

Laurence Rosenberg, et al. v. BioReference Laboratories, Inc.

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (hereinafter, “Agreement”) is made and entered into in the lawsuit *Laurence Rosenberg, et al. v. BioReference Laboratories, Inc.*, No. 2:22-cv-02321-CCC-CLW (the “Action”), by and between Plaintiffs Laurence Rosenberg, Kelly M. Brown, Kenneth Cardarelle, Deborah Desmarais, Sual Downes, Jason Faulkner, Isaiah Johnson, Shireen Reyahi and Tre Jur Williams (the “Named Plaintiffs”), and the Participating Collective Members (as defined below), on the one hand, and Defendant BioReference Health, LLC (formerly known as BioReference Laboratories, Inc.) (“Defendant” or “BioReference”), on the other hand (all collectively referred to as the “Parties”).

RECITALS

WHEREAS, on April 21, 2022, Plaintiffs Rosenberg and Brown filed a complaint in the Action asserting violations of the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.* (“FLSA”), and violations of the New Jersey Wage and Hour Law, N.J. Stat. Ann. § 34:11-56a, *et seq.* (“NJWHL”), New Jersey Wage Payment Law, N.J. Stat. Ann. § 34:11-4.1, *et seq.* (“NJWPL”), and the wage payment laws of Washington State (WA St. 49.46.130), as well as common law claims with respect to alleged unpaid time, unpaid overtime, unreimbursed business expenses and related violations;

WHEREAS, on July 5, 2022, the Named Plaintiffs filed an amended complaint in the Action and added claims under the wage payment laws of Maryland, Florida, New York and Colorado with respect to alleged unpaid time, unpaid overtime, unreimbursed business expenses and other violations (the “Amended Complaint”);

WHEREAS, to date, an additional twenty-eight individuals have filed Consent to Join Forms with the Court;

WHEREAS, on August 26, 2022, the Named Plaintiffs filed a Motion for Conditional Certification (ECF No. 52);

WHEREAS, on October 3, 2022, BioReference filed Opposition to the Motion for Conditional Certification (ECF No. 63);

WHEREAS, on October 25, 2022, BioReference filed a Motion To Compel Opt-Ins Tracey Bock, Jacqueline Davis-Brown, Shaquanta Jones and Jeanette Ysasi to Pursue Their Claims in Arbitration on an Individual Basis and for a Stay of Judicial Proceedings (ECF No. 65);

WHEREAS, on November 14, 2022, the Named Plaintiffs filed Opposition to the Motion to Compel Arbitration (ECF No. 69);

WHEREAS, the Named Plaintiffs assert that their claims in the Action are meritorious;

WHEREAS, BioReference denies that the claims in the Action are meritorious or that it has committed any wrongdoing or violated any laws asserted in the Action or otherwise, and denies that certification of the case as a class or collective action would be appropriate and asserts that it has meritorious defenses to the claims in the Action and would prevail if the Action continued to be litigated;

WHEREAS, in order to avoid the expense and burden of litigation, the Parties desire to resolve any and all causes of action, claims, and demands based on purported violations alleged in the Amended Complaint, and any other federal, state or local law (statutory, regulatory, and common law) including, but not limited to, claims pertaining to the payment of wages and reimbursement of expenses;

WHEREAS, on May 23, 2023, the Parties participated in mediation with Stephen P. Sonnenberg, an experienced employment law mediator with JAMS;

WHEREAS, in advance of mediation, the Parties agreed to an exchange of substantial documents, information, and data, as well as an exchange of briefs on legal issues, to inform their settlement discussions;

WHEREAS, the Parties engaged in extensive arm's-length, comprehensive settlement negotiations;

WHEREAS, during the mediation, the Parties negotiated a Term Sheet that is the basis for this Agreement;

WHEREAS, the Parties have entered into this Agreement, which is subject to the Court's approval;

NOW, THEREFORE, in consideration of the foregoing premises and the terms and conditions set forth herein, the Parties agree, subject to the Court's approval, as follows:

1. DEFINITIONS

1.1. “**Administrator**” means RG2 Claims Administration LLC, which was selected by Plaintiffs’ Counsel and approved by Defendant to act as the settlement administrator in connection with this Settlement.

1.2. “**Administration Costs**” means the fees and costs that will be paid to the Administrator for the work described in this Agreement. The Administration Costs will be paid to the Administrator from the Maximum Settlement Amount.

1.3. “**Agreement**” means this Settlement Agreement and Release. The settlement described in the Agreement may be referred to as the “**Settlement**.”

1.4. “**Claim Deadline**” means the deadline by which a Potential Collective Member (other than a Participating Plaintiff who executes this Agreement) must complete, sign and return a Claim Form And Release in order to be eligible to participate in this Settlement. The Claim Deadline is sixty (60) days after the mailing of the Notice Packet to a Potential Collective Member and no later than ninety (90) days after the date the Notice Packets are first mailed pursuant to Section 3.10 (B) below.

1.5. “**Cost and Fee Award**” means the fees and costs that the Court in the Action awards to Plaintiffs’ Counsel as part of the Settlement. This Settlement is not conditioned on Court approval of Plaintiffs’ Counsel’s petition for fees and costs.

1.6. “**Court**” means the United States District Court for the District of New Jersey, which is presiding over the Action.

1.7. “**Defendant’s Counsel**” means Faegre Drinker Biddle & Reath LLP.

1.8. “**Employer Payroll Taxes**” means all taxes and withholdings an employer is required to make arising out of or based upon the payment of compensation under the Agreement, including the employer’s FICA, FUTA, and SUTA obligations, as applicable. Employer Payroll Taxes are independent of the Maximum Settlement Amount, except as set forth in this Agreement.

1.9. “**Final Approval Order**” means an Order of the Court substantially in the form attached as **Exhibit 1**. This Settlement is conditioned on the Court issuing the Final Approval Order without material modifications.

1.10. “**Final Judgment**” means the latest of: (1) the date of final affirmance on any appeal of the Court’s Final Approval Order; (2) the date of final dismissal, with prejudice, of the last pending appeal from the Court’s Final Approval Order; or (3) if no appeal is filed, the expiration date of the time for the filing or noticing of any form of valid appeal from the Court’s Final Approval Order.

1.11. “**Last Known Mailing Address**” means the most recently recorded mailing address for a Potential Collective Member contained in records maintained by Defendant (if any including as provided to Defendant by any staffing agency), the most recently recorded mailing address in Plaintiffs’ Counsel’s records, any mailing address a Potential Collective Member provides to the Parties or the Administrator, and any results of skip tracing conducted by the Administrator.

1.12. “**Last Known E-mail Address**” means the most recently recorded e-mail address for a Potential Collective Member contained in records maintained by Defendant (if any including as provided to Defendant by any staffing agency), the most recently recorded e-mail address in Plaintiffs’ Counsel’s records, any e-mail address a Potential Collective Member provides to the Parties or the Administrator, and any e-mail address resulting from skip tracing conducted by the Administrator.

1.13. “**Last Known Cellular Phone Number**” means the most recently recorded cellular telephone number for a Potential Collective Member contained in records maintained by Defendant (if any including as provided to Defendant by any staffing agency), the most recently recorded cellular telephone number in Plaintiffs’ Counsel’s records, any cellular telephone number a Potential Collective Member provides to the Parties or the Administrator, and any cellular telephone number resulting from skip tracing conducted by the Administrator.

1.14. “**Maximum Settlement Amount**” means the total gross amount of One Million Six Hundred Thousand Dollars (\$1,600,000), which is the most that BioReference will potentially pay in full and complete settlement of the Action and as consideration for the Releases and other terms and conditions of this Agreement. The Maximum Settlement Amount will satisfy and resolve the claims of the Participating Plaintiffs and all Participating Collective Members; any Service Awards; the Administration Costs; and any Cost and Fee Award. BioReference will owe no further amounts in connection with the Settlement (except for Employer Payroll Taxes pursuant to Section 3.7).

1.15. “**Net Settlement Fund**” means the Maximum Settlement Amount minus the Cost and Fee Award, the Service Awards, and the Administration Costs.

1.16. “**Notice**” means the document provided to the Potential Collective Members to notify them of the Settlement, the form of which is attached hereto as **Exhibit 2**.

1.17. “**Notice Packet**” means the documents that will be mailed to the Potential Collective Members pursuant to the terms of this Agreement, and includes the following documents: (1) Notice (**Exhibit 2**); and (2) Claim Form And Release (**Exhibit 3**). This Agreement will be provided to Potential Collective Members by email and made available by the Administrator on a website.

1.18. “**Claim Form And Release**” means the form that a Potential Collective Member (other than a Participating Plaintiff) must timely complete, sign and return to the Administrator in accordance with this Agreement to be eligible to join the settlement and receive a settlement payment. The form of the Claim Form And Release is attached as **Exhibit 3**.

1.19. “**Opt-In Plaintiff**” means any individual who filed a consent to join the Action, pursuant to 29 U.S.C. § 216(b). An Opt-In Plaintiff will become a Participating Collective Member by timely completing, signing and returning a Claim Form And Release.

1.20. “**Participating Collective Members**” means Potential Collective Members who timely complete, sign and return a Claim Form And Release and Participating Plaintiffs who timely execute this Agreement.

1.21. “**Participating Plaintiffs**” means any and all of the Named Plaintiffs who timely execute the Agreement.

1.22. “**Plaintiffs’ Counsel**” means counsel for the Named Plaintiffs, Opt-In Plaintiffs and the Participating Collective Members, the Law Office of Christopher Q. Davis, PLLC.

1.23. “**Potential Collective Members**” means anyone who, at any time during the Sailing Period, as reflected in the records of Defendant, (a) was employed by BioReference, JPI, Medix and/or All Medical as an hourly (non-exempt) employee; and (b) worked as a Cruise Swabber and/or Team Lead onboard Royal Caribbean Group cruise ships.

1.24. “**QSF**” means the Qualified Settlement Fund account established by the Administrator for the settlement payment by Defendant in an amount up to the Maximum Settlement Amount. The QSF will be controlled by the Administrator subject to the terms of this Agreement and the Court’s Final Approval Order. The QSF is reversionary. Any monies shall revert solely and exclusively to BioReference if they are unclaimed or otherwise remaining in the QSF as of the later of: (a) the last day for Participating Collective Members to cash or deposit their Settlement Checks pursuant to Section 3.9; or (b) six (6) calendar months after BioReference initially funds the QSF.

1.25. “**Qualifying Cruises**” means the Royal Caribbean Group cruises that a Potential Collective Member worked as either a Cruise Swabber or Team Lead during the Sailing Period as reflected in Defendant’s records.

1.26. “**Released Parties**” means BioReference, The JPI Group (“JPI”), Medix Staffing Solutions, Inc. (“Medix”), All Medical Personnel (“All Medical”), Royal Caribbean Group and each of their predecessors, successors, assigns, parents, subsidiaries, operating companies, affiliates, owners, insurers, reinsurers, directors, and current and former partners, officers, members, employees, contractors, attorneys, representatives and agents including, but not limited to, OPKO Health, Inc.

1.27. “**Sailing Period**” means the time period from June 1, 2021, to June 30, 2022.

1.28. “**Service Awards**” means the amounts approved by the Court to be paid to the Participating Plaintiffs in addition to their awards as Potential Collective Members. Payment of a Service Award to a Participating Plaintiff is conditioned on the Participating Plaintiff releasing claims as set forth in Section 4.2 of this Agreement. Service Awards shall be paid from the QSF.

1.29. “**Settlement**” refers to the settlement described in this Agreement.

