

SETTLEMENT AND RELEASE AGREEMENT

This Settlement Agreement under the California Labor Code Private Attorneys General Act of 2004 (“PAGA”) is made by and between Plaintiff Ryah Baroudi (“Plaintiff”), on behalf of herself and on behalf of the State of California, on the one hand, and Defendant Orca Biosystems Inc. (“Defendant”), on the other, subject to approval by the Court in accordance with California Labor Code section 2699(I)(2), and subject to the following terms and conditions:

I. DEFINITIONS

Unless otherwise defined herein, the following terms used in this Agreement shall have the meanings ascribed to them as set forth below:

- A. “Action” means the civil action entitled *Ryah Baroudi v. Orca Biosystems Inc.*, Superior Court of California, County of Sacramento, Case No. 23CV003657.
- B. “Agreement,” “Settlement,” or “Settlement Agreement” means this Settlement Agreement.
- C. “Complaint” means the First Amended Complaint filed by Plaintiff on or about August 11, 2023 in the Action, and any amendments thereto.
- D. “Court” means the Superior Court for the State of California, County of Sacramento.
- E. “Covered Period” means the period of time from on or about June 6, 2022 through and including the date the Court enters an order granting approval of the Settlement.
- F. “Defendant” means Orca Biosystems Inc.
- G. “Defendant’s Counsel” means Summer J. Wynn and Andrea Zachrich of Cooley LLP.
- H. “Effective Date” means five (5) court days after the date that the Court enters an order granting approval of the Settlement.
- I. “LWDA” means the California Labor & Workforce Development Agency.
- J. “LWDA Payment” means the portion of the payment from the Net Settlement Amount to be paid to the LWDA under the Settlement Agreement.
- K. “Mediation” means the mediation that occurred on December 19, 2023 with mediator Michael Loeb, wherein the Parties agreed to settle this matter.
- L. “Memorandum of Understanding of PAGA Settlement” and “MOU” means the preliminary agreement signed by the Parties following the Mediation, which outlines the terms and purpose of this Settlement Agreement.
- M. “Net Settlement Amount” means the amount from the Total Settlement Amount that is available for distribution as the LWDA Payment and Settlement Shares to the PAGA Settlement Group Members after the deductions set forth in Sections IV(E), IV(F), and IV(L). The entire Net Settlement Amount will be distributed to the LWDA and PAGA Settlement Group Members for settlement of PAGA penalties.
- N. “Order” means the Order granting approval of the Settlement; the Parties will submit a proposed Order Approving Settlement Agreement, in the form evidenced by Exhibit A to this Agreement, for consideration by the Court.

- O. "PAGA" means the Labor Code Private Attorneys General Act of 2004, California Labor Code section 2698 et seq.
- P. "PAGA Settlement Group Members" means all similarly situated manufacturing research group employees who currently work or have worked for Orca Biosystems Inc. in California during the Covered Period.
- Q. "Plaintiff" means Ryah Baroudi.
- R. "Plaintiff's Counsel" means Tim Del Castillo, Daniel Richardson, and other members of Castle Law: California Employment Counsel, PC.
- S. "Parties" means Plaintiff and Defendant.
- T. "Released PAGA Claims" means any and all claims under PAGA, including but not limited to any and all claims for civil penalties, attorneys' fees, and/or costs, that arise from or relate to the allegations in the Complaint and the allegations in Plaintiff's letter to the LWDA dated June 6, 2023, including but not limited to alleged failure to provide meal and rest periods, alleged failure to provide complete and accurate wage statements, alleged failure to maintain accurate records, alleged failure to pay all overtime wages, alleged failure to pay all minimum wages, alleged failure to timely pay wages during employment, alleged failure to pay all wages on separation, alleged willful misclassification, and alleged failure to reimburse necessary expenditures, alleged violation of the California Equal Pay Act and/or alleged violation of California Labor Code sections 201, 202, 203, 226, 226.3, 226.7, 226.8, 256, 432.3, 510, 558, 558.1, 1102.5, 1174, 1194, 1197.1, 1197.5, 2802 et seq., and/or violation of Industrial Welfare Commission Wage Order No. 4.
- U. "Released Parties" means Defendant Orca Biosystems Inc. and all of its present and former parent companies, subsidiaries, divisions, partnerships, or affiliates, and each of its respective present and former employees, officers, directors, partners, members, agents, attorneys, administrators, representatives, shareholders, predecessors, successors, and assigns.
- V. "Releasing Parties" means Plaintiff, the LWDA, and all PAGA Settlement Group Members, and each of their predecessors, successors, and assigns.
- W. "Settlement Administrator" means the administrator Phoenix Settlement Administrator, or a comparable vendor approved by the Court.
- X. "Settlement Share" means the portion of the Net Settlement Amount allocable to each PAGA Settlement Group Member as consideration for the settlement and release of claims for penalties under PAGA as provided by this Agreement.
- Y. "Total Settlement Amount" means the total amount to be paid by Defendant as provided by this Agreement.

II. PROCEDURAL BACKGROUND

- A. On or about June 6, 2023, Plaintiff served a notice letter to the LWDA, pursuant to California Labor Code section 2699.3, to notify the LWDA of alleged Labor Code violations. The LWDA did not respond to Plaintiff's correspondence.
- B. On or about August 11, 2023, Plaintiff filed the Action via a First Amended Complaint for Damages in the Superior Court of California, County of Sacramento, Case No. 23CV003657. Plaintiff sought, on behalf of the State of California, to represent herself and

the PAGA Settlement Group Members on the basis that they were allegedly misclassified as exempt employees during the PAGA period, among other alleged Labor Code claims.

- C. On or about September 11, 2023, the Court stayed litigation of the Action in its entirety pursuant to the joint stipulation filed by the Parties requesting that the Action be stayed pending a private mediation.
- D. Through arms-length negotiations and a mediation session held on December 19, 2023 with qualified employment law mediator, Michael Loeb, the Parties reached a settlement of Plaintiff's PAGA claims following the exchange of information sufficient to allow the Parties to evaluate the merits of Plaintiff's PAGA claim and the merits of Defendant's defenses to that claim. The information exchange included information pertaining to the current and former PAGA Settlement Group Members, job duties performed, employees who worked as independent contractors, Plaintiff's employment records and wage statements, and pay periods worked by the PAGA Settlement Group Members. These negotiations between the Parties allowed the Parties to reach a final resolution as to Plaintiff's PAGA claims.
- E. After the Mediation, the Parties executed the MOU outlining the preliminary terms of this Settlement Agreement.
- F. The Parties expressly acknowledge that this Agreement is entered into solely for the purpose of compromising significantly disputed claims and that nothing herein is an admission of liability or wrongdoing by Defendant. The Agreement's provisions, and all related drafts, communications, and discussions cannot be construed as or deemed to be evidence of an admission or concession of any point of fact or law by any person or entity and cannot be offered or received into evidence or requested in discovery in this Action or any other action or proceeding as evidence of an admission or concession. Nothing in this Agreement is intended or will be construed as an admission by Defendant that Plaintiff's claims in the Action have any merit or that it has any liability to Plaintiff or any of the PAGA Settlement Group Members. If for any reason the Agreement is not approved by the Court, it will be of no force or effect.

III. NO ADMISSION OF LIABILITY

- A. Defendant denies that it has engaged in any unlawful activity, has failed to comply with the law in any respect, or has any liability to any person or entity under the claims asserted in the Action. This Agreement is entered into solely for the purpose of compromising highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission of liability or wrongdoing by Defendant. This Settlement and the fact that Plaintiff and Defendant were willing to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (other than solely in connection with the Settlement).
- B. Whether or not the Order becomes final and the Effective Date occurs, nothing in this Agreement, any document, statement, proceeding or conduct related to the Settlement, or any reports or accounting of those matters, will be construed as, offered or admitted in evidence as, received as, or deemed to be evidence of a presumption, concession, indication or admission by any of the Released Parties of any liability, fault, wrongdoing, omission, concession or damage. If the Court does not approve the Settlement or enter the Order approving it for any reason, or if the Effective Date does not occur for any reason, Defendant shall retain all of its rights to object to the maintenance of the Action as a representative action or otherwise, and nothing in this Agreement or other papers or proceedings related to the Settlement shall be used as evidence or argument by any party concerning whether the Action may properly be maintained as a representative action under PAGA.

- C. This Section and all other provisions of this Agreement notwithstanding, any and all provisions of this Agreement may be admitted in evidence and otherwise used in any and all proceedings to enforce any or all terms of this Agreement, or in defense of any claims released or barred by this Agreement.

IV. SETTLEMENT TERMS AND CONDITIONS

- A. **Stipulation for Settlement Only.** Consistent with this Agreement, Plaintiff will request the dismissal, with prejudice, of any and all PAGA-related claims alleged in the Complaint, specifically the Thirteenth Cause of Action and all related representative allegations in the Complaint in the motion seeking approval of the Settlement.
- B. **PAGA Settlement Group Members.** Defendant represents that there are approximately 50 individuals that compose the PAGA Settlement Group Members.
- C. **Total Settlement Amount.** Subject to the terms and conditions of this Agreement, the Total Settlement Amount is One Hundred and Forty-Two Thousand, One Hundred Dollars and no cents (\$142,100.00). The Total Settlement Amount will cover (a) the LWDA Payment; (b) all Settlement Shares to PAGA Settlement Group Members pursuant to the Settlement (described in Section IV(I)); (c) Plaintiff's attorneys' fees, costs, and expenses related to the claims encompassed by this Agreement (which includes, but is not limited to, all such fees and costs incurred to date, as well as all such fees and costs incurred in documenting the settlement, securing court approval of the settlement including any and all submissions related thereto, providing notice to the LWDA (described in Section IV(M)(2) and IV(N)), administration associated with the Settlement, and obtaining a dismissal of the PAGA-related claims alleged in the Complaint with prejudice (described in Section IV(A)); (d) the enhancement payment to Plaintiff; and (e) the Settlement Administrator's fees and expenses. In no event shall Defendant be required to pay any amount more than the Total Settlement Amount.
- D. **Modification Based on Increase in Pay Periods.** Defendant represents that, as of December 2023, there have been approximately 1,421 pay periods worked by the PAGA Settlement Group Members during the Covered Period. If the number of relevant pay periods increases by more than 25% (i.e., is more than 1,776) through the date of the Order, then the Total Settlement Amount shall be increased on a proportional basis based on the pay period value for every pay period over a 25% increase. The pay period value shall be calculated by multiplying each pay period in excess of 1,776 by the pay period value of \$100. For example, and for purposes of illustration only, if the number of relevant pay periods increases to 2,000 pay periods in the Covered Period, then the Total Settlement Amount shall be increased by \$22,400 (2,000 pay periods – 1,776 pay periods = 224 pay periods x \$100).
- E. **Attorneys' Fees and Costs.** Defendant will not oppose an application for attorneys' fees in an amount that does not exceed 33.33% of the Total Settlement Amount (i.e., \$47,361.93). Defendant will not oppose an application for up to \$20,000.00 in litigation costs. Plaintiff's Counsel will not seek, or be entitled to any attorneys' fees and/or costs related to the claims encompassed by this Agreement, other than those specified in this Agreement. Plaintiff's counsel agrees that any reduction by the Court or any an appellate court of the attorneys' fees and costs shall not affect any of the Parties' other rights and obligations under this Settlement Agreement. Plaintiff's Counsel shall be solely and legally responsible to pay all applicable taxes on any payments made pursuant to this Section IV(E). The appropriate 1099 tax forms shall be provided by the Settlement Administrator to Plaintiff's Counsel for any payments made pursuant to this Section IV(E). Plaintiff's Counsel agrees to indemnify and hold Defendant harmless as to any tax liabilities imposed on or sought to be recovered against Defendant relating to or arising from any payments made pursuant to this Section IV(E).

- F. **Enhancement Payment.** Subject to Court approval, Defendant agrees not to object to Plaintiff requesting an enhancement payment in an amount that does not exceed five thousand dollars and no cents (\$5,000.00). This incentive payment shall be in addition to whatever Settlement Share Plaintiff is otherwise entitled to as a PAGA Settlement Group Member. The appropriate tax forms shall be provided by the Settlement Administrator to Plaintiff for any payment made pursuant to this Section IV(F). Plaintiff shall be solely responsible for any tax obligations relating to or arising from her receipt of payment made pursuant to this Section IV(F). In no event shall Defendant be required to pay any amount more than the Gross Settlement Amount.
- G. **Representations By Plaintiff and Plaintiff's Counsel.** Plaintiff and Plaintiff's Counsel each represent and warrant that each of them are not aware of any other person or entity with plans and/or intentions to file litigation or a claim of any kind against Defendant.
- H. **Settlement Shares.** Subject to the terms and conditions of this Agreement, each PAGA Settlement Group Member will be allocated a Settlement Share from 25% of the Net Settlement Amount; the remainder of the Net Settlement Amount shall be paid to the LWDA, as described in Section IV(J).
- I. **Distribution of Settlement Shares to PAGA Settlement Group Members.** After deducting for the amounts for the LWDA Payment, the Settlement Administrator's fees and expenses, the enhancement payment to Plaintiff, and attorneys' fees, costs, and expenses, the remainder of the Net Settlement Amount will be paid as Settlement Shares to each PAGA Settlement Group Member. The portion of the Net Settlement Amount available for distribution to PAGA Settlement Group Members (25% of the Net Settlement Amount) will be divided proportionally among all PAGA Settlement Group Members based on pay periods worked during the Covered Period.
- J. **Payment to LWDA.** The Settlement Administrator will pay 75% of the Net Settlement Amount to the LWDA as its share of the Settlement attributable to civil penalties under Labor Code section 2699(i) (the "LWDA Payment").
- K. **Appointment of Settlement Administrator.** In connection with a joint submission to the Court for an order approving this Agreement, the Parties will propose a Settlement Administrator to distribute the Settlement Shares and other payments due under the Settlement, and otherwise administer the Settlement. In the event that the Settlement is not approved, Defendant will pay the Settlement Administrator's reasonable fees incurred as of that time. The Settlement Administrator, as a condition of appointment, will agree to be bound by this Agreement with respect to the performance of its duties and its compensation.
- L. **Payment to Settlement Administrator.** The Settlement Administrator will pay to itself out of the Total Settlement Amount its reasonable fees and expenses as approved by the Court. The Settlement Administrator's fees are estimated to not exceed \$3,245.00.
- M. **Procedure for Seeking Approval of Settlement.**
1. Plaintiff also agrees to submit the application or motion seeking approval of this Settlement by no later than fifteen (15) court days after her execution of this Settlement Agreement, and reserve the Court's first available date for hearing the approval request. The Parties will cooperate in seeking approval of the Settlement pursuant to California Labor Code section 2699(l)(2). Plaintiff shall provide Defendant with a copy of the draft proposed application seeking approval of this Settlement at least five (5) court days prior to filing. The Parties will submit a proposed order granting approval of the Settlement in the form evidenced by Exhibit A to this Agreement. The Parties further agree to fully cooperate in the

drafting and/or filing of any documents reasonably necessary to be prepared or filed and shall take all steps that may be requested by the Court relating to the approval and implementation of the Settlement.

2. Plaintiff shall submit a copy of the Settlement to the LWDA at the same time that the Settlement is submitted to the Court for approval pursuant to California Labor Code section 2699(I)(2). If Plaintiff fails to satisfy this condition in compliance with California Labor Code section 2699(I)(2), the Settlement shall be voidable at Defendant's option.
 3. If the Court does not grant the motion for approval and issue an Order approving the Settlement, under the specific terms requested, the Parties agree to meet and confer to determine whether resolution of the claims encompassed by the Settlement can be obtained in a manner consistent with the Court's concerns.
 4. If the Court does not grant approval of the Settlement, or if the Court's approval of the Settlement is reversed or materially modified on appellate review, then the Settlement will become null and void. A modification of amounts payable in attorneys' fees or expenses, or the amount of the requested enhancement payment, shall not be deemed a material modification of the Settlement.
- N. **Submission Order to LWDA.** Within 10 calendar days after entry of the Order approving the Settlement, Plaintiff shall submit a copy of the Order in compliance with California Labor Code section 2699(I)(3).
- O. **Compliance with All Required Notice.** Plaintiff's compliance with the notice procedures described in Sections IV(M)(2) and IV(N) shall constitute due and sufficient notice to the LWDA, and shall be deemed by the Parties to satisfy any requirement of due process. Nothing else shall be required of, or done by, the Parties, Plaintiff's Counsel, or Defendant's Counsel to provide notice of the Settlement.
- P. **No Right to Opt Out.** The Parties agree there is no statutory right for any PAGA Settlement Group Member to opt out or otherwise exclude themselves from the Settlement.
- Q. **Payment of Settlement Shares to PAGA Settlement Group Members.**
1. Within 10 business days after the Effective Date, Defendant will provide to the Settlement Administrator the last known mailing addresses for each of the PAGA Settlement Group Members, for the purpose of the Settlement Administrator distributing the Settlement Shares by U.S. mail delivery of a check. This mailing address information will otherwise remain confidential and will not be disclosed to anyone. The Settlement Administrator will distribute the Settlement Shares pursuant to the timing outlined in Section IV(R).
 2. If a PAGA Settlement Group Member fails to cash the Settlement Share check within 180 calendar days after it is sent via U.S. mail, the Settlement Administrator will, within 20 calendar days, distribute the funds represented by the uncashed check(s) to the California State Controller's Office Unclaimed Property Fund, or alternatively to a single recipient designated by the Court in its discretion in connection with the Court's consideration and approval of the Settlement.
 3. The Settlement Share checks to PAGA Settlement Group Members shall be accompanied by a transmittal letter in the same or substantially similar form as that attached hereto as **Exhibit B**.

- R. **Timing of Settlement Payments.** Within 10 business days after the Effective Date, the Settlement Administrator will provide Defendant with wire transfer information. Within 30 business days after the Effective Date, Defendant will transfer the Total Settlement Amount to the Settlement Administrator via wire transfer. The Settlement Administrator will then distribute the payments required under this Agreement within 10 business days after Defendant transfers the Total Settlement Amount to the Settlement Administrator. No person or entity shall have any claim against Defendant, Defendant's Counsel, Plaintiff, Plaintiff's Counsel or any Settlement Administrator based on distributions and payments made in accordance with this Agreement. Defendant shall have no responsibility to distribute any payment of attorneys' fees or costs to any attorney or law firm that may claim entitlement to fees and costs under this Settlement Agreement or as a result of the Action.
- S. **Waiver of Right to Appeal.** Provided that the Court's approval of this Settlement is consistent with the material terms of this Agreement, Plaintiff, Defendant, and their respective counsel hereby waive any and all rights to appeal the approval of the Settlement, and the Order therefore will become non-appealable at the time it is entered. The waiver of appeal does not include any waiver of the right to oppose any appeal, appellate proceedings or post-judgment proceedings. If any appeal is taken, the time for consummating the Settlement (including making payments under the Settlement) will be suspended until after the Effective Date.
- T. **Release and Waiver of Claims.** Upon the Effective Date, Releasing Parties shall waive and forfeit, and be deemed to have fully, finally and forever released and discharged all Released PAGA Claims against all Released Parties.
- U. **No Injunctive Relief.** As part of this Settlement, Defendant shall not be required to enter any consent decree, nor shall Defendant be required to agree to any provision of injunctive relief.
- V. **Interim Stay of Proceedings.** The Parties agree to refrain from further litigation of this matter, except such proceedings necessary to implement and obtain entry of the Order granting approval of the Settlement. The Parties agree that, if warranted, they shall jointly seek to stay all dates and deadlines in the Action pending approval by the Court of the Settlement. The Parties further agree that the mutual, voluntary cessation of litigation shall terminate if the Settlement is not approved by the Court.
- W. **Continued Jurisdiction.** After entry of the request for dismissal of the Action, with prejudice, the Court shall have continuing jurisdiction solely for purposes of addressing: (i) the interpretation and enforcement of the terms of the Agreement, (ii) Agreement administration matters, and (iii) such matters as may be appropriate under court rules or applicable law, or as set forth in this Agreement.
- X. **Confidentiality.** Neither Plaintiff nor her counsel shall engage in the release of any media statements, press releases, or advertising relating to this Settlement or to Defendant, nor shall they make any comments or initiate any publicity of any kind related to this Settlement or Defendant.
- Y. **Fair Settlement.** The Parties and their respective counsel believe and warrant that this Agreement reflects a fair, reasonable, and adequate settlement of the Action reached through arms-length negotiations, through the assistance of a neutral mediator, taking into account all relevant factors, current and potential.
- Z. **Agreement Constitutes a Complete Defense.** To the extent permitted by law, this Settlement Agreement may be pled as a full and complete defense to any action, suit, or other proceedings that may be ongoing, instituted, prosecuted, or attempted, with respect to the Released PAGA Claims, against the Released Parties.

AA. Miscellaneous Terms.

1. **Entire Agreement.** This Agreement contains the entire agreement between the Parties regarding this Settlement and the Released PAGA Claims and constitutes the complete, final, and exclusive embodiment of their agreement with respect to the subject matter hereof, and all prior or contemporaneous understandings, representations, and statements, oral or written, are merged into and superseded by this Agreement. No other promises or agreements, either expressed or implied, shall be binding unless signed in writing by Plaintiff and Defendant.
2. **Attorney Authorization.** Plaintiff's Counsel and Defendant's Counsel warrant and represent that they are authorized by Plaintiff and Defendant, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement. If the Parties are unable to reach agreement on the form or content of any document needed to implement this Agreement, or on any supplemental provisions that may become necessary to effectuate the terms of this Agreement, the Parties may seek the assistance of the Court to resolve such disagreement.
3. **Modification of Agreement.** This Agreement, and any and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their successors-in-interest.
4. **Agreement Binding on Successors.** This Agreement will be binding upon, and inure to the benefit of, the successors of the Parties.
5. **Applicable Law.** All terms and conditions of this Agreement 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.
6. **Cooperation in Drafting.** The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
7. **Headings.** The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
8. **Grammar.** The neuter form of a pronoun shall be considered to include within its meaning the masculine and feminine forms of the pronoun, and vice versa.
9. **Execution in Counterparts.** This Agreement may be executed in counterparts which shall be deemed to be part of one original, and facsimile signatures and signatures transmitted by PDF shall be equivalent to original signatures. Signatures on this Agreement communicated by facsimile or other similar electronic transmission or a digital signature provided through DocuSign (or some other similar service) shall be considered an original signature, and the use of electronic signatures and the keeping of records in electronic form be granted the same legal effect, validity, or enforceability as a signature affixed by hand or the use of a paper-based record keeping system to the extent and as provided for in any applicable law including the Federal Electronic Signatures in Global and

National Commerce Act, California digital signature regulations, or any other similar state laws based on the Uniform Electronic Transactions Act.

V. EXECUTION

The Parties have duly authorized and caused this Agreement to be executed on the date(s) set forth below.

Dated: Mar 13, 2024

RYAH BAROUDI


Ryah Baroudi (Mar 13, 2024 14:56 PDT)

Dated: March 12, 2024

ORCA BIOSYSTEMS INC.

By: Ivan Dimov
Ivan Dimov
Chief Executive Officer

EXHIBIT A

1 Timothy B. Del Castillo (SBN: 277296)

tdc@castleemploymentlaw.com

2 Lisa L. Bradner (SBN: 197592)

lb@castleemploymentlaw.com

3 Daniel E. Richardson (SBN: 289327)

dr@castleemploymentlaw.com

4 **CASTLE LAW: CALIFORNIA EMPLOYMENT COUNSEL, PC**

5 2999 Douglas Blvd., Suite 180

Roseville, CA 95661

6 Telephone: (916) 245-0122

7 Attorneys for Plaintiff

8 RYAH BAROUDI, individually and on behalf of all others similarly aggrieved

9
10 **SUPERIOR COURT OF CALIFORNIA**
11 **FOR THE COUNTY OF SACRAMENTO**
12

13 RYAH BAROUDI, an individual, on behalf of)
14 herself and all other aggrieved employees)
15 pursuant to the Private Attorneys General Act)
16 (PAGA),)

16 Plaintiff,

17 vs.

18 ORCA BIOSYSTEMS, INC., a Delaware)
19 Corporation, and DOES 1 to 20, inclusive,)

20 Defendants.
21)
22)
23)
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Case No. 22CV1415

**[PROPOSED] ORDER APPROVING
PLAINTIFF'S PRIVATE ATTORNEYS
GENERAL ACT SETTLEMENT AND
DISMISSING PAGA CLAIMS WITH
PREJUDICE**

Date:

Time:

Dept.:

Filed: June 23, 2023

Trial Date: None Set

1 **TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:**

2 The Motion to Approve Private Attorneys General Act Settlement (“Motion”) in the above
3 referenced case came before this Court, on [REDACTED], in Department [REDACTED]. Plaintiff Ryah
4 Baroudi (“Plaintiff”) filed this Private Attorneys General Act (“PAGA”) action on August 11, 2023.
5 Plaintiff has alleged that Defendant Orca Biosystems Inc. (“Defendant”) committed violations of Labor
6 Code sections 201, 202, 203, 226, 226.3, 226.7, 226.8, 256, 432.3, 510, 558, 558.1, 1102.5, 1174, 1194,
7 1197.1, 1197.5, 2802, and the applicable IWC Wage Orders, and is liable for civil penalties pursuant to
8 the PAGA. Defendant denies all of Plaintiff’s allegations.

9 The parties have agreed to a settlement of the PAGA claims and the dismissal of PAGA claims
10 with prejudice. Defendant will provide monetary consideration in exchange for a release of claims and
11 dismissal consistent with the terms of the PAGA Settlement and Release Agreement (the “Settlement
12 Agreement”). The Court, having received and considered Plaintiff’s Motion, the declarations in support,
13 the Settlement Agreement, the Notice of Settlement, and other evidence, HEREBY ORDERS AND
14 MAKES DETERMINATIONS AS FOLLOWS:

15 **1. SCOPE OF INDIVIDUALS WITHIN THE PAGA SETTLEMENT – SETTLEMENT**
16 **GROUP MEMBERS**

17 The Court finds that Plaintiff has exhausted all administrative remedies required to bring the
18 PAGA claims asserted in this litigation and is authorized to act as a private attorney general with respect
19 to the PAGA claims being released under the proposed Settlement Agreement. The Court finds the
20 individuals (“PAGA Settlement Group Members”) included within the scope of the Settlement Agreement
21 are as defined by the Parties in the Settlement Agreement.

22 **2. APPROVING THE SETTLEMENT AGREEMENT**

23 The Court approves of the PAGA penalty allocations set forth in the Settlement Agreement
24 wherein the Net Settlement Amount shall be allocated as the 75% share of civil penalties pursuant to the
25 allocation set forth in California Labor Code section 2699(i) to be paid to the Labor and Workforce
26 Development Agency (“LWDA”), with 25% share of civil penalties pursuant to the allocation set forth in
27 California Labor Code section 2699(i) to be paid to the PAGA Settlement Group Members.
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1 The Court approves of the releases set forth in the Settlement Agreement, which encompass all
2 Claims under PAGA that arise from the allegations in Plaintiff's operative complaint and/or letter to the
3 LWDA dated June 6, 2023 based on alleged violations of the California Labor Code. The individuals
4 and/or entities released shall include Defendant, and all of its present and former parent companies,
5 subsidiaries, divisions, partnerships, or affiliates, and each of its respective present and former employees,
6 officers, directors, partners, members, agents, attorneys, administrators, representatives, shareholders,
7 predecessors, successors, and assigns ("Released Parties"), from any and all claims, causes of action,
8 damages, expenses, benefits, interest, penalties, attorneys' fees, costs, and any other form of relief or
9 remedy in law, equity, or whatever kind or nature that were asserted or could have been asserted based on
10 the facts alleged and with respect to the claims asserted in Plaintiff's LWDA Notice and the operative
11 complaint for the entire period from June 6, 2022 through the date the Court enters an order granting
12 approval of the Settlement Agreement (the "PAGA Period").

