.

19 3. **MONETARY TERMS**

20 3.1. **Gross Settlement Amount.** Except as otherwise provided by Paragraph 9 below,
21 Defendant promises to pay \$450,000.00 and no more as the Gross Settlement Amount. Defendant
22 has no obligation to pay the Gross Settlement Amount prior to the deadline stated in Paragraph
23 6.1 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount
24 without asking or requiring Aggrieved Employees to submit any claim as a condition of payment.
25 None of the Gross Settlement Amount will revert to Defendant.

26 3.2. **Payments from the Gross Settlement Amount.** The Administrator will make
27 and deduct the following payments from the Gross Settlement Amount, in the amounts specified
28 by the Court in the Final Approval:

1 3.2.1. **To PAGA Counsel:** A PAGA Counsel Fees Payment of not more than
2 thirty-five percent (35%) of the Gross Settlement Amount, subject to
3 escalation pursuant to section 8.1 of this Agreement and approval by the
4 Court, which is currently estimated to be \$157,500.00 and PAGA Counsel
5 Litigation Expenses Payment of not more than \$30,000.00. Defendant will
6 not oppose requests for Court approval of these payments provided that
7 they do not exceed these amounts. Plaintiff and/or PAGA Counsel will file
8 an application or motion for PAGA Counsel Fees Payment and PAGA
9 Litigation Expenses Payment. If the Court approves a PAGA Counsel Fees
10 Payment and/or a PAGA Counsel Litigation Expenses Payment less than
11 the amounts requested, the Administrator will allocate the remainder to the
12 Net Settlement Amount. Released Parties shall have no liability to PAGA
13 Counsel or any other Plaintiff's Counsel arising from any claim to any
14 portion of any PAGA Counsel Fees Payment and/or PAGA Counsel
15 Litigation Expenses Payment. The Administrator will pay the PAGA
16 Counsel Fees Payment and PAGA Counsel Expenses Payment using one
17 or more IRS 1099 Forms. PAGA Counsel assumes full responsibility and
18 liability for taxes owed on the PAGA Counsel Fees Payment and the
19 PAGA Counsel Litigation Expenses Payment and holds Defendant and
20 Released Parties harmless, and indemnifies Defendant and Released
21 Parties, from any dispute or controversy regarding any division or sharing
22 of any of these Payments. There will be no additional charge of any kind
23 to Aggrieved Employees or request for additional consideration from
24 Defendant for such work, unless Defendant materially breaches this
25 Agreement, including any term regarding funding, and further efforts are
26 necessary to remedy such breach, including, without limitation, moving
27 the Court to enforce the Agreement.
28

1 3.2.2. **To the Administrator:** An Administrator Expenses Payment not to
2 exceed \$3,550.00 except for a showing of good cause and as approved by
3 the Court. To the extent the Administration Expenses are less, or the Court
4 approves payment less than \$3,550.00, the Administrator will retain the
5 remainder in the Net Settlement Amount.

6 3.2.3. **To the LWDA and Aggrieved Employees:** PAGA Penalties in the
7 amount of no less than \$258,950.00 to be paid from the Gross Settlement
8 Amount, with 75% (no less than \$194,212.50) allocated to the LWDA
9 PAGA Payment and 25% (no less than \$64,737.50) allocated to the
10 Individual PAGA Payments.

11 3.2.3.1. The Administrator will calculate each Individual PAGA Payment
12 by (a) dividing the amount of the Aggrieved Employees' 25%
13 share of PAGA Penalties (no less than \$64,737.50) by the total
14 number of PAGA Period Pay Periods worked by all Aggrieved
15 Employees during the PAGA Period and (b) multiplying the
16 result by each Aggrieved Employee's PAGA Period Pay Periods.
17 Aggrieved Employees assume full responsibility and liability for
18 any taxes owed on their Individual PAGA Payment.

