

1 MILLS SADAT DOWLAