

CAUSE NO. 2023-08090

BESTLIFE18, LLC,

PLAINTIFF,

v.

DCS LABS, LLC,

DEFENDANT.

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IN THE DISTRICT COURT OF

HARRIS COUNTY, T E X A S

234th JUDICIAL DISTRICT

MOTION FOR DEFAULT JUDGMENT

EXHIBIT E

BESTLIFE18, LLC,	§	IN THE DISTRICT COURT OF
PLAINTIFF,	§	
v.	§	HARRIS COUNTY, T E X A S
DCS LABS, LLC,	§	
DEFENDANT.	§	234 th JUDICIAL DISTRICT

**DECLARATION OF ROBERT J. KRUCKEMEYER IN SUPPORT OF
BESTLIFE18, LLC's MOTION FOR DEFAULT JUDGMENT**

My name is Robert J. Kruckemeyer, my date of birth is July 14, 1959, and my address is 244 Malone Street, Houston, Texas 77007, USA.

1. I have been licensed to practice law in Texas since 1984, and I am duly admitted to practice in good standing in Texas and in various federal courts, including the Southern, Northern and Eastern districts of Texas.

2. I am experienced in state and federal court litigation and Litigation in Texas. Since 1984, I have concentrated my practice on civil litigation matters that include breach of contract, oil and gas, product liability, shareholder disputes, business divorce, business disputes of all kinds, as well as serious personal injury matters. I have represented both plaintiffs and defendants in these types of cases. I was recognized as the "Litigator of the Week" in the May 14, 2012, edition of Texas Lawyer magazine, and I am a Sustaining Life Fellow of the Texas Bar Foundation.

3. I graduated from St. Louis University in 1981 with a Bachelor of Arts degree in Political Science, *magna cum laude*. In 1984, I received my Juris Doctor from the St. Louis

University School of Law, *cum laude*.

4. I have represented Plaintiff since 1996 in general and in connection with the above-captioned litigation (the "Litigation") beginning in January 2023. My customary hourly rate is \$500/hour and Michael Kruckemeyer's customary hourly rate is \$250/hour.

5. Based on my education and experience, described above at paragraphs 2-4, my personal communications with lawyers handling similar types of matters, and my review of court filings, case law, and published literature pertaining to such hourly rates, I am familiar with the hourly rates that lawyers and support staff customarily charge in Houston, Harris County, Texas and elsewhere in complex cases and Litigations, such as this Litigation. Based on the foregoing, I am also familiar with the attorney and support staff time and effort that it takes and can reasonably take to prosecute and defend matters such as the Litigation and what constitutes reasonable and necessary attorneys' fees for doing so. As a result, I am able to offer opinions pertaining to the amount, reasonableness, and necessity of all attorneys' fees sought by Plaintiff in the Litigation. I was also requested to offer opinions pertaining to whether such attorneys' fees are equitable and just.

6. I am familiar with the nature of this case and the work that was performed in the course of this representation. I am familiar with the number of hours spent and the amounts I have charged and what would be a reasonable charge by the Plaintiff's attorneys.

7. I am familiar with and have considered the factors bearing upon the reasonableness of attorneys' fees in Texas, as articulated in Rule 1.04(b) of the Texas Disciplinary Rules of Professional Conduct and the Texas Supreme Court in *Arthur Andersen & Co. v. Perry Equipment*, 945 S.W.2d 812 (Tex. 1997), which are as follows: (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill required to

perform the legal services properly; (2) the likelihood ... that the acceptance of the particular employment will preclude other employment by the lawyer; (3) the fee customarily charged in the locality for similar legal services; (4) the amount involved and the results obtained; (5) the time limitations imposed by the client or by the circumstances; (6) the nature and length of the professional relationship with the client; (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and (8) whether the fee is fixed or contingent on the results obtained or uncertainty of collection before the legal services have been rendered.

8. Specifically, with reference to Paragraph 8 of this Affidavit and to form my opinions with regard to the reasonable and necessary attorneys' fees incurred by Plaintiff in this Litigation, I will address the factors bearing upon the reasonableness of attorneys' fees in Texas, as follows:

a. **The Time and Labor Required, the Novelty and Difficulty of the Questions Involved and the Skill Requisite to Perform the Legal Service Properly.** I have considered the time and labor required to handle Plaintiff's claims which has included, without limitation: (1) determining the proper amount of the claim and the method by which the defendant could be served; (2) filing pleadings; and (3) preparing Plaintiff's Motion for Default Judgment.

b. **The Likelihood, if Apparent to the Client, That the Acceptance of the Particular Employment Will Preclude Other Employment by the Lawyer.** Plaintiff has agreed to pay me on an hourly fee basis. Plaintiff understands that my working for Plaintiff necessarily precludes me from accepting other employment by other clients.