19 3.2.3.2. If the Court approves PAGA Penalties of less than the amount
20 requested, the Administrator will allocate the remainder to the Net
21 Settlement Amount. The Administrator will report the Individual
22 PAGA Payments on IRS 1099 Forms.

23 **4. SETTLEMENT FUNDING PAYMENTS**

24 4.1. **Aggrieved Employee Pay Periods.** Based on a review of its records, at mediation,
25 Defendant estimated there were 207 Aggrieved Employees who worked a total of 6,291 PAGA
26 Pay Periods from May 22, 2022 through April 24, 2024. The Parties anticipate and understand
27 that these numbers will increase for the period of time from April 25, 2024 through the end of
28 the PAGA Period (June 23, 2024).

1 **4.2. Aggrieved Employee Data.** Within 15 days of the Effective Date, Defendant will
2 deliver the Aggrieved Employee Data to the Administrator in the form of a password protected
3 Microsoft Excel spreadsheet. To protect Aggrieved Employee's privacy rights, the Administrator
4 must maintain the Aggrieved Employee Data in confidence, use the Aggrieved Employee Data
5 only for purposes of this Settlement and for no other purpose, and restrict access to the Aggrieved
6 Employee Data to Administrator employees who need access to the Aggrieved Employee Data
7 to effect and perform under this Agreement. Defendant has a continuing duty to immediately
8 notify PAGA Counsel if it discovers that the Aggrieved Employee Data omitted employee
9 identifying information and to provide corrected or updated Aggrieved Employee Data as soon
10 as reasonably feasible. Without any extension of the deadline by which Defendant must send the
11 Aggrieved Employee Data to the Administrator, the Parties and their counsel will expeditiously
12 use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or
13 omitted Aggrieved Employee Data.

14 **4.3. Funding of Gross Settlement Amount.** Defendant shall fully fund the Gross
15 Settlement Amount by transmitting the funds to the Administrator no later than 21 days after the
16 Effective Date.

17 **4.4. Payments from the Gross Settlement Amount.** Within 14 days after Defendant
18 funds the Gross Settlement Amount, the Administrator will mail checks for all Individual PAGA
19 Payments, the LWDA PAGA Payment, Administration Expenses Payment, PAGA Counsel Fees
20 Payment and PAGA Counsel Litigation Expenses Payment. Disbursement of the PAGA Counsel
21 Fees Payment and the PAGA Counsel Litigation Expenses Payment shall not precede
22 disbursement of Individual PAGA Payments.

23 **4.4.1.** The Administrator will issue checks for the Individual PAGA Payments
24 and send them to the Aggrieved Employees via First Class U.S. Mail,
25 postage prepaid. The face of each check shall prominently state the date
26 (not less than 180 days after the date of mailing) when the check will be
27 voided. The Administrator will cancel all checks not cashed by the void
28 date. Before mailing any checks, the Settlement Administrator must update

1 the recipients' mailing addresses using the National Change of Address
2 Database. The Administrator must send **Exhibit A** with the Individual
3 PAGA Payments.

4 4.4.2. The Administrator must conduct an Aggrieved Employee Address Search
5 for all Aggrieved Employees whose checks are returned undelivered
6 without USPS forwarding address. Within 7 days of receiving a returned
7 check the Administrator must re-mail checks to the USPS forwarding
8 address provided or to an address ascertained through the Aggrieved
9 Employee Address Search. The Administrator need not take further steps
10 to deliver checks to Aggrieved Employees whose re-mailed checks are
11 returned as undelivered. The Administrator shall promptly send a
12 replacement check to any Aggrieved Employee whose original check was
13 lost or misplaced, requested by the Aggrieved Employee prior to the void
14 date.

15 4.4.3. For any Aggrieved Employee whose Individual PAGA Payment check is
16 uncashed and cancelled after the void date, the Administrator shall
17 transmit the funds represented by such checks to the California Controller's
18 Unclaimed Property Fund in the name of the Aggrieved Employee.