13 Additionally, because the Court finds the parties' settlement to have been agreed upon only after
14 significant investigation and arms-length negotiations in mediation, and in an attempt to avoid further
15 delays and costs, the Court grants approval to the settlement, which is incorporated by reference in its
16 entirety, as if stated here in full.

17 The Court finds that the Common Fund Doctrine is applicable to this case because there is a
18 sufficiently identifiable group of beneficiaries (*i.e.*, the Settlement Group Members and the Labor and
19 Workforce Development Agency), the benefits can be accurately traced as set forth in the Settlement
20 Agreement, Plaintiff and Plaintiff's counsel were able to negotiate on behalf of the beneficiaries, and the
21 fee can be shifted with exactitude to those benefiting as the fee request is a specific, lump-sum percentage
22 of the common fund. *See Paul, Johnson, Alston & Hunt v. Gaulty*, 886 F.2d 268, 271 (9th Cir. 1989);
23 *Serrano v. Priest*, 20 Cal.3d 25, 34-35 (1977); *Laffitte v. Robert Half Internat., Inc.*, 1 Cal.5th 480, 506
24 (2016). The Court finds the attorneys' fees request of one-third of the common fund (\$47,361.93) to be
25 appropriate compensation for Plaintiff's counsel. The attorneys' fees request is within the range that has
26 been approved by other Courts in similar cases and reasonable in light of the circumstances of this case,
27 the results obtained on behalf of the PAGA Settlement Group Members and the LWDA, and the contingent
28 nature of the recovery over the course of this case, which included potential loss at summary judgment,

and/or trial proceedings. Additionally, the Court orders that costs of approximately \$_____ be reimbursed to class counsel for reasonable costs incurred in this case.

The Court approves Phoenix Settlement Administrator as the Claims Administrator to perform the administration of the PAGA Settlement in accordance with the Settlement Agreement, and whose costs shall be approximately \$3,245.00 as provided for in the Settlement Agreement and quote provided by the Claims Administrator.

3. IMPLEMENTATION SCHEDULE

Accordingly, with good cause shown, the Court hereby approves the PAGA Settlement Agreement and the implementation schedule identified in the Settlement Agreement and orders said implementation schedule be adhered to.

Last day for Defendant to provide Claims Administrator with the last known mailing addresses for each of the Settlement Group Members	15 calendar days after the date the Court enters an order granting approval of the Settlement Agreement (“Approval Date”)
Last day for Defendant to fund settlement	Within 35 calendar days after Approval Date
Last day for Claims Administrator to deliver payment of Plaintiff’s Counsel’s attorney’s fees and costs, PAGA Payment, Settlement Administration Costs, and payment to Settlement Group Members	Within 10 calendar days after Defendant funds the settlement
Last day for Settlement Group Members to cash settlement checks	180 days after issuance of checks to Settlement Group Members
Last day for Claims Administrator to deliver value of uncashed settlement checks to California State Controller’s Office Unclaimed Property.	20 days after 180-day settlement check cashing deadline

1 IT IS FURTHER ORDERED that Plaintiff's PAGA claims shall be dismissed with prejudice in
2 their entirety and as to all Parties as set forth in the Settlement Agreement, with each party to bear its
3 own fees and costs outside of what has been ordered herein. This matter is subject to the Court's
4 continuing jurisdiction to monitor and enforce the terms of this order and the approved Settlement
5 Agreement pursuant to California Civil Procedure Code section 664.6. In any action to enforce the terms
6 of the Settlement Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and
7 costs.

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9 IT IS SO ORDERED.

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11 Date: _____

By: _____

12 Judge of the Superior Court
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Complete_with_DocuSign_Baroudi-Orca_PAGA_Set[64]

Final Audit Report

2024-03-13

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By:	Ron Buchanan (rb@castleemploymentlaw.com)
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