c. **The Fee Customarily Charged in the Locality for Similar Legal**

Services. I have been practicing law in Harris County since 1984. Based on my education and experience, described above at paragraphs 2-4, my personal communications with lawyers handling similar types of matters, and my review of court filings, case law, and published literature pertaining to such hourly rates, I am familiar with the hourly rates that lawyers and support staff customarily charge in Houston, Harris County, Texas and elsewhere in complex cases and Litigations, such as this Litigation. My hourly rate of \$550.00 is reasonable.

d. **The Amount Involved and the Results Obtained.** Plaintiff's seeks recovery of \$200,000.00 principal together with prejudgment interest in the amount of \$48,740.35 as of May 5, 2023, with interest accruing at the rate of \$30.28 per day pursuant to the promissory notes. Plaintiff anticipates obtaining a judgment for the amount requested.

e. **The Time Limitations Imposed by the Client or by the Circumstances.** No time limitations have been imposed by the client or by the circumstances.

f. **The Nature and Length of the Professional Relationship with the Client.** I have represented Plaintiff since 2023.

g. **The Experience, Reputation, and Ability of the Lawyer or Lawyers Performing the Services.** As noted above, I have been licensed to practice law in Texas since 1984. I was awarded an AV rating by Martindale-Hubbell in 1999 and have been a member of the Bar Register of Preeminent Lawyers since 2005. I was recognized as the "Litigator of the Week" in the May 14, 2012, edition of Texas Lawyer magazine, and I am a Sustaining Life Fellow of the Texas Bar Foundation.

h. **Whether the Fee is Fixed or Contingent on Results Obtained or**

Uncertainty of Collection Before the Legal Services Have Been Rendered. Plaintiff has agreed to pay me an hourly rate. My compensation is not fixed or contingent on the results obtained. My fees are not affected by the uncertainty of collection before the legal services have been rendered.

9. Attached hereto as Exhibit 1 are the slip lists maintained by me that record the work that I have done on this matter. I have not included that time in the calculation of attorneys' fees for obtaining the default judgment in this matter. The slip lists for obtaining the default judgment total \$1,934.19. I have performed additional work this month in finalizing the Motion for Default Judgment and I anticipate appearing at a hearing on the Motion for Default Judgment.

10. Based upon my experience, training, and expertise, it is my opinion that Plaintiff's request for attorneys' fees in the amount of \$2,500.00 is reasonable and necessary and equitable and just. Further, in the event an appeal to the Court of Appeals is made but is unsuccessful, reasonable attorney's fees would be an additional \$25,000.00; in the event an appeal is made to the Texas Supreme Court is made but is unsuccessful, reasonable attorney's fees would be an additional \$25,000.00.

I declare under penalty of perjury that the facts stated herein are within my personal knowledge and are true and correct.

May 9, 2023.


Robert J. Kruckemeyer

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**DECLARATION OF ROBERT J. KRUCKEMEYER IN SUPPORT OF
BESTLIFE18, LLC'S MOTION FOR DEFAULT JUDGMENT**

EXHIBIT 1

Selection Criteria

Slip.Transaction Dat 1/1/2017 - 5/9/2023
Slip.Classification Open
Clie.Selection Include: Gullo, Chris

Rate Info - identifies rate source and level

Slip ID	Dates and Time	Posting Status	Description	Timekeeper	Activity	Client	Phase/Task	Units	DNB Time	Rate	Slip Value
								Est. Time	Rate Info	Bill Status	
								Variance			
24551	TIME			Bob				0.50	500.00		250.00
	1/25/2023				Manage data			0.00	T		
	Billed	G:13164	2/1/2023	Gullo, Chris				0.00			
					DCS Labs, LLC			0.00			
					Communicate with Mr. Gullo re lawsuit.						
24552	TIME			Mike				1.50	250.00		375.00
	1/25/2023				Manage data			0.00	T		
	Billed	G:13164	2/1/2023	Gullo, Chris				0.00			
					DCS Labs, LLC			0.00			
					Work on Plaintiff's Original Petition.						
24573	TIME			Mike				2.00	250.00		500.00
	1/30/2023				Manage data			0.00	T		
	Billed	G:13164	2/1/2023	Gullo, Chris				0.00			
					DCS Labs, LLC			0.00			
					Work on Plaintiff's Original Petition.						
24616	TIME			Mike				0.75	250.00		187.50
	2/7/2023				Manage data			0.00	T		
	Billed	G:13180	3/1/2023	Gullo, Chris				0.00			
					DCS Labs, LLC			0.00			
					Finalize and attend to filing Plaintiff's Original Petition.						
24617	EXP			Mike				1	371.69		371.69
	2/7/2023				Court fees						
	Billed	G:13180	3/1/2023	Gullo, Chris							
					DCS Labs, LLC						
					Fee to file Plaintiff's Original Petition.						
24891	TIME			Mike				1.00	250.00		250.00
	5/5/2023				Manage data			0.00	T		
	WIP				Gullo, Chris			0.00			
					DCS Labs, LLC			0.00			
					Revise Motion for Default Judgment. Prepare Declaration for Mr. Gullo.						
Grand Total											
					Billable			5.75			1934.19
					Unbillable			0.00			0.00
					Total			5.75			1934.19