19 4.4.4. The payment of Individual PAGA Payments shall not obligate Defendant
20 to confer any additional benefits or make any additional payments to the
21 Aggrieved Employees (such as 401(k) contributions or bonuses) beyond
22 those specified in this Agreement.

23 **5. RELEASES OF CLAIMS**

24 Effective on the date when Defendant fully funds the entire Gross Settlement Amount,
25 Plaintiff and PAGA Counsel will release claims against all Released Parties as follows:

26 5.1. **Plaintiff's Release.** Plaintiff and her respective former and present spouses,
27 representatives, agents, attorneys (including PAGA Counsel), heirs,
28 administrators, successors, and assigns generally, release and discharge Released

1 Parties from all claims, transactions, or occurrences that occurred during the
2 PAGA Period, including, but not limited to: (a) all claims that were, or reasonably
3 could have been, alleged, based on the facts contained in the Operative Complaint
4 and/or the PAGA Notice (“Plaintiff’s Release”). Plaintiff’s Release does not
5 extend to any claims or actions to enforce this Agreement, or to any claims for
6 wrongful termination, violation of the Fair Employment and Housing Act,
7 discrimination, harassment, or retaliation related claims that arose at any time, for
8 vested benefits, unemployment benefits, disability benefits, social security
9 benefits, workers’ compensation benefits that arose at any time, or based on
10 occurrences outside the PAGA Period. Plaintiff acknowledges that Plaintiff may
11 discover facts or law different from, or in addition to, the facts or law that Plaintiff
12 now knows or believes to be true but agrees, nonetheless, that Plaintiff’s Release
13 shall be and remain effective in all respects, notwithstanding such different or
14 additional facts or Plaintiff’s discovery of them.

15 **5.1.1. Plaintiff’s Waiver of Rights Under California Civil Code Section 1542.**

16 For purposes of Plaintiff’s Release, Plaintiff expressly waives and
17 relinquishes the provisions, rights, and benefits, if any, of section 1542 of
18 the California Civil Code, which reads:

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

23 5.1.1.1. However, the foregoing release, including waiver of 1542,
24 expressly excludes any claims for wrongful termination, violation
25 of the Fair Employment and Housing Act, discrimination,
26 harassment, and retaliation related claims.

27 **5.2. Release by Aggrieved Employees:** To the maximum extent permitted by law, the
28 LWDA, the State of California, by and through Plaintiff as an agent and proxy of the LWDA,

1 and all Aggrieved Employees are deemed to fully, finally and forever release, settle, compromise,
2 relinquish and discharge on behalf of themselves and their respective former and present
3 representatives, agents, attorneys, heirs, administrators, successors and assigns Defendant and
4 the Released Parties from all claims, rights, demands, liabilities and causes of action that arose
5 during the PAGA Period for civil penalties under PAGA that were alleged, or could have been
6 alleged, based on the facts stated in the Operative Complaint and/or the PAGA Notice for PAGA
7 civil penalties, including, but not limited to, pursuant to Labor Code sections 210, 226.3, 558,
8 1174.5, 1197.1 and 2699, including but not limited to, in connection with alleged violations of
9 Labor Code sections 96, 98.6, 200, 201, 201.3, 202, 203, 204, 204.1, 205, 205.5, 210, 212, 213,
10 221, 223, 226, 226.3, 226.7, 227.3, 232, 232.5, 245, *et seq.*, 246, 404, 432, 432.3, 432.7, 432.8,
11 510, 512, 558, 1102.5, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1197.5, 1198.5, 2699,
12 2802 and 2810.5, 6409.6, Cal. Code Regs., title 8, section 110404(5)(A), applicable Wage
13 Orders, failing to provide suitable seats, alleged violations of California Business & Professions
14 Code sections 17200, 16600 and 16700, and Government Code section 12952, among other
15 alleged violations.

16 5.3. **Release by PAGA Counsel:** PAGA Counsel release, on behalf of their present
17 and former attorneys, employees, agents, successors and assigns, the Released Parties from all
18 claims for PAGA Fees incurred in connection with the Operative Complaint and/or the PAGA
19 Period facts stated in the Operative Complaint and the PAGA Notice, except as described herein.