1.30. “**Settlement Award**” is the portion of the Net Settlement Fund attributable to each Potential Collective Member based on the allocation formula described herein. Specifically, each Potential Collective Member’s Settlement Award will include, as further defined in Section 3.4 below: (1) a “Wage Payment,” (2) a “Liquidated Damages Payment,” and (3) a “Business Expense Reimbursement Payment.”

1.31. “**Settlement Checks**” mean the checks issued to Participating Plaintiffs and the Participating Collective Members for their share of the Net Settlement Fund calculated in accordance with this Agreement.

1.32. “**Text Message Notice**” means the Court-approved text message that (to the extent allowed by applicable law) the Administrator sends to Potential Collective Members notifying them of this Settlement. The form of the Text Message Notice is attached as **Exhibit 4**.

1.33. “**Work Data**” means the following information regarding the Potential Collective Members that BioReference will in good faith compile from its records (or through requests to JPI, All Medical and Medix) and provide to the Administrator: (1) the full name of each Potential Collective Member; and (2) the number of Qualifying Cruises for each Potential Collective Member. The Work Data will be treated as confidential information by the Administrator and shall not be disclosed to Plaintiffs’ Counsel or any third-party without Defendant’s prior written consent. The Work Data will not be used by the Administrator for any purpose other than to effectuate the terms of this Settlement.

2. INITIAL PROCEDURAL ISSUES

2.1. **Binding Agreement.** Subject to the Court’s approval, this Agreement is a binding agreement and contains all material agreed-upon terms for a full and final settlement of the Action.

2.2. **Non-Admission of Liability.** By agreeing to the terms of this Agreement, BioReference does not acknowledge any fault or liability. These terms have been reached because this Settlement will avoid further expense and disruption due to the pendency and expense of litigation and put the claims in the Action finally to rest. Nothing in this Agreement shall be construed as an admission by Defendant of liability, or as an admission that a class or collective should be certified for any purpose other than settlement purposes. The Agreement is a settlement document and will, pursuant to Federal Rule of Evidence 408, be inadmissible in evidence in any lawsuit or proceeding for any purpose, except an action or proceeding to approve, interpret, or enforce the Agreement (including to enforce the release of claims provisions).

2.3. **Retention of Administrator.** Plaintiffs’ Counsel will be responsible for retaining the Administrator. The Administrator shall be responsible for administering the Settlement including: (1) preparing, printing, and disseminating to Potential Collective Members the Notice Packet and postage prepaid Claim Form And Releases, in the manner and means specified herein; (2) creating and maintaining the electronic portal through which Potential Collective Members can complete, sign and submit Claim Form And Releases, including maintenance of all related electronic, and other records; (3) promptly and simultaneously copying counsel for all Parties on material correspondence and promptly and simultaneously notifying all counsel for the Parties of any material requests or communications made by any Party; (4) promptly and simultaneously furnishing to counsel for the Parties copies of any written or electronic communications from Potential Collective Members that the Administrator receives; (5) calculating Settlement Awards for the Participating Plaintiffs and Potential Collective Members in accordance with this Agreement; (6) receiving Claim Form And Releases; (7) mailing the Settlement Checks to Participating Collective Members, (9) mailing Court approved Service Awards, (10) mailing or initiating a wire transfer of Court-approved Attorneys’ Fees and Costs, and (11) providing a final report detailing the results of the Claim Form And Release mailings and participation to Defendant’s Counsel and Plaintiffs’ Counsel. The Administration Costs will be \$36,213.00. Subject to Approval by the Court, the Administration Costs shall be paid from the QSF.

Notwithstanding any other provision of this Section 2.3, the Administrator will maintain strict confidentiality of the Work Data and will not disclose it, in whole or in part, to Plaintiffs' Counsel.

2.4. **Approval Motion and Dismissal of Action.**

- (A) Within fourteen (14) days after the execution by all Parties of this Agreement, Plaintiffs' Counsel will file the Unopposed Motion for Approval of Collective Action Settlement Agreement and Release that is attached to this Agreement as **Exhibit 5** ("Approval Motion"). Defendant's Counsel will not oppose the Approval Motion.
- (B) As reflected in **Exhibit 5**, in the Approval Motion, Plaintiffs' Counsel will request that the Court enter the Final Approval Order.

2.5. **Effect of Failure to Grant Approval.** If the Court denies the Approval Motion or otherwise fails to enter the Final Approval Order without material modification, the Parties will work together, diligently and in good faith, to remedy any issue(s) leading to such denial and to seek Court approval of a renegotiated settlement (without any change to the Maximum Settlement Amount). If, despite the Parties' efforts, they are unable to reach agreement on a settlement acceptable to the Court, this Agreement will become null and void, and:

- (A) The Action will proceed as if no settlement had been attempted.
- (B) The QSF will not be funded. If it was already funded, no portion of the QSF will be distributed.
- (C) The Administrator will return the entire QSF (if any) to BioReference.
- (D) In that event that the Court certified a collective in connection with the Settlement, the collective shall be decertified (either by the Court *sua sponte* or on a motion by Defendant, which Plaintiffs agree not to oppose).
- (E) Defendant retains all rights and defenses including the right to contest whether the Action should be certified and maintained as a collective and/or class action and to contest the merits of the claims in the Action.
- (F) The Parties agree to each pay half of any fees and costs incurred by the Administrator through the date the Court denies the Approval Motion.

3. THE SETTLEMENT

3.1. **Certification of the Collective for Purposes of Settlement Only.** For the limited purposes of this Settlement only, the Parties stipulate that the Court may certify the Action as an FLSA opt-in collective action pursuant to 29 U.S.C. § 216(b) for all Potential Collective Members (the "**FLSA Stipulation**"). The FLSA Stipulation is made solely for purposes of the Settlement.

The FLSA Stipulation is in no way an admission that collective certification is proper or that certification requirements would be established by further discovery.

3.2. **Service Awards.** In addition to their individual Settlement Awards, each Participating Plaintiff will receive, subject to Court approval, a Service Award in the amounts specified below from the QSF. Defendant will not oppose the granting of the Service Awards.

- (A) For services rendered on behalf of the Potential Collective Members and as consideration for the release set forth below in Section 4.2, Laurence Rosenberg will receive a Service Award of no more than \$15,000.00.
- (B) For services rendered on behalf of the Potential Collective Members and as consideration for the release set forth below in Section 4.2, Kelly Brown will receive a Service Award of no more than \$15,000.00.
- (C) For services rendered on behalf of the Potential Collective Members and as consideration for the release set forth below in Section 4.2, Kenneth Cardarelle, Deborah Desmarais, Saul Downes, Jason Faulkner, Isaiah Johnson, Shireen Reyahi, and Tre Jur Williams will each receive a Service Award of no more than \$10,000.00 each.

3.3. **Cost and Fee Award; Administration Costs.** The Cost and Fee Award shall consist of Plaintiffs' Counsels' reasonable attorneys' fees and litigation costs, and BioReference will not oppose a Cost and Fee Award of up to 33.33% of the Maximum Settlement Amount. The Cost and Fee Award shall be paid from the QSF in accordance with Section 3.8. The Cost and Fee Award awarded by the Court shall be the full, final and complete payment by BioReference of all attorneys' fees, costs and expenses in connection with the Action. The Parties and the Participating Collective Members shall otherwise bear their own fees, costs and expenses related to the Action and will not seek reimbursement from any other Party. The Administration Costs will also be paid from the QSF and in accordance with Section 3.8.

3.4. **Allocation of Net Settlement Fund.** The Administrator will calculate the amount available to each Potential Collective Member by allocating the Net Settlement Fund as follows:

- (A) \$300 per Potential Collective Member for a "**Business Expense Reimbursement Payment.**" Payment of a Business Expense Reimbursement Payment to a Participating Collective Member is conditioned on the Participating Collective Member releasing claims as set forth in Section 4.1 of this Agreement.
- (B) One half of the remaining Net Settlement Fund, after allocating the "Business Expense Reimbursement Payments," will be allocated for the "**Wage Payments.**" Payment of a Wage Payment to a Participating Collective Member is conditioned on the Participating Collective Member releasing claims as set forth in Section 4.1 of this Agreement.
- (C) One half of remaining Net Settlement Fund, after allocating the "Business Expense Reimbursement Payments," will be allocated for the "**Liquidated Damages**

Payments.” Payment of a Liquidated Damages Payment to a Participating Collective Member is conditioned on the Participating Collective Member releasing claims as set forth in Section 4.1 of this Agreement.

The value of each Potential Collective Member’s Wage Payment and Liquidated Damages Payment will be that Potential Collective Member’s pro rata share based on the Potential Collective Member’s Qualifying Cruises. Each Potential Collective Member’s pro rata share will be calculated by dividing the individual Potential Collective Member’s total Qualifying Cruises by the total number of Qualifying Cruises worked by all Potential Collective Members. The resulting fraction will then be multiplied by the remaining Net Settlement Fund, after allocating the “Business Expense Reimbursement Payments.” Half of this amount will be the Potential Collective Member’s Wage Payment and the other half will be the Potential Collective Member’s Liquidated Damages Payment.

In no event will the total combined value of all Potential Collective Members’ pro rata shares plus the total combined value of all Potential Collective Members’ Business Expense Reimbursement Payments exceed the total value of the Net Settlement Fund.

3.5. Information Needed to Calculate Settlement Amounts. Within thirty (30) calendar days after the Court enters the Final Approval Order, Defendant’s Counsel will provide the Administrator with the Work Data. The Administrator will not disclose the Work Data (in whole or in part) to Plaintiffs’ Counsel or any third party.

3.6. Tax Treatment of Settlement Awards.

- (A) The Wage Payment Amount will be considered wages subject to the withholding of all applicable local, state, and federal taxes. The Administrator shall make the required withholdings and shall issue an IRS Form W-2 to each recipient of a Wage Payment Amount for this portion of the recipient’s Settlement Award.
- (B) The Liquidated Damages Payment and Business Expense Reimbursement Payment will be considered non-wage payments for interest, unreimbursed business expenses, liquidated damages and any and all other statutory and civil penalties available under any applicable local, state, and federal laws. The Administrator shall issue an IRS Form 1099 to each Participating Collective Member for this non-wage portion of the Settlement Award, if necessary, in accordance with IRS requirements.
- (C) Any Court-approved Service Awards will be considered wages subject to the withholding of all applicable local, state, and federal taxes. The Administrator shall make the required withholdings and shall issue an IRS Form W-2 to each Participating Plaintiff for any Court-approved Service Award in accordance with IRS requirements.
- (D) Each Participating Collective Member is solely responsible for correctly characterizing his or her Settlement Award for tax purposes and paying any taxes

due. BioReference shall have no liability to any tax authorities for the tax treatment of the Settlement Awards or Service Awards as set forth in the Agreement.

- (E) BioReference, Defendant's Counsel, Plaintiffs, and Plaintiffs' Counsel do not intend anything contained herein to constitute legal advice regarding the taxability of any amount paid hereunder, and no person shall rely on anything contained in the Agreement or conveyed by BioReference or Defendant's Counsel as such. The tax issues for each Participating Collective Member may be unique, and each such individual should obtain independent tax advice concerning any payments resulting from the Agreement.

3.7. **Employer Payroll Taxes.** The Administrator shall pay the Employer Payroll Taxes from unclaimed amounts in the QSF. If there is an insufficient amount of unclaimed funds in the QSF, then the Defendant shall be solely responsible for any Employer Payroll Taxes due and owing. Within ten (10) calendar days after the later of Final Judgment or the latest deadline for a Potential Collective Member to complete, sign and submit a Claim Form And Release, the Administrator will inform Defendant of an estimate of all Employer Payroll Taxes due with respect to the amounts treated as wages pursuant to Sections 3.4 and 3.6. To the extent the total amount of Employer Payroll Taxes exceeds the amount of unclaimed funds in the QSF, BioReference will transfer the difference to the Administrator within thirty (30) calendar days of receiving a written itemized request from the Administrator, which transferred funds the Administrator will use solely for purposes of paying the Employer Payroll Taxes. Except as otherwise provided in this paragraph, BioReference shall have no liability with respect to tax obligations arising as a result of the Settlement.

3.8. **Timing.**

- (A) Within twenty-one (21) days after the later of Final Judgment or the latest deadline for a Potential Collective Member to complete, sign and submit a Claim Form And Release, the Administrator shall request from BioReference, in writing, the amount of funds that the Administrator reasonably calculates will be sufficient to pay all amounts claimed by the Participating Plaintiffs and the Participating Collective Members, as well as the Court-approved Service Awards, the Cost and Fee Award, and the Administration Costs. In no event may the amount requested by the Administrator exceed the Maximum Settlement Amount.
- (B) Within thirty (30) days after receiving the written request from the Administrator described in Section 3.8(A), BioReference shall transfer the requested funds to the Administrator, which the Administrator shall maintain in the QSF.
- (C) Within ten (10) business days after BioReference complies with Section 3.8(B), the Administrator shall mail (i) Settlement Checks to the Participating Collective Members, and (ii) Service Awards to the Participating Plaintiffs pursuant to the terms of this Agreement.
- (D) Within ten (10) business days after BioReference complies with Section 3.8(B), the Administrator shall (i) initiate a wire transfer of the Cost and Fee Award to Plaintiffs'

Counsel, and (ii) transfer funds from the QSF to the Administrator for the Administration Costs.

3.9. **Cashing of Settlement Checks.** Each Participating Collective Member shall have one hundred eighty (180) days after the issuance date to cash or deposit the Participating Collective Member's Settlement Check(s). Settlement Checks will state that they are void after one hundred eighty (180) days and will be accompanied by a cover letter when they are sent by the Administrator by U.S. First Class Mail. At any point in the check cashing period, the Administrator shall have the authority to stop payment on a lost Settlement Check and issue a new one to a requesting Participating Collective Member. The costs associated with doing so will be covered by the Administration Costs.

3.10. **Distribution of Notices.**

- (A) Within thirty (30) calendar days after the entry of the Final Approval Order, Defendant's Counsel will provide the Administrator with a confidential list containing each Potential Collective Member's Last Known Mailing Address, Last Known E-mail Address, and Last Known Cellular Number (collectively, the "Potential Collective Members List"), to the extent these items are within Defendant's possession, in electronic form. All information provided in the Potential Collective Members List will be treated as confidential information by the Administrator and shall not be disclosed to Plaintiffs' Counsel or any third-party without Defendant's prior written consent. Said information will not be used by the Administrator for any purpose other than to effectuate the terms of the Settlement and issue required tax documents, as applicable.
- (B) Within forty-five (45) calendar days after the later of Final Judgment or the date on which the Administrator receives the Potential Collective Members List, the Administrator will send a Notice Packet to each Potential Collective Member except the Administrator will not send a Notice Packet to the Participating Plaintiffs. The Notice Packet will be sent via First Class U.S. Mail to each Potential Collective Member's Last Known Mailing Address and via email to each Potential Collective Member's Last Known E-mail Address. To the extent permissible under applicable law as determined by the Administrator, the Text Message Notice will be sent via text message to each Potential Collective Member's Last Known Cellular Phone Number. BioReference shall not incur any liability for text messages sent by the Administrator to any Potential Collective Member (or anyone else) in violation of applicable law.
- (C) The Administrator will take all reasonable steps to obtain the correct address of any Potential Collective Member for whom a Notice Packet is returned by the post office as undeliverable, including no more than two (2) skip traces, and shall attempt no more than two (2) re-mailings to any Potential Collective Member for whom it obtains a more recent address. The Administrator will notify Defendant's Counsel of any Notice Packet sent to a Potential Collective Member that is returned as undeliverable after the first mailing, as well as any such Notice returned as undeliverable after any subsequent mailings as set forth in this Agreement. The

Administrator will notify Plaintiffs' Counsel of the number of Potential Collective Members whose Notice Packets return as undeliverable after the first mailing and any subsequent mailings, but the Administrator will not provide Plaintiffs' Counsel with the names or any other identifying information regarding those Potential Collective Members. If a Notice Packet is not returned to the Administrator as undeliverable it will be presumed to have been received by the intended recipient.

- (D) The Administrator will send out reminder postcards (in the form attached to this Agreement as **Exhibit 6**) twenty (20) days after the initial mailing of the Notice Packet, reminding each Potential Collective Member of the deadline to complete, sign and submit a Claim Form And Release.
- (E) In order to comply with withholding and other tax requirements as set forth in this Agreement, the Administrator may request the Social Security Numbers from BioReference for all Participating Collective Members. BioReference shall provide the requested Social Security Numbers to the Administrator to the extent that BioReference possesses them.

3.11. **Claim Form And Releases.**

- (A) Except for a Participating Plaintiff who executes this Agreement, a Potential Collective Member who chooses to opt into the Settlement and receive a Settlement Check must timely return a signed Claim Form And Release to the Administrator via either First Class United States Mail, fax, email or through an electronic portal set up by the Administrator. Electronic signatures will be deemed an original signature for purposes of this Agreement and will be binding. To be effective, a Claim Form And Release must be postmarked by, or otherwise received on or before, sixty (60) days from the mailing of the Notice Packet to the Potential Collective Member and no later than ninety (90) days from the date the Notice Packets are first mailed pursuant to Section 3.10 (B) above.
- (B) The Administrator will keep accurate records of the dates on which it sends out Notices to each Potential Collective Member. The Administrator will record the date on which it receives each signed Claim Form And Release and shall provide copies of each signed Claim Form And Release to Plaintiffs' Counsel and Defendant's Counsel on a weekly basis. The Administrator will, as soon as practicable after the end of the last applicable deadline for any Potential Collective Member to return a Claim Form And Release, send Plaintiffs' Counsel and Defendant's counsel, via email, a final list of all Potential Collective Members who timely completed, signed and returned Claim Form And Releases. The Administrator will retain the stamped originals of all such Claim Form And Releases and originals of all envelopes accompanying Claim Form And Releases in its files until such time as the Administrator is relieved of its duties and responsibilities under this Agreement.

- (C) The Claim Form And Release also will constitute a consent to join the Action pursuant to Section 16(b) of the FLSA for settlement purposes only. The Notices will explain that by submitting a Claim Form And Release to become a Participating Collective Member each individual (a) will be electing to opt into the Settlement; and (b) will be releasing and agreeing not to sue for any of the Released Claims.
- (D) To be deemed timely, a signed Claim Form And Release must be returned to the Administrator and must bear a postmark of, timestamp of, or be marked as received by the Administrator, on or before the Claim Deadline.
- (E) Participating Plaintiffs do not need to submit a Claim Form And Release to be Participating Collective Members and they agree that they will not revoke the consents to join the Action that they previously filed pursuant to 29 U.S.C. § 216(b).

3.12. **Uncashed Settlement Checks.** All funds remaining in the QSF including, without limitation, from any uncashed Settlement Checks shall be returned to BioReference by the Administrator.

3.13. **Acknowledgement That the Settlement is Fair and Reasonable.** The Participating Plaintiffs and BioReference believe this Agreement is a fair, adequate and reasonable settlement of the Action and have arrived at this Settlement after arm's-length negotiations and in the context of adversarial litigation, taking into account all relevant factors, present and potential. Plaintiffs and BioReference further acknowledge that they are each represented by competent counsel and that they have had an opportunity to consult with their counsel regarding the fairness and reasonableness of this Settlement.

4. RELEASES

4.1. **Participating Collective Members Release and Covenant Not To Sue.** By signing and timely returning a Claim Form And Release, each Participating Collective Member (including each Participating Plaintiff) will, to the fullest extent permissible under applicable law, release, from the beginning of time through the date the Participating Collective Member returns the Claim Form And Release, any and all claims asserted in the Action and any and all wage and hour claims, rights, and causes of action, whether known or unknown, against the Released Parties under all federal, state, and local wage and hour laws including, but not limited to, the Fair Labor Standards Act and the wage and hour laws of the states of Colorado, Florida, Maryland, New Jersey, New York and Washington including, without limitation, all statutory, constitutional, contractual, and common law claims for wages, damages, penalties, interest, attorneys' fees, restitution, and equitable relief (including claims for overtime wages and any other wages) (collectively, the "**Participating Collective Members' Released Claims**"). By signing and timely returning a Claim Form And Release, each Participating Collective Member (including each Participating Plaintiff) agrees not to sue or otherwise bring any legal action against any of the Released Parties ever for any Participating Collective Members' Released Claims.

4.2. **Participating Plaintiffs' Release and Covenant Not To Sue.** By signing this Agreement, in addition to releasing the Participating Collective Members' Released Claims (as

described in Section 4.1), the Participating Plaintiffs are agreeing to the General Release of Claims set forth in this Section 4.2 (the “**General Release**”). This General Release constitutes a waiver and release by each Participating Plaintiff of any and all claims and causes of action, whether known or unknown, that the Participating Plaintiff may have against any of the Released Parties from the beginning of time through the date the Participating Plaintiff signs this Agreement. This General Release is much broader in scope than the Participating Collective Members’ Released Claims. The claims and causes of action released by the Participating Plaintiffs in this General Release include, but are not limited to, the following: wage and hour claims, breach of contract claims, claims for salary, incentive payments, benefits, bonuses, restricted stock awards, stock options, severance pay, commissions, and vacation pay, claims for harassment and intentional infliction of emotional distress, claims for negligence and tort, fraud claims, claims for medical bills, all claims arising in law, in equity, or pursuant to statute including, but not limited to, all claims for punitive, exemplary, compensatory and all other damages, penalties, interest, attorneys’ fees, costs, and expenses, and, without limiting the generality of the foregoing, all claims including, but not limited to, those arising under the Fair Labor Standards Act; Title VII of the Civil Rights Act of 1964, as amended; the Civil Rights Act of 1991; the Americans with Disabilities Act; 42 U.S.C. § 1981; the Age Discrimination in Employment Act; the Older Workers’ Benefit Protection Act; the Employee Retirement Income Security Act; the Genetic Information Nondiscrimination Act; the Family and Medical Leave Act; the New Jersey Law Against Discrimination; the New York State Human Rights Law; the New York City Human Rights Law; the Washington State anti-discrimination law (RCW Chapter 49.60); the Maryland anti-discrimination law (Code of Maryland, §20-602); the Florida Civil Rights Act; the Florida Whistleblower Protection Act; the Colorado Anti-Discrimination Act; retaliation provisions of every state’s Workers Compensation Law; and the wage and hour laws and regulations of every state including, without limitation, the states of Colorado, Florida, Maryland, New Jersey, New York and Washington; and any other federal, state, and local law, statute, and ordinance. By signing this Agreement, the Participating Plaintiffs agree not to sue or otherwise bring any legal action against any of the Released Parties ever for any of the claims set forth in this Section 4.2.

4.3. The releases of claims set forth in Sections 4.1 and 4.2 of this Agreement are intended to be as broad as legally permissible and include waivers of jury trials and non-jury trials as well as claims asserted on an individual, class and collective basis including, without limitation, claims asserted under the Fair Labor Standards Act and Rule 23 of the Federal Rules of Civil Procedure.

5. INTERPRETATION AND ENFORCEMENT

5.1. **Cooperation Between the Parties; Further Acts.** The Parties shall reasonably cooperate with each other and shall use their reasonable best efforts to obtain the Court’s approval of this Agreement and all of its terms. Each party, upon the request of any other party, agrees to perform such further acts and to execute and deliver such other documents as are reasonably necessary to carry out the provisions of this Agreement.

5.2. **No Assignment.** Plaintiffs’ Counsel and Participating Plaintiffs represent and warrant that they have not assigned or transferred, or purported to assign or transfer, to any person

or entity, any claim or any portion thereof or interest therein, including, but not limited to, any interest in the Action, or any related action.

5.3. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties with regard to the subject matter contained herein, and all prior and contemporaneous negotiations and understandings between the Parties shall be deemed superseded by this Agreement.

5.4. **Binding Effect.** This Agreement shall be binding upon the Parties and, with respect to the Participating Plaintiffs and the Participating Collective Members, their spouses, children, representatives, heirs, administrators, executors, beneficiaries, conservators, attorneys and assigns.

5.5. **Arms' Length Transaction; Materiality of Terms.** The Parties have negotiated all the terms and conditions of this Agreement at arms' length. All terms and conditions of this Agreement in the exact form set forth in this Agreement are material to this Agreement and have been relied upon by the Parties in entering into this Agreement, unless otherwise expressly stated.

5.6. **Captions.** The captions or headings of the sections and paragraphs of this Agreement have been inserted for convenience of reference only and shall have no effect upon the construction or interpretation of any part of this Agreement.

5.7. **Construction.** The determination of the terms and conditions of this Agreement has been by mutual agreement of the Parties. Each party participated jointly in the drafting of this Agreement, and therefore the terms and conditions of this Agreement are not intended to be, and shall not be, construed against any party by virtue of draftsmanship.

5.8. **Blue Penciling.** If any provision of this Agreement is held by a court of competent jurisdiction to be void, voidable, unlawful or unenforceable, the remaining portions of this Agreement will remain in full force and effect.

5.9. **Governing Law.** This Agreement shall in all respects be interpreted, enforced and governed by and under the laws of the State of New Jersey, without regard to choice of law principles, except to the extent that the law of the United States governs any matter set forth herein, in which case such federal law shall govern.

5.10. **Continuing Jurisdiction and Forum Selection.** The United States District Court for the District of New Jersey shall retain jurisdiction over the interpretation and implementation of this Agreement as well as any and all matters arising out of, or related to, the interpretation or implementation of this Agreement. In the event that the Court lacks jurisdiction, the Parties agree to submit to the jurisdiction of the state courts of State of New Jersey.

5.11. **Waivers, etc. to Be in Writing.** No waiver, modification or amendment of the terms of this Agreement, whether purportedly made before or after the Court's approval of this Agreement, shall be valid or binding unless in writing, signed by or on behalf of all Parties and then only to the extent set forth in such written waiver, modification or amendment, subject to any required Court approval. Any failure by any party to insist upon the strict performance by the

other party of any of the provisions of this Agreement shall not be deemed a waiver of future performance of the same provisions or of any of the other provisions of this Agreement, and such party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Agreement.

5.12. **When Agreement Becomes Effective; Counterparts.** This Agreement shall become effective upon its execution, subject to the Court’s entry of the Final Approval Order and Final Judgment. The Parties may execute this Agreement in counterparts, and execution in counterparts shall have the same force and effect as if all Parties had signed the same instrument.

5.13. **Signatures.** This Agreement is valid and binding upon the signatures of Defendant’s authorized representative and the Participating Plaintiffs. Plaintiffs’ Counsel shall deliver this Agreement to the Participating Plaintiffs for their signatures and shall deliver copies of the Agreement, signed by the Participating Plaintiffs, to Defendants’ Counsel.

5.14. **Electronic Signatures.** Any party may execute this Agreement by electronic means (including an electronic signature platform). Any signature made and transmitted by electronic means for the purpose of executing this Agreement shall be deemed an original signature for purposes of this Agreement and shall be binding upon the Party whose counsel transmits the signature page.

ACCEPTED AND AGREED BY:

DATED: 10/16, 2023

BIOREFERENCE

By: *Ehud Fried*

Its: Senior Legal Counsel

DATED: _____, 2023

LAURENCE ROSENBERG

DATED: _____, 2023

KELLY BROWN

DATED: _____, 2023

KENNETH CARDARELLE

DATED: _____, 2023

DEBORAH DESMARAIS

DATED: _____, 2023

SUAL DOWNES

DATED: _____, 2023

JASON FAULKNER

DATED: _____, 2023

ISAIAH JOHNSON

DATED: _____, 2023

SHIREEN REYAH

DATED: _____, 2023

TRE JUR WILLIAMS

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ACCEPTED AND AGREED BY:

DATED: _____, 2023

BIOREFERENCE

By: _____

Its: _____

DATED: _____, 2023
10 / 16 / 2023

LAURENCE ROSENBERG



DATED: _____, 2023

KELLY BROWN

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ACCEPTED AND AGREED BY:

DATED: _____, 2023

BIOREFERENCE

By: _____

Its: _____

DATED: _____, 2023

LAURENCE ROSENBERG

DATED: _____, 2023

10 / 16 / 2023

KELLY BROWN



DATED: _____, 2023
10 / 16 / 2023

KENNETH CARDARELLE



DATED: _____, 2023

DEBORAH DESMARAIS

DATED: _____, 2023

SUAL DOWNES

DATED: _____, 2023

JASON FAULKNER

DATED: _____, 2023

ISAIAH JOHNSON

DATED: _____, 2023

SHIREEN REYAH

DATED: _____, 2023

KENNETH CARDARELLE

DATED: _____, 2023
10 / 16 / 2023

DEBORAH DESMARAIS

Deborah-Christie Desmarais

DATED: _____, 2023

SUAL DOWNES

DATED: _____, 2023

JASON FAULKNER

DATED: _____, 2023

ISAIAH JOHNSON

DATED: _____, 2023

SHIREEN REYAH

DATED: _____, 2023

KENNETH CARDARELLE

DATED: _____, 2023

DEBORAH DESMARAIS

DATED: _____, 2023

10 / 16 / 2023

SUAL DOWNES

Sual Downes

DATED: _____, 2023

JASON FAULKNER

DATED: _____, 2023

ISAIAH JOHNSON

DATED: _____, 2023

SHIREEN REYAH

DATED: _____, 2023

KENNETH CARDARELLE

DATED: _____, 2023

DEBORAH DESMARAIS

DATED: _____, 2023

SUAL DOWNES

DATED: _____, 2023

10 / 16 / 2023

JASON FAULKNER



DATED: _____, 2023

ISAIAH JOHNSON

DATED: _____, 2023

SHIREEN REYAH

DATED: _____, 2023

KENNETH CARDARELLE

DATED: _____, 2023

DEBORAH DESMARAIS

DATED: _____, 2023

SUAL DOWNES

DATED: _____, 2023

JASON FAULKNER

DATED: _____, 2023

10 / 16 / 2023

ISAIAH JOHNSON

Isaiah Johnson

DATED: _____, 2023

SHIREEN REYAH

DATED: _____, 2023

KENNETH CARDARELLE

DATED: _____, 2023

DEBORAH DESMARAIS

DATED: _____, 2023

SUAL DOWNES

DATED: _____, 2023

JASON FAULKNER

DATED: _____, 2023

ISAIAH JOHNSON

DATED: _____, 2023

10 / 16 / 2023

SHIREEN REYAH



DATED: _____, 2023
10 / 16 / 2023

TRE JUR WILLIAMS

Tre Jur Williams

Exhibit 1

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

LAURENCE ROSENBERG, KELLY M. BROWN,
KENNETH CARDARELLE, DEBORAH
DESMARAIS, SUAL DOWNES, JASON
FAULKNER, ISAAH JOHNSON, SHIREEN
REYAHY, and TRE JUR WILLIAMS, individually and
on behalf of all others similarly situated,

Plaintiffs,

vs.

BIOREFERENCE LABORATORIES, INC.,

Defendant.

Case No. 2:2022-cv-02321

**[PROPOSED] ORDER GRANTING PLAINTIFFS’ UNOPPOSED MOTION FOR
APPROVAL OF COLLECTIVE ACTION FAIR LABOR STANDARDS ACT
SETTLEMENT AGREEMENT AND RELEASE, AND ENTERING FINAL JUDGMENT
DISMISSING THE CASE WITH PREJUDICE**

WHEREAS Plaintiffs Laurence Rosenberg, Kelly M. Brown, Kenneth Cardarelle, Deborah Desmarais, Sual Downes, Jason Faulkner, Isaiah Johnson, Shireen Reyahi and Tre Jur Williams (“Plaintiffs”) have moved for approval of a collective action Fair Labor Standards Act settlement and release; and

WHEREAS, having reviewed and considered the proposed Settlement Agreement dated [insert date] (the “Settlement Agreement”), Plaintiffs’ Memorandum of Law, and the Declaration filed in support of Plaintiffs’ Motion, the Court is satisfied that the terms and conditions set forth in the Settlement Agreement are the result of good faith, arms’ length settlement negotiations and a fair and reasonable resolution of a bona fide dispute in which the interests of the parties were represented by competent and experienced counsel;

IT IS HEREBY ORDERED:

1. Plaintiffs’ Motion is granted in its entirety;

2. The Settlement Agreement is approved in its entirety including, without limitation:
 - a. For purposes of this settlement only, notice of the settlement and an opportunity to participate in the settlement as set forth in the Settlement Agreement are authorized for individuals who, at any time from June 1, 2021, to June 30, 2022, as reflected in BioReference's records: (1) were employed by BioReference, The JPI Group, Medix Staffing Solutions, Inc., or All Medical Personnel as hourly (non-exempt) employees; and (2) worked as Cruise Swabbers or Team Leads onboard Royal Caribbean cruise ships.
 - b. The award of attorneys' fees to Plaintiffs' attorneys in the amount of \$533,280 (to be issued from the settlement fund pursuant to the Settlement Agreement) is approved.
 - c. The award of costs to Plaintiffs' attorneys in the amount of \$11,226.09 (to be issued from the settlement fund pursuant to the Settlement Agreement) is approved.
 - d. Service awards for Plaintiffs as set forth in the Settlement Agreement (to be issued from the settlement fund pursuant to the Settlement Agreement) are approved.
 - e. The payment of the Settlement Administrator's fees in the total amount of \$36,213.00 (to be issued from the settlement fund pursuant to the Settlement Agreement) is approved.
 - f. The Releases of Claims and Covenants Not To Sue in the Settlement Agreement are reasonable, supported by adequate consideration and fully enforceable.
3. Plaintiffs' claims are dismissed with prejudice and (except as otherwise expressly provided in this Order) without costs.

4. Without affecting the finality of this Order in any way, this Court retains jurisdiction over the parties to this action for the purpose of the administration and enforcement of the settlement until the conclusion of the settlement administration process.

5. This case is closed and all other pending motions are denied as moot.

6. Final judgment is hereby entered.

Dated: _____

Honorable

Exhibit 2

**NOTICE TO INDIVIDUALS EMPLOYED AS A CRUISE SWABBER OR TEAM LEAD
ON ROYAL CARIBBEAN GROUP CRUISE SHIPS AT ANY TIME BETWEEN
JUNE 1, 2021, and JUNE 30, 2022**

OPPORTUNITY TO RECEIVE SETTLEMENT PAYMENT

*The United States District Court, District of New Jersey, authorized this notice.
This is not a solicitation from a lawyer.*

Dear [NAME]:

If you were employed by BioReference Health, LLC (formerly known as BioReference Laboratories, Inc.) (“BioReference”), The JPI Group (“JPI”), Medix Staffing Solutions, Inc. (“Medix”) or All Medical Personnel (“All Medical”) as a Cruise Swabber or Team Lead on Royal Caribbean Group cruise ships at any time during the period from June 1, 2021, to June 30, 2022, you are eligible to participate in a settlement of the lawsuit titled *Laurence Rosenberg, et al. v. BioReference Laboratories, Inc.*, No. 2:22-cv-02321-CCC-CLW (DNJ) (the “Settlement”).

If you choose to participate in the Settlement, you will receive a settlement payment of **[insert amount]** (less applicable withholding) (the “Settlement Payment”). As a condition of receiving the Settlement Payment, you must agree to release BioReference and related parties from liability for all of the claims in the lawsuit and any other wage and hour claims arising before you return the completed Claim Form And Release.

**PLEASE READ THIS NOTICE CAREFULLY. IT CONTAINS IMPORTANT
INFORMATION ABOUT YOUR RIGHTS.**

- This Settlement resolves a lawsuit in the United States District Court, District of New Jersey, in which the plaintiffs allege that BioReference failed to issue all of the overtime pay owed to Cruise Swabbers and Team Leads and failed to reimburse all of their business expenses. BioReference denies the allegations and maintains that it acted lawfully. The parties disagree as to which party would have prevailed if the lawsuit had continued. The Settlement avoids the costs and risks of continuing the lawsuit.
- Attached is a copy of the Settlement Agreement setting forth the terms of the Settlement. Please read it carefully.
- **TO RECEIVE A PAYMENT YOU MUST COMPLETE AND RETURN THE ENCLOSED CLAIM FORM AND RELEASE.**

Below are Frequently Asked Questions regarding the Settlement.

1. *Why am I receiving this Notice?*

On April 21, 2022, two individuals filed a lawsuit against BioReference. One of the individuals alleged that she had worked for BioReference through a staffing agency. The

other individual alleged that he had been directly employed by BioReference. Both alleged that, when working for BioReference on Royal Caribbean Group cruise ships, Cruise Swabbers and Team Leads did not receive all of the overtime pay they were entitled to receive or full reimbursement for their work-related expenses. On July 5, 2022, seven additional individuals joined the lawsuit asserting similar allegations. BioReference denies the allegations in the lawsuit in their entirety.

In May 2023, after significant litigation and the exchange of certain documents and information, the parties proceeded to mediation. With the help of an impartial mediator, the parties reached the Settlement to resolve the litigation. Under the Settlement, which has been approved by the Court, BioReference agreed to pay up to \$1,600,000 in exchange for dismissal of the lawsuit. In addition, the individuals who filed the lawsuit and anyone else who participates in this Settlement must release certain claims against BioReference and related parties.

Former Cruise Swabbers and Team Leads are eligible to receive a share of this settlement in exchange for releasing certain claims. BioReference's records indicate that you worked on Royal Caribbean Group cruise ships as a Cruise Swabber or Team Lead directly for BioReference or as an employee of JPI, Medix or All Medical.

Therefore, you may choose to participate in this Settlement.

2. *What are my options?*

You have two options, as follows:

Option #1: If you want to participate in the Settlement, you must complete the attached Claim Form And Release. If you return this form by the deadline, you will receive the Settlement Payment.

The Settlement Payment was calculated based on the number of Royal Caribbean Group cruises you worked as a Cruise Swabber or Team Lead between June 1, 2021, and June 30, 2022, as reflected in BioReference's records.

If you return the Claim Form And Release, you will be, to the fullest extent permissible under applicable law, releasing, from the beginning of time to the date you return the completed Claim Form And Release, any and all claims asserted in the Action and any and all wage and hour claims, rights, and causes of action, whether known or unknown, against the Released Parties under all federal, state, and local wage and hour laws including, but not limited to, the Fair Labor Standards Act and the wage and hour laws of the states of Colorado, Florida, Maryland, New Jersey, New York and Washington including, without limitation, all statutory, constitutional, contractual, and common law claims for wages, damages, penalties, interest, attorneys' fees, restitution, and equitable relief (including claims for unreimbursed business expenses and overtime wages and any other wages) (collectively, the "Released Claims").

As used in this Notice, “Released Parties” means BioReference, JPI, Medix, All Medical, Royal Caribbean Group and each of their predecessors, successors, assigns, parents, subsidiaries, operating companies, affiliates, owners, insurers, reinsurers, directors, and current and former partners, officers, members, employees, contractors, attorneys, representatives and agents including, but not limited to, OPKO Health, Inc.

Once you receive your settlement check it is important that you cash or deposit the check on or before its printed void date. Checks will not be re-issued. A Settlement Administrator will separately send you appropriate IRS forms including a Form W-2 for the wage portion of your payment and an IRS Form 1099-MISC for the non-wage portion of your payment. The wage portion of your Settlement Payment will be treated as unpaid overtime back wages and subject to withholding, while the non-wage portion is for claims for unreimbursed expenses and liquidated damages, which are not subject to withholding. Note that you are responsible for any tax obligation resulting from the payment of the Settlement Payment. The Settlement Administrator cannot provide you with tax advice. Nor can the Plaintiffs’ lawyers or BioReference’s lawyers. You should consult with your tax advisor, at your expense, regarding any tax questions.

Option No. 2: Do Nothing. Participation in the Settlement is purely voluntary. If you do not want to participate in the Settlement, you should not return the Claim Form And Release. If you do not return the Claim Form And Release, you will not join the lawsuit and **you will not receive the Settlement Payment**. If you do not return the Claim Form And Release, you will not release any claims against BioReference or the other Released Parties.

3. *What if I have questions?*

If you have any questions, please consult the Settlement Administrator at <mailto:info@rg2claims.com>. Or, you may contact counsel for Plaintiffs:

The Law Office of Christopher Q. Davis, PLLC
80 Broad Street, Suite 703
New York, NY 10004
646-430-7930
clerk@workingsolutionsnyc.com

Exhibit 3

CLAIM FORM AND RELEASE

DEADLINE: To receive your settlement payment, you must complete, sign, and return this Claim Form And Release. Your Claim Form And Release must be postmarked or otherwise received by facsimile, email, or through the website by [**insert deadline**].

CONSENT TO JOIN & AGREEMENT TO BE BOUND BY RELEASE: I agree to be bound by the collective action settlement and release approved by the Court as contained in the Settlement Agreement. I hereby designate The Law Office of Christopher Q. Davis to represent me in this action.

BY SIGNING BELOW, I AM CONFIRMING THAT I HAVE CAREFULLY READ AND FULLY UNDERSTAND ALL OF THE PROVISIONS OF THE SETTLEMENT AGREEMENT. I AM JOINING THIS SETTLEMENT – AND AGREEING TO THE RELEASE OF CLAIMS, COVENANT NOT TO SUE AND CLASS AND COLLECTIVE ACTION WAIVER – KNOWINGLY AND VOLUNTARILY, WITH FULL UNDERSTANDING OF ITS TERMS AND CONDITIONS.

I CONFIRM THAT I RECEIVED A COPY OF THE SETTLEMENT AGREEMENT BY EMAIL AND/OR I KNOW HOW TO ACCESS A COPY OF THE SETTLEMENT AGREEMENT ONLINE. I HAD THE OPPORTUNITY TO READ THE SETTLEMENT AGREEMENT BEFORE RETURNING THIS CLAIM FORM AND RELEASE.

I UNDERSTAND THAT, BY COMPLETING AND SUBMITTING THIS CLAIM FORM AND RELEASE, I AM AGREEING TO ACCEPT A SETTLEMENT PAYMENT (THE AMOUNT HAS BEEN PROVIDED TO ME IN A SEPARATE NOTICE). IN RETURN FOR THE SETTLEMENT PAYMENT, I AM RELEASING, TO THE FULLEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW, FROM THE BEGINNING OF TIME TO THE DATE I SUBMIT THIS COMPLETED FORM, ANY AND ALL CLAIMS ASSERTED IN *LAURENCE ROSENBERG, ET AL. v. BIOREFERENCE LABORATORIES, INC.*, (CIVIL ACTION NO. 2:22-CV-02321-CCC-CLW), FILED IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY, AND ANY AND ALL WAGE AND HOUR CLAIMS, RIGHTS, AND CAUSES OF ACTION, WHETHER KNOWN OR UNKNOWN, AGAINST THE RELEASED PARTIES UNDER ALL FEDERAL, STATE, AND LOCAL WAGE AND HOUR LAWS INCLUDING, BUT NOT LIMITED TO, THE FAIR LABOR STANDARDS ACT AND THE WAGE AND HOUR LAWS OF THE STATES OF COLORADO, FLORIDA, MARYLAND, NEW JERSEY, NEW YORK AND WASHINGTON INCLUDING, WITHOUT LIMITATION, ALL STATUTORY, CONSTITUTIONAL, CONTRACTUAL, AND COMMON LAW CLAIMS FOR WAGES, DAMAGES, PENALTIES, INTEREST, ATTORNEYS' FEES, RESTITUTION, AND EQUITABLE RELIEF (INCLUDING CLAIMS FOR UNREIMBURSED BUSINESS EXPENSES AND OVERTIME WAGES AND ANY OTHER WAGES). AS USED IN THIS DOCUMENT, "RELEASED PARTIES" MEANS BIOREFERENCE, ROYAL CARIBBEAN GROUP, THE JPI GROUP, MEDIX STAFFING SOLUTIONS, INC., AND ALL MEDICAL PERSONNEL, AND EACH OF THEIR PREDECESSORS, SUCCESSORS, ASSIGNS, PARENTS, SUBSIDIARIES, OPERATING COMPANIES, AFFILIATES, OWNERS, INSURERS, REINSURERS, DIRECTORS, AND CURRENT AND FORMER PARTNERS, OFFICERS, MEMBERS, EMPLOYEES, CONTRACTORS, ATTORNEYS, REPRESENTATIVES AND AGENTS INCLUDING, BUT NOT LIMITED TO, OPKO HEALTH, INC.

Date: _____, 20__

Signature

xxx-xx-_____
Last Four digits of Social Security Number

Print Full Name

Telephone Number

Email Address

Former (Maiden) Names worked under, if any: _____

IMPORTANT INSTRUCTIONS

If you elect to join the settlement and receive a settlement payment you should return this form to:

RG/2 Claims Administration LLC
P.O. Box 59479
Philadelphia, PA 19102-9479

If you send the Consent Form And Release via email, the email must be dated and sent by **[insert date]**. If you use U.S. mail or private delivery service (e.g., UPS, Federal Express), the form must be postmarked by **[insert date]**. If you fail to return the Consent Form And Release by the deadline of **[insert date]**, you will not be able to participate in the lawsuit.

You may also send the completed Claim Form And Release by e-mail to info@rg2claims.com or by fax to (215) 827-5551. You may also access and complete the Claim Form And Release online at **[insert hyperlink]**, provided you submit the online form by no later than **[insert date]**. Please use this personal identifier **[insert]** to submit the Claim Form And Release via the website.

Your settlement payment will be sent to you directly at the mailing address to which this Notice was sent. If your address changes, please call (866) 742-4955 . It is your responsibility to keep an updated address on file with the Settlement Administrator.

Exhibit 4

Text message notice:

This is a court-authorized reminder from RG/2 Claims Administration LLC. You should have received a notice explaining your eligibility to participate in the settlement of a lawsuit, Laurence Rosenberg, et al. v. BioReference Laboratories, Inc. You are eligible to participate in the settlement if you worked on a Royal Caribbean Group cruise ship as a Cruise Swabber or Team Lead between June 1, 2021, and June 30, 2022. In order to participate in the settlement, you must complete, sign and submit a Claim Form And Release by the deadline set forth in the notice. By submitting the Claim Form And Release, you are releasing and waiving certain claims. If you have any questions about the Claim Form And Release or if you did not receive it or no longer have it, you may contact the Settlement Administrator at (866) 742-4955 or orinfo@rg2claims.com. Reply STOP to prevent further updates or communication. Message and data rates may apply.

Exhibit 5

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

LAURENCE ROSENBERG, KELLY M. BROWN, KENNETH
CARDARELLE, DEBORAH DESMARAIS, SUAL DOWNES,
JASON FAULKNER, ISAIAH JOHNSON, SHIREEN REYAH,
and TRE JUR WILLIAMS, individually and on behalf of
all others similarly situated,

Plaintiffs,

vs.

BIOREFERENCE LABORATORIES, INC.,

Defendant.

Case No. 2:2022-cv-02321

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS'
UNOPPOSED MOTION FOR APPROVAL OF COLLECTIVE ACTION FAIR LABOR STANDARDS ACT
SETTLEMENT AND RELEASE**

Christopher Q Davis
Brendan Sweeney
Nicholas Bittner
Law Office of Christopher Q. Davis
80 Broad Street, Suite 703
New York, NY 10004
19176351218
cdavis@workingsolutionsnyc.com
Attorneys for Plaintiffs

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Plaintiffs Laurence Rosenberg, Kelly M. Brown, Kenneth Cardarelle, Deborah Desmarais, Sual Downes, Jason Faulkner, Isaiah Johnson, Shireen Reyahi and Tre Jur Williams, along with the twenty-eight individuals who have joined this case as Opt-in Plaintiffs (collectively “Plaintiffs”) submit this memorandum in support of their Unopposed Motion for Approval of Collective Action Fair Labor Standards Act Settlement and Release. Under the proposed settlement, Defendant BioReference Laboratories, Inc. (“BioReference”) agreed to pay up to \$1,600,000 to resolve all the claims from the Plaintiffs and any eligible individuals who elect to participate in the settlement. Plaintiffs submit that this settlement represents an excellent result for the Plaintiffs and the other former Cruise Swabbers and Team Leads who join the settlement. The Plaintiffs and Participating Collective Member will be eligible to receive awards ranging from \$417.44 (for individuals who worked one cruise) to \$11,339.63. The awards are based on: (1) \$300 to resolve claims for unreimbursed business expenses; and (2) \$117.44 per cruise worked to resolve claims of unpaid overtime and other claims for wages.

Plaintiffs respectfully request that the Court grant their unopposed motion for approval as it complies with the criteria applicable to the settlement of claims under the Fair Labor Standards Act (“FLSA”).

I. BACKGROUND

A. The Litigation

Plaintiffs alleged in the Amended Complaint that, in June 2021, BioReference entered into an agreement with Royal Caribbean Group to conduct “a COVID-19 testing program for U.S. based crew and guests who cruise with Royal Caribbean Group [(“RCG”)], helping provide a safe environment for travelers.” (Am. Comp. ¶ 64). Plaintiffs alleged that BioReference directly

employed or indirectly retained 670 people to work as Cruise Swabbers and Team Leads on RCG ships. Plaintiffs alleged that Cruise Swabbers and Team Leads would travel from their homes to U.S. ports (often in different states) and then live on cruise ships traveling to international destinations to “provide a safe environment for travelers.” *Id.* ¶ 65. The program ended as of June 19, 2022.

Plaintiffs filed their original Complaint in the District of New Jersey on April 21, 2022, and filed an Amended Complaint on July 5, 2022. (ECF Nos. 1, 40). BioReference filed an Answer on September 8, 2022. (ECF No. 56). The Amended Complaint asserts twenty causes of action including claims for unpaid overtime under the Fair Labor Standards Act (“FLSA”) and applicable state laws, failure to reimburse expenses and failure to provide accurate wage statements. (ECF No. 40). After additional investigation, Plaintiffs focused on claims for unpaid time on the first day of cruises, unpaid “off the clock” time, and claims for unreimbursed expenses.

During the period from June 2022 to March 2023, the parties vigorously litigated this case. (Sweeney Dec. ¶ 10). Plaintiffs opposed what they considered improper communications to putative class members and filed a motion seeking a protective order and corrective communications. (Mot. Discl. of Information, Jul. 27, 2022, ECF No. 44); (Decl. of Sual Downes, Aug. 5, 2022, ECF No. 49). Plaintiffs also filed a motion for conditional certification, supported by ten detailed Declarations. (Mot. to Certify Class, Aug. 26, 2022, ECF No. 52). BioReference opposed both of these motions. (ECF Nos. 57, 63). BioReference also filed a motion to compel certain opt-ins to arbitrate their claims and moved to stay the lawsuit (Mot. to Compel, Oct. 25, 2022, ECF No. 65), which Plaintiffs opposed (ECF No. 69). In addition, the attorneys for the

parties disagreed about the enforceability of a Separation Agreement signed by named plaintiff Sual Downes and other putative collective action members. This disagreement was likely to lead to additional motion practice.

In March 2023, after a conference with the Court, the parties agreed to mediation with Stephen P. Sonnenberg. At the time of the conference, the motions discussed above were pending. They were then administratively terminated without prejudice by the Court pending mediation. (ECF No. 81). Both parties were aware that there would be substantial disputes about factual and legal issues. In advance of the mediation, the parties exchanged a significant amount of documents and data regarding both liability and damages. Both parties submitted detailed mediation statements and supporting evidence to the mediator. On May 23, 2023, the parties participated in a full day of mediation and agreed on the terms of this proposed settlement. (Sweeney Dec. ¶¶ 11-12).

B. The Proposed Settlement

The Settlement Agreement is attached to the Declaration of Brendan Sweeney (“Sweeney Dec.”) as Exhibit 1. BioReference has agreed to pay a maximum of \$1,600,000 (the “Maximum Settlement Amount”) to resolve the claims in this case. The Net Settlement Fund¹ is equal to the Maximum Settlement Amount minus the Cost and Fee Award, the Service Awards, and the Settlement Administration Costs. The Plaintiffs and the putative collective action members who choose to participate in this settlement are eligible to receive shares of the Net Settlement Amount. All Plaintiffs and Participating Collective Members will be eligible to

¹ Capitalized terms are defined in the Settlement Agreement. (Sweeney Dec., Ex. 1).

receive awards ranging from \$417.44(for individuals who worked one cruise) to \$11,339.63.

The awards are based on: (1) \$300 to resolve claims for unreimbursed business expenses; and (2) \$117.44 per cruise worked (as reflected in BioReference's records) to resolve claims of unpaid overtime and other claims for wages.

Potential Collective Members will receive notice of the settlement (Settlement Agreement, Exhibit 2) via U.S. mail to the last address known by BioReference (to the extent reflected in BioReference's records). To the extent that BioReference has their email addresses and cell phone numbers, they will also receive notice via email and a reminder via text message (provided that the Settlement Administrator determines that sending such text messages is permissible under applicable law). Each notice will state the specific gross Settlement Award that the recipient is eligible to claim. The Potential Collective Members will receive their settlement payments if they timely complete and return a simple "Claim Form And Release" within sixty days of receiving notice. (Settlement Agreement, Exhibit 3).

The Settlement also includes the following terms:

- "The Wage Payment Amount will be considered wages subject to the withholding of all applicable local, state, and federal taxes." (Section 3.6(A)).
- "The Liquidated Damages Payment and Business Expense Reimbursement Payment will be considered non-wage payments for interest, unreimbursed business expenses, liquidated damages and any and all other statutory and civil penalties available under any applicable local, state, and federal laws." (Section 3.6(B)).
- In return for the consideration provided under the Settlement, Participating Collective Members "will, to the fullest extent permissible under applicable law, release, from the beginning of time through the date the Court enters the Final Approval Order, any and all wage and hour claims, rights, and causes of action, whether known or unknown, against the Released Parties under all federal, state, and local wage and hour laws including, but not limited to, the Fair Labor Standards Act and the wage and hour laws of the states of Colorado, Florida,

Maryland, New Jersey, New York and Washington including, without limitation, all statutory, constitutional, contractual, and common law claims for wages, damages, penalties, interest, attorneys' fees, restitution, and equitable relief (including claims for overtime wages and any other wages)." (Section 4.1).

- Subject to Court approval, Plaintiffs' Counsel can request "up to 33% of the Maximum Settlement Amount" as fees and seek reimbursement of actual costs. (Section 3.3).
- Subject to Court approval, service awards of \$15,000 each shall be paid to Plaintiffs Laurence Rosenberg and Kelly Brown and service awards of \$10,000 shall be paid to the other seven Named Plaintiffs. (Section 3.2).

If this settlement is approved, the Settlement Administrator will send the Notice Packet to each former Cruise Swabber and Team Lead. In addition to allowing a Putative Collective Member to elect to participate in the settlement, the Claim Form And Release also operates as a release of claims. This efficient approach for FLSA-only settlements has become commonplace, if not the norm, because an FLSA collective action is an opt-in group action. Unlike in a Rule 23 class action settlement, there is no release of claims in an FLSA collective action settlement unless the individual decides to join the case and receive their share of the settlement, meaning there are no due process issues implicated.² A choice not to opt-in and claim a portion of the settlement means the person has decided to retain their claims and can assert them separately (or not) as they wish. The Notice Packet informs Potential Collective

² See, e.g., *Campbell v City of Los Angeles*, 903 F.3d 1090, 1105 (9th Cir. 2018) (leading decision addressing the difference in the nature of FLSA collective actions and Rule 23 class actions and how the former is "a kind of mass action, in which aggrieved workers act as a collective of individual plaintiffs with individual cases"); see also, e.g., *O'Connor v. Oakhurst Dairy*, 2015 U.S. Dist. LEXIS 67029, at *10 (D. Me. May 22, 2015) ("The due process safeguards built into Rule 23 class actions are not necessary in the FLSA collective action context.").

Members of the claims in this case and their options. It also informs them how they can contact the Settlement Administrator or Plaintiffs' counsel for more information.

Plaintiffs' counsel submits that this result is an excellent one for the Potential Collective Members. The litigation would have been difficult for a number of reasons, including the potentially disparate facts related to Plaintiffs' "off the clock" claims and the fact that some Potential Collective Members signed arbitration agreements that include class and collective action waivers. Considering that many Potential Collective Members worked only a few cruises, no one worked these jobs for more than a year, and the job no longer exists, the maximum potential recovery for many Potential Collective Members would be small and the risk of loss could be high. (Sweeney Dec. ¶ 17). This Settlement, therefore, readily meets the requirements for approval of a FLSA settlement, as is next addressed.

II. ARGUMENT

A Court must approve the terms of a settlement of FLSA claims. *McGee v. Ann's Choice, Inc.*, 2014 U.S. Dist. LEXIS 75840, *4-5 (E.D. Pa. June 4, 2014) (citing *Lynn's Food Stores, Inc. v. United States*, 679 F.2d 1350, 1353 (11th Cir. 1982)). The standard for approval is straightforward: a court must determine that the settlement is a "fair and reasonable resolution of a bona fide dispute over FLSA provisions," and if a settlement reflects "a reasonable compromise," then the court may approve the settlement "in order to promote the policy of encouraging settlement of litigation." *Lynn's Food Stores* 679 F.2d at 1352-54 (citing *Brooklyn Sav. Bank v. O'Neil*, 324 U.S. 697 (1945)); see also *Clarke v. Flik Int' Corp.*, 2020 U.S. Dist. LEXIS 26306, *5 (D.N.J. Feb. 14, 2020) ("[a]lthough the Third Circuit has not adopted a standard for evaluating the settlement of a FLSA action, district courts in this Circuit have followed the

guidance set forth by the Eleventh Circuit in *Lynn's Food Stores...*). Accordingly, a FLSA settlement will be approved if it: (1) resolves a bona fide dispute under the FLSA; (2) is fair and reasonable for the employee(s); and (3) furthers the FLSA's implementation in the workplace. *Id.* 2020 U.S. Dist. LEXIS at *5-7; *see also Gabrielyan v. S.O. Rose Apartments LLC*, 2015 U.S. Dist. LEXIS 135615 (D.N.J. Oct. 5, 2015).³

C. Approval of the Settlement is Warranted

The proposed settlement should be approved because it satisfies the relevant criteria.

1. The Settlement Resolves a Bona Fide FLSA Dispute

In determining whether the settlement resolves a bona fide dispute, the Court must be assured that the settlement “reflect[s] a reasonable compromise of disputed issues [rather] than a mere waiver of statutory rights brought about by an employer's overreaching,” and the bona fide dispute must be determined to be one over “factual issues” not “legal issues such as the statute's coverage or applicability.” *Brumley v. Camin Cargo Control, Inc.*, 2012 U.S. Dist. LEXIS 40599 at *6 (D.N.J. Mar. 26, 2012) (*quoting Lynn's Food Stores*, 679 F.2d at 1350); *Davis v. Essex Cnty*, 2015 U.S. Dist. LEXIS 161285, *5-6 (D.N.J. December 1, 2015); *Dominguez v. Galaxy Recycling, Inc.*, 2017 U.S. Dist. LEXIS 88855, *16-17 (D.N.J. June 9, 2017). Here, the Proposed Settlement would resolve a bona fide dispute over issues such as (1) whether BioReference exercised control over individuals who were hired and paid by staffing agencies such that

³ Because an FLSA collective settlement does not implicate the rights of absent class members, “[e]valuation of an FLSA settlement is less rigorous than the court’s evaluation of a class action settlement because, under the FLSA, parties may elect to opt in but a failure to do so does not prevent them from bringing their own suits at a later date.” *Romero v. La Revise Assocs., LLC*, 58 F. Supp. 3d 411, 421 (S.D.N.Y. 2014).

BioReference was their “employer”; (2) whether uncompensated time on the first day of each cruise was compensable; (3) whether certain allegedly “on call” time was compensable given that, according to BioReference, Cruise Swabbers were never “on-call” and, when they were “on-call,” Team Leads were completely relieved of work responsibilities; (4) whether BioReference maintained appropriate records of all hours worked and the extent to which those hours arguably seemed to contradict some allegations in the lawsuit; (5) whether conflicts of interest precluded certification of a collective action including both line-level workers (Cruise Swabbers) and their onboard supervisors (Team Leads); (6) whether, even in the absence of any conflicts of interest, the plaintiffs would be able to demonstrate that they and the other putative collective action members were similarly situated with respect to an alleged unlawful policy, especially given that BioReference’s policies expressly prohibited the conduct alleged in the lawsuit; (7) the impact of arbitration agreements (with class and collective action waivers) signed by many putative collective action members would have on the claims and potential value of the case; (8) the impact of records signed by plaintiffs and other putative collective action members seemingly reflecting that they worked fewer hours than they now allege; (9) the impact of numerous posts on social media by plaintiffs and other putative collective action members seemingly showing them enjoying the amenities of cruise ship life on their allegations that they were overworked and denied pay; (10) the enforceability of a release of claims and class and collective action waiver signed by a named plaintiff and other putative collective action members; and (11) the impact of evidence presented by BioReference that it went to great lengths to ensure that workers were paid properly and that any alleged

underpayments were one-off events that cannot form the basis for a class or collective action. The settlement resolves these, and other, bona fide disputes.

2. The Settlement is Fair and Reasonable

While it is often recognized that “there is a range of reasonableness with respect to a settlement – a range which recognizes the uncertainties of law and fact in any particular case and the concomitant risks and costs necessarily inherent in taking any litigation to completion” (*Frank v. Eastman Kodak Co.*, 228 F.R.D. 174, 186 (W.D.N.Y. 2005)) – this Settlement represents a fair and reasonable result, one reached through arms’ length negotiation, over contested issues, and with assistance from a third party mediator.

First, counsel for Plaintiffs are experienced wage and hour litigators who had an adequate appreciation of the merits of this case when negotiating the settlement. Plaintiffs’ counsel worked with thirty-seven clients who provided information through interviews and by providing documents, including significant amounts of electronic communications. Counsel for the Parties agreed to exchange substantial portions of their factual presentations to the mediator. Counsel for Plaintiffs understood the evidence and data that supported their positions. Counsel also exchanged written statements on their respective positions on legal issues in connection with the mediation. Informed and competent counsel’s judgment is accorded significant weight and deference in approving FLSA settlements.

Second, the Settlement is fair and reasonable in light of the considerable risk posed to recovery. As discussed, whether BioReference was the “employer” of all Potential Collective Members would be a disputed factual issue. In addition, BioReference filed a motion to compel several opt-in plaintiffs to arbitrate their claims in individual arbitrations.

Approximately ¼ of the Potential Collective had executed similar arbitration agreements with class and collective action waivers. Also, one named plaintiff and other putative collective action members signed Separation Agreements with BioReference containing a release of claims and a class and collective action waiver. BioReference also opposed conditional certification. If the court did grant conditional certification, defense counsel has indicated that BioReference would have later sought decertification on the grounds that the Plaintiffs' claims – especially their “off the clock” claims – did not emanate from a common policy of BioReference.

Third, the result here is reasonable in light of the range of damages that could be obtained. Plaintiffs' counsel constructed a damages model based on their claims for (1) unpaid time on the first day of cruises, (2) unpaid “on call” time, and (3) “off the clock” time. The first component of this model was based on a standard amount of time, but this claim only implicated one working day per pay period. Plaintiffs estimated that the claim for unpaid overtime attributable to the first day of cruises was approximately \$750,000. As discussed above, BioReference disputed whether this time was compensable at all, as well as the amount of time at issue. The second and third components of Plaintiffs' model involved much more uncertain and variable amounts of time. Plaintiffs estimated that damages for these categories could have been approximately \$1,400,000. Whether BioReference would be liable for liquidated damages would have been a contested issue. Plaintiffs also pursued claims for failure to reimburse expenses or late reimbursement of expenses. These proved to also be very fact-specific issues and many of the plaintiffs worked in states that provided limited rights to recover for unreimbursed expenses. (Sweeney Dec. ¶ 18). Accordingly, a

settlement for a total Maximum Settlement Amount of \$1,600,000 is fair and reasonable. *McCoy v. Health Net, Inc.*, 569 F. Supp. 2d 448, 462 (D.N.J. 2008) (that parties “insisted on vastly different methodologies for determining damages” favored settlement).

The proposed settlement is also fair and reasonable considering some of the unique aspects of this case. First, the Cruise Swabber and Team Lead jobs on Royal Caribbean Group cruise ships were short-term, temporary positions for many of the Potential Collective Members. Second, BioReference’s contract to provide Cruise Swabbers and Team Leads to RCG ended in June 2022, so there are no current employees.

3. The Proposed Settlement “Furthers the FLSA’s implementation”

Finally, the Settlement furthers the FLSA’s purpose and implementation by providing relief to a large number of employees who might have had claims and, as discussed, the Settlement conforms to the FLSA’s opt-in structure. Typically, indicia of a settlement that runs counter to the FLSA’s purpose of protecting workers “include restrictive confidentiality clauses and overly broad release provisions.” *Clarke*, 2020 U.S. Dist. LEXIS 26306 at *11; *see also Brumley*, 2012 US Dist. LEXIS 40599 at *2 (noting that settlements that place “constraints on employees beyond their full compensation under the FLSA” such as barring FLSA plaintiffs from informing fellow employees of the result obtained diminish the benefit to the plaintiffs and frustrate the FLSA’s purpose); *Mabry v. Hildebrandt*, 2015 U.S. Dist. LEXIS 112137, *2-3 (E.D. Pa. Aug. 24, 2015) (rejecting confidentiality provision in a settlement of FLSA claims as “unnecessarily restrictive” and counter to the FLSA’s purpose of correcting imbalances of power and information between employers and their employees).

Here, the Settlement Agreement does not contain any such restrictive confidentiality provision on the Plaintiffs nor the Potential Collective Members. The releases here are, for the Potential Collective Members, properly tailored to the wage and hour claims asserted in the lawsuit. While the release applicable to the nine named Plaintiffs is a general one, that is proper (and commonplace in employment cases) because they are seeking a service award for having stepped forward in this lawsuit.

D. The Court Should Approve the Expense and Fee Request

In the Settlement Agreement, the parties agreed that Plaintiffs would seek, and BioReference would not oppose, an award of fees up to 33% of the Maximum Settlement Amount of \$1,600,000 and an additional amount for the actual litigation expenses incurred by Plaintiffs' counsel. Plaintiffs' counsel incurred \$11,226.09 in litigation related expenses (mediation fees, fees for a consulting expert on damages and fees for online research services). (Sweeney Dec. ¶ 27, Exhibit 3).

Plaintiffs' counsel seeks approval of a fee award of \$533,280. Each of Plaintiffs' thirty-seven clients in this matter agreed to retainer agreements that provide for a contingency fee of 33% of each individual's recovery. (Sweeney Dec. ¶ 25). *See Koszyk v. Country Fin. a/k/a CC Servs., Inc.*, 2016 U.S. Dist. LEXIS 126893, at * 8-9 (N.D. Ill. Sept. 16, 2016) (approving 1/3rd fee request in FLSA opt-in settlement) and noting:

In awarding attorneys' fees, courts ultimately "must do their best to award counsel the market price for legal services, in light of the risk of nonpayment and the normal rate of compensation in the market at the time." *In re Synthroid Mktg. Litig.*, 264 F.3d 712, 718 (7th Cir. 2001). District courts must "undertake an analysis of the terms to which the private plaintiffs and their attorneys would have contracted at the outset of the litigation when the risk of loss still existed." *Sutton v. Bernard*, 504 F.3d 688, 692 (7th Cir. 2007). They must "do their best to recreate the market by considering factors such as actual fee contracts that were

privately negotiated for similar litigation, [and] information from other cases." *Taubenfeld v. AON Corp.*, 415 F.3d 597, 599 (7th Cir. 2005)).