20 **6. MOTION OR APPLICATION FOR APPROVAL OF**
21 **SETTLEMENT**

22 The Parties agree to Plaintiff's filing of a motion for approval of this Settlement.

23 6.1. **Plaintiff's Responsibilities.** Plaintiff will prepare and deliver to Defense Counsel
24 all documents necessary for obtaining approval of this Settlement under Labor Code Section
25 2699, subd. (f)(2)) including (i) a draft proposed Order Granting Approval of PAGA Settlement;
26 (ii) a signed declaration from the Administrator attaching its "not to exceed" bid for administering
27 the Settlement and attesting to its willingness to serve; competency; operative procedures for
28 protecting the security of Aggrieved Employee Data; amounts of insurance coverage for any data

1 breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential
2 conflicts of interest with Aggrieved Employees or the LWDA; and the nature and extent of any
3 financial relationship with Plaintiff, PAGA Counsel or Defense Counsel; (iii) a signed
4 declaration from PAGA Counsel attesting to their timely transmission to the LWDA of all
5 necessary PAGA documents (initial notices of violations (Labor Code section 2699.3, subd. (a)),
6 the Operative Complaint (Labor Code section 2699, subd. (1)(1)), this Agreement (Labor Code
7 section 2699, subd. (1)(2)); and (iv) all facts relevant to any actual or potential conflict of interest
8 with Aggrieved Employees and/or the Settlement Administrator.

9 **6.2. Responsibilities of PAGA Counsel.** PAGA Counsel are responsible for
10 expeditiously finalizing and filing the motion for approval of this Settlement after the full
11 execution of this Agreement and, if necessary, obtaining a prompt hearing date for the motion
12 and appearing in Court to advocate in favor of the motion. PAGA Counsel are responsible for
13 delivering the Court's Approval Order to the Administrator. PAGA Counsel will provide Defense
14 Counsel a courtesy copy of the motion for approval for review and comment at least seven
15 calendar days prior to filing.

16 **6.3. Duty to Cooperate.** If the Parties disagree on any aspect of the proposed
17 application or motion for approval of this Settlement and/or the supporting declarations and
18 documents, PAGA Counsel and Defense Counsel will expeditiously work together on behalf of
19 the Parties by meeting in person, by e-mail, or by telephone, and in good faith, to resolve the
20 disagreement. If the Court does not grant the motion for approval of this Settlement or conditions
21 its approval on any material change to this Agreement, PAGA Counsel and Defense Counsel will
22 expeditiously work together on behalf of the Parties by meeting in person, by e-mail, or by
23 telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns.

24 **7. SETTLEMENT ADMINISTRATION**

25 **7.1. Selection of Administrator.** The Parties have selected Phoenix to serve as the
26 Administrator and verified that, as a condition of appointment, Phoenix agrees to be bound by
27 this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange
28 for payment of Administration Expenses. The Parties and their Counsel represent that they have

no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.

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

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

7.4. **Administrator Duties.** The Administrator has a duty to perform or observe all tasks to be performed or observed by the Administrator contained in this Agreement or otherwise. The Administrator will mail the letter attached as **Exhibit A** along with settlement payments to Aggrieved Employees. The Parties will ask the Court to approve the mailing of this letter as part of the request for approval of the Settlement.

8. AGGRIEVED EMPLOYEE SIZE ESTIMATES AND ESCALATOR CLAUSE

Based on its records, on the date of mediation, Defendant estimated that there were 207 Aggrieved Employees who worked 6,291 Pay Periods between May 18, 2022 and April 24, 2024. The Parties anticipate that these numbers will increase from the time period of April 25, 2024 through the end of the PAGA Period.

8.1. **Escalator Clause.** In the event the actual number of Pay Periods worked by Aggrieved Employees during the PAGA period is more than 10% (629) greater than 6,291 (i.e., if there are more than 6,920 Pay Periods worked during the PAGA Period), the Gross Settlement Amount will increase by the percentage over the 10% cushion, or at Defendant’s election, the PAGA Period will be shorted so that the number of Pay Periods does not exceed 6,920.

9. CONTINUING JURISDICTION OF THE COURT

The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i) enforcing this Agreement and/or

Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

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

10. ADDITIONAL PROVISIONS

10.1. **No Admission of Liability or Representative Manageability for Other Purposes.** This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Defendant that any of the allegations in the Operative Complaint have merit or that Defendant has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that Defendant's defenses in the Action have merit. The Parties agree that representative treatment is for purposes of this Settlement only. If, for any reason the Court does not approve this Settlement, Defendant reserves all available defenses to the claims in the Action, and Plaintiff reserves the right to contest Defendant's defenses. The Settlement, this Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement). Finally, the Parties agree that the Settlement shall not be deemed a finding or determination that any of Defendant's policies or practices were unlawful in this action or any other action.

10.2. **Integrated Agreement.** Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the

1 Parties relating to the Settlement, superseding any and all oral representations, warranties,
2 covenants, or inducements made to or by any Party.

3 10.3. **Confidentiality.** Plaintiff, PAGA Counsel, Defendant and Defense Counsel agree
4 that, other than with respect to the motion for settlement approval and related filings, they will
5 not disclose, disseminate and/or publicize or cause or permit another person to disclose,
6 disseminate or publicize, any of the terms of the Agreement directly or indirectly, specifically or
7 generally, to any person, corporation, association, government agency, or other entity except: (1)
8 to the Parties' attorneys, accountants, or spouses, all of whom will be instructed to keep this
9 Agreement confidential; (2) counsel in any potentially related matter; (3) to the extent necessary
10 to report income to appropriate taxing authorities; (4) in response to a court order or subpoena;
11 (5) in response to an inquiry or subpoena issued by a state or federal government agency; or (6)
12 with respect to Defendant, to provide information with respect to resolution to
13 employees/managers/board members regarding the status and fact of settlement and/or to comply
14 with other reporting/disclosure obligations. Plaintiff, PAGA Counsel, Defendant and Defense
15 Counsel separately agree not to, directly or indirectly, initiate any conversation or other
16 communication, before the filing of the motion for settlement approval, with any third party
17 regarding this Agreement or the matters giving rise to this agreement except to respond only that
18 "the matter has been resolved," or words to that effect. This Paragraph does not restrict
19 communications with Aggrieved Employees. The Parties and their attorneys shall not make any
20 public announcements (including press releases, press interviews, internet postings, or social
21 media posts) concerning the settlement other than seeking the court's approval of settlement
22 through a motion for approval and for Defendant, as necessary to comply with any
23 reporting/disclosure obligations, if any.

24 10.4 **Attorney Authorization.** PAGA Counsel and Defense Counsel separately
25 warrant and represent that they are authorized by Plaintiff and Defendant, respectively, to take
26 all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement
27 to effectuate its terms, and to execute any other documents reasonably required to effectuate the
28 terms of this Agreement including any amendments to this Agreement.

1 **10.5. Cooperation.** The Parties and their counsel will cooperate with each other and
2 use their best efforts, in good faith, to implement the Settlement by, among other things,
3 modifying the Settlement Agreement, submitting supplemental evidence and supplementing
4 points and authorities as requested by the Court. In the event the Parties are unable to agree upon
5 the form or content of any document necessary to implement the Settlement, or on any
6 modification of the Agreement that may become necessary to implement the Settlement, the
7 Parties will seek the assistance of a mediator and/or the Court for resolution.

8 **10.6. No Prior Assignments.** The Parties separately represent and warrant that they
9 have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer,
10 or encumber to any person or entity and portion of any liability, claim, demand, action, cause of
11 action, or right released and discharged by the Party in this Settlement.

12 **10.7. No Tax Advice.** Neither Plaintiff, PAGA Counsel, Defendant, nor Defense
13 Counsel are providing any advice regarding taxes or taxability, nor shall anything in this
14 Settlement be relied upon as such within the meaning of United States Treasury Department
15 Circular 230 (31 CFR Part 10, as amended) or otherwise.

16 **10.8. Modification of Agreement.** This Agreement, and all parts of it, may be
17 amended, modified, changed, or waived only by an express written instrument signed by all
18 Parties or their representatives, and approved by the Court.

19 **10.9. Agreement Binding on Successors.** This Agreement will be binding upon, and
20 inure to the benefit of, the successors of each of the Parties.

21 **10.10. Applicable Law.** All terms and conditions of this Agreement and its exhibits will
22 be governed by and interpreted according to the internal laws of the state of California, without
23 regard to conflict of law principles.

24 **10.11. Cooperation in Drafting.** The Parties have cooperated in the drafting and
25 preparation of this Agreement. This Agreement will not be construed against any Party on the
26 basis that the Party was the drafter or participated in the drafting.

27 ///

28 ///

1 10.12. **Confidentiality.** To the extent permitted by law, all agreements made, and orders
2 entered during Action and in this Agreement relating to the confidentiality of information shall
3 survive the execution of this Agreement.

4 10.13. **Use of Aggrieved Employee Data.** Information provided to PAGA Counsel
5 pursuant to Cal. Evid. Code §1152, and all copies and summaries of the PAGA Data provided to
6 PAGA Counsel by Defendant in connection with the mediation, other settlement negotiations, or
7 in connection with the Settlement, may be used only with respect to this Settlement, and no other
8 purpose, and may not be used in any way that violates any existing contractual agreement, statute,
9 or rule of court. Not later than 90 days after the Administrator discharges its obligations to pay
10 out the Settlement Funds, Plaintiff shall destroy all paper and electronic versions of Aggrieved
11 Employee Data received from Defendant unless, prior to the Administrator's payment of all
12 Settlement Funds, Defendant makes a written request to PAGA Counsel for the return, rather
13 than the destruction, of Aggrieved Employee Data. The aforementioned sentence shall not apply
14 to PAGA Counsel. PAGA Counsel may retain Aggrieved Employee Data they received during
15 the pendency of this Action solely to meet malpractice insurance requirements and will retain its
16 confidential nature and not share or use it outside PAGA Counsel's law firm. PAGA Counsel
17 will not use the Aggrieved Employee Data for any purpose, including for use in any other matter.
18 Once the statute of limitations on malpractice claims run, PAGA Counsel must destroy all
19 Aggrieved Employee Data.

20 10.14. **Headings.** The descriptive heading of any section or paragraph of this Agreement
21 is inserted for convenience of reference only and does not constitute a part of this Agreement.

22 10.15. **Calendar Days.** Unless otherwise noted, all reference to "days" in this Agreement
23 shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a
24 weekend or federal legal holiday, such date or deadline shall be on the first business day
25 thereafter.

26 10.16. **Notice.** All notices, demands or other communications between the Parties in
27 connection with this Agreement will be in writing and deemed to have been duly given as of the
28

1 third business day after mailing by United States mail, or the day sent by email or messenger,
2 addressed as follows:

3 To Plaintiff:

4 **BIBIYAN LAW GROUP, P.C.**

David D. Bibiyan (SBN 287811)

david@tomorrowlaw.com

5 Vedang J. Patel (SBN 328647)

vedang@tomorrowlaw.com

6 1460 Westwood Boulevard

Los Angeles, California 90024

7 Tel: (310) 438-5555; Fax: (310) 300-1705

8 To Defendant:

9 **PERKINS COIE LLP**

Javier F. Garcia, Esq.