Numerous courts within the Third Circuit and this District have awarded fees equal to or exceeding 33% in wage and hour class and collective actions. *See, e.g., Goodman v. Burlington Coat Factory Warehouse Corp.*, No. 11-cv-04395-JHS-JS (D.N.J. June 10, 2020) (one third plus expenses); *Lucia v. McClain & Co.*, Civil Action No. 11-cv-930 (CCC-MF), 2015 U.S. Dist. LEXIS 164584 (D.N.J. Dec. 8, 2015) (42%); *Lovett v. Connect Am.com*, No. 14-2596, 2015 U.S. Dist. LEXIS 121838, at *14-15 (E.D. Pa. Sep. 11, 2015) (38.26%); *Rouse v. Comcast Corp.*, No. 14-1115, 2015 U.S. Dist. LEXIS 49347, at *29 (E.D. Pa. Apr. 14, 2015) (35%); *Creed v. Benco Dental Supply Co.*, No. 3:12-CV-01571, 2013 U.S. Dist. LEXIS 132911, at *17 (M.D. Pa. Sep. 17, 2013) (33 1/3%).⁴

These courts invoke the "percentage-of-recovery" method in determining attorneys' fee awards in common fund cases because it "directly aligns the interests of the class and its counsel" and because it incentivizes attorneys to create the largest common fund out of which payments to the class can be made. *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 122 (2d Cir. 2005) (leading decision; internal citations omitted); *see also, In re Rite*

⁴ District courts in this Circuit are afforded discretion in approving settlement awards and fees. *Girsh v. Jepson*, 521 F.2d 153, 156 (3d Cir. 1975) (fee award left to "sound discretion" of district court); *Smith v. Daimlerchrysler Servs. N. Am., LLC*, 2005 U.S. Dist. LEXIS 25116, *3-4 (D.N.J. Oct. 19, 2005) (setting the amount of attorneys' fees and expenses "is within the discretion of the district court.>").

Aid Corp. Sec. Litig., 396 F.3d 294, 300 (3d Cir. 2005) (approving percentage of the fund approach); *In re Cendant Corp. Litig.*, 264 F.3d 201, 256 (3d Cir. 2001) (same).⁵

Plaintiffs' Counsel undertook this action entirely on a contingent fee basis, assuming a substantial risk that they might not be compensated at all for their efforts. (Sweeney Dec. ¶ 24). "Courts recognize the risk of non-payment as a factor in considering an award of attorneys' fees." *In re Datatec Sys. Sec. Litig.*, No. 04-CV-525 (GEB) 2007 U.S. Dist. LEXIS 87428, at *20 (D.N.J. Nov. 28, 2007).

Plaintiffs' counsel's lodestar confirms this fee request is entirely reasonable. To date, Plaintiffs' counsel has invested more than 750 hours in this litigation. (Sweeney Dec. ¶ 26). As stated above, in addition to working with thirty-seven clients and drafting a detailed Complaint and Amended Complaint, Plaintiffs' counsel briefed three significant motions. Plaintiffs' counsel also devoted a significant amount of time and resources to analyzing written discovery and data and prepared a detailed mediation statement. Through conclusion of the settlement, the lodestar will be in excess of \$400,000.⁶ If the court were to apply the lodestar approach as a cross-check on the percentage-of-recovery approach, Plaintiffs are seeking only a modest 1.33% multiplier, which is entirely reasonable. (Sweeney Dec. ¶ 28). Large multipliers are common in wage and hour litigation. *Ramirez v. Lovin' Oven Catering Suffolk, Inc.*, No. 11 Civ. 520, 2012 U.S.

⁵ The American Law Institute's *Principles of Aggregate Litigation* states: "the percentage-of-the-fund approach should be the method utilized in most common-fund cases, with the percentage being based on both the monetary and nonmonetary value of the judgment or settlement." American Law Institute, *Principles of the Law of Aggregate Litigation* § 3.13(b), (c) at 248-49 (2010).

⁶ The hourly rates for Plaintiffs' counsel and the time devoted to prosecuting this case is further detailed in the Sweeney Dec. ¶¶ 26-27, Ex. 2).

Dist. LEXIS 25060 (S.D.N.Y. Feb. 24, 2012) (6.8 multiplier in FLSA wage and hour case); *Davis v. J.P. Morgan Chase & Co.*, 827 F. Supp. 2d 172, 185 (W.D.N.Y. 2011) (5.3 multiplier in FLSA wage and hour case and noting, “had this case not settled, class counsel’s hours, and hence the lodestar figure, would almost certainly have been greater, although it is by no means certain that the class’s recovery would also have been larger-indeed, given the vagaries of litigation and trial, it might have been lower. That, too, then, tends to show that the multiplier here is not so high as to raise any red flags over the size of the fee request.”). As the court explained in *In re Mercedes-Benz Emissions Litigation*, No. 2:16-cv-881 (KM)(ESK), 2021 U.S. Dist. LEXIS 256167, at *51 (D.N.J. Aug. 2, 2021):

Courts in this Circuit and elsewhere have approved large multipliers, when appropriate, in a range exceeding 10. *See, e.g., In re Merry-Go-Round Enterprises, Inc.*, 244 B.R. 327 (Bankr. D. Md. 2000) (40% award for \$71 million fund awarded, resulting in cross-check multiplier of 19.6); *Stop & Shop Supermarket Co. v. Smithkline Beecham Corp.*, 2005 U.S. Dist. LEXIS 9705, 2005 WL 1213926 at *39-40, 60 (E.D. Pa. May 20, 2005) (multiplier of 15.6 and fee of 20% of \$100M settlement where “no prior government investigation” or finding of civil or criminal liability existed); *New England Carpenters*, 2009 WL 2408560, at *2 (approving multiplier of 8.3 and 20% fee); *In re Rite Aid Corp. Sec. Litig.*, 146 F. Supp. 2d at 736 n.44 (award of 25% of the \$193 million fund, which amounted to \$48 million and represented a multiplier of 4.5-8.5, which court described as “handsome but unquestionably reasonable”); *In re Rite Aid Corp. Sec. Litig.*, 362 F. Supp. 2d 587 (25% of \$126,800,000 fund awarded; multiplier of 6.96); *Weiss*, 899 F. Supp. at 1304 (fee resulted in multiplier of 9.3 times hourly rate).

E. The Court Should Approve the Service Awards

The Settlement Agreement provides that Plaintiffs would seek, and BioReference would not oppose, Service Awards of \$15,000 for Named Plaintiffs Rosenberg and Brown and \$10,000 for the other seven Named Plaintiffs. Named Plaintiffs Rosenberg and Brown participated in hours of initial interviews and provided valuable information about their experiences as Cruise Swabbers and Team Leads to Plaintiffs’ counsel. They participated in multiple consultations to

allow Plaintiffs' Counsel to draft the initial Complaint. All of the Named Plaintiffs devoted significant time to working with Plaintiffs' counsel to generally develop the factual background and to prepare detailed Declarations that were filed in support of Plaintiffs' Motion for Conditional Certification. The Named Plaintiffs also worked with Plaintiffs' counsel to prepare for mediation. (Sweeney Dec. ¶¶ 19-21).

As a result of the Named Plaintiffs' willingness to bring this action, several hundred other Cruise Swabbers and Team Leads are eligible for settlement payments. Service awards are generally appropriate for named plaintiffs. *Somogyi v. Freedom Mortg. Corp.*, 2020 U.S. Dist. LEXIS 194035 at *26-27 (D.N.J. Oct. 20, 2020) (citing cases). Service awards are particularly appropriate in wage and hour cases because each Named Plaintiff here faced the risk of retaliation from within their industry by putting their name out there as Named Plaintiffs. As the Second Circuit explained in *Shahriar v. Smith & Wollensky Rest. Grp., Inc.*, 659 F.3d 234, 244 (2d Cir. 2011): "an employee fearful of retaliation or of being 'blackballed' in his or her industry may choose not to assert his or her FLSA rights."

The amount of the requested Service Awards is reasonable inasmuch as the law recognizes that it is appropriate to make awards in the range of \$10,000 to \$20,000 in recognition of the services that named plaintiffs perform. *See, e.g., Rivet v. Office Depot, Inc.*, No. 12-cv-2992, Final Order & Judgment (D.N.J. Dec. 21, 2017) (FLSA case: \$10,000 to each of five named plaintiffs); *In re Ins. Brokerage Antitrust Litig.*, Nos. 04-5184 (GEB), 05-1079 (GEB), 2007 U.S. Dist. LEXIS 74711, at *60-61 (D.N.J. Oct. 5, 2007) (\$10,000 incentive award to each plaintiff, resulting in total payment of \$250,000); *Lazy Oil Co. v. Witco Corp.*, 95 F. Supp. 2d 290, 347 (W.D. Pa. 1997), *aff'd*, 166 F.3d 581, 588 (3d Cir. 1999) (\$5,000 to \$20,000 and enhancement

awards); *Godshall v. Franklin Mint Co.*, No. 01-CV-6539, 2004 U.S. Dist. LEXIS 23976, at *19-20 (E.D. Pa. Dec. 1, 2004) (\$20,000 enhancement award to each named plaintiff).

F. The Court Should Approve the Settlement Administrator's Costs

Finally, the Court should approve the payment of \$36,213.00, to RG2 Claims Administration LLC ("RG2"). The parties agreed in the Settlement Agreement that the Settlement Administrator will: (1) prepare, print, and disseminate to Potential Collective Members the Notice Packet and postage prepaid Claim Form And Releases; (2) create and maintain the electronic portal through which Potential Collective Members can complete and submit Claim Form And Releases; (3) promptly and simultaneously copy counsel for all Parties on material correspondence and promptly and simultaneously notify all counsel for the Parties of any material requests or communications made by any Party; (4) promptly and simultaneously furnish to counsel for the Parties copies of any written or electronic communications from Potential Collective Action Members that the Administrator receives; (5) calculate Settlement Awards for the Participating Plaintiffs and Potential Collective Action Members in accordance with this Agreement; (6) receive Claim Form And Releases; (7) mail the Settlement Checks to Participating Collective Member, (9) mail Court-approved Service Awards, (10) mail or initiate a wire transfer of Court-approved Attorneys' Fees and Costs, and (11) provide a final report detailing the results of the Claim Form And Release mailings and participation to BioReference's Counsel and Plaintiffs' Counsel. RG2 is an experienced administrator. The proposed fees to administer this settlement are reasonable and typical of the cost to administer this type of settlement.

CONCLUSION

For all the foregoing reasons, Plaintiffs respectfully request that the Court grant Plaintiffs' Unopposed Motion for Approval of Collective Action Settlement Agreement and Release and enter the accompanying proposed Order on Approval of Collective Action Settlement and Judgment and the relief set forth therein.

Respectfully submitted,

Dated: October 20, 2023
New York, New York

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Exhibit 6

REMINDER REGARDING THE SETTLEMENT WITH BIOREFERENCE INVOLVING FORMER CRUISE SWABBERS AND TEAM LEADS

You should have received a court-authorized notice explaining that you are eligible to participate in the settlement of a lawsuit, *Laurence Rosenberg, et al. v. BioReference Laboratories, Inc.* You are eligible to participate in the settlement if you worked on a Royal Caribbean Group cruise ship as a Cruise Swabber or Team Lead between June 1, 2021, and June 30, 2022. In order to participate in the settlement, you must complete, sign and submit a Claim Form And Release by the deadline set forth in the notice.

Our records indicate that you have not submitted a Claim Form And Release. If you would like to participate in the settlement and receive a settlement check (in exchange for waiving and releasing claims), you must complete and sign a Claim Form And Release, and submit it by mail, email or fax by **[insert deadline]** to:

RG/2 Claims Administration LLC
P.O. Box 59479
Philadelphia, PA 19102-9479

info@rg2claims.com

Fax: (215) 827-5551

Tel: (866) 742-4955

By submitting the Claim Form And Release, you are releasing and waiving certain claims. If you have any questions about the Claim Form And Release or if you did not receive it or no longer have it, you may contact the Settlement Administrator at (866) 742-4955 or info@rg2claims.com. If you have any other questions, you can contact the attorneys representing the plaintiffs and opt-ins, The Law Office of Christopher Q. Davis, PLLC, at (646) 430-7930 or nbittner@workingsolutionsnyc.com.