JGarcia@perkinscoie.com

10 Brittany A. Sachs, Esq.

BSachs@perkinscoie.com

11 1888 Century Park East, Suite 1700

Los Angeles, CA 90067-1721

12 Telephone: (310) 788- 9900

13
14 **10.17. Execution in Counterparts.** This Agreement may be executed in one or more
15 counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this
16 Agreement shall be accepted as an original. All executed counterparts and each of them will be
17 deemed to be one and the same instrument if counsel for the Parties will exchange between
18 themselves signed counterparts. Any executed counterpart will be admissible in evidence to
19 prove the existence and contents of this Agreement.

20 **10.18. Stay of Litigation.** The Parties agree that upon the execution of this Agreement
21 the litigation shall be stayed, except to effectuate the terms of this Agreement. Defendant shall
22 not be required to respond to the Complaint during the period of the stay, and will not be deemed
23 to have waived any defenses it may have if the Court does not approve the Settlement. The Parties
24 further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to
25 extend the date to bring a case to trial under CCP section 583.310 for the entire period of this
26 settlement process.

27 **10.19. Severability.** In the event that one or more of the provisions contained in this
28 Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such

1 invalidity, illegality, or unenforceability shall in no way effect any other provision if Defendant's
2 Counsel and PAGA Counsel, on behalf of the Parties and the Aggrieved Employees, mutually
3 elect in writing to proceed as if such invalid, illegal, or unenforceable provision had never been
4 included in this Agreement.

5
6 **IT IS SO AGREED:**

7
8 Lucero Noriega
9 Lucero Noriega (Feb 25, 2025 18:12 PST)

10 Plaintiff Lucero Noriega

11
12 Vedang J. Patel

13 David D. Bibiyan
14 Vedang J. Patel
15 Counsel for Plaintiff Lucero Noriega

DocuSigned by:
16 Elena McDermott
17 1.53 FEB 25 2025 14:18 PST
18 Defendant Pacira Pharmaceuticals, Inc.
19 By: Elena McDermott
20 Its: Associate General Counsel

21 James Garcia
22 Javier F. Garcia
23 Brittany A. Sachs
24 Counsel for Defendant Pacira Pharmaceuticals,
25 Inc.
26
27
28

1 EXHIBIT A: NOTICE

2 <<FIRST_NAME>> <<LAST_NAME>>
3 <<ADDRESS 1>>
4 <<ADDRESS 2>>

5 ***Re: Payment from Noriega v. Pacira Pharmaceuticals, Inc., San Diego County Superior Court,
Case Number: 37-2023-00031173-CU-OE-CTL***

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

8 Dear <<FIRST_NAME>><<LAST_NAME>>:

9 Enclosed you will find a check made payable to you. This is your payment from the settlement of
10 the lawsuit entitled *Lucero Noriega v. Pacira Pharmaceuticals, Inc., San Diego County Superior
Court, Case No. 37-2023-00031173-CU-OE-CTL*.

11 That case was filed against Pacira Pharmaceuticals, Inc. pursuant to the California Private
12 Attorneys General Act of 2004, Cal. Lab. Code § 2698 *et. seq.* (called “PAGA”). The claim was
13 brought on behalf of the State of California and all current and former non-exempt employees
working for Pacira Pharmaceuticals, Inc. between May 18, 2022 and June 23, 2024. You have
been identified as one of the employees who is part of the resolution of the claim.

14 Pacira Pharmaceuticals, Inc. denies that it did anything wrong or that it owes any penalties. The
15 Parties agreed to resolve the case, and as part of that settlement, Pacira Pharmaceuticals, Inc.
agreed to pay a certain amount of money as PAGA penalties. Under the PAGA statute, the
penalties get divided between the State and the employees.

16 The enclosed check represents your portion of the PAGA settlement. It is important to note that
17 this is not a class action settlement, and you cannot opt out of receiving this payment. Please note
18 you are responsible for any taxes on the amount received as non-wage income. The check will
become void in 180 days. If you do not cash your check, the amount will be transferred to the
California Unclaimed Property Fund in your name.

19 If you have any questions, you can contact the settlement administrator.

20 [INSERT ADMINISTRATOR CONTACT INFORMATION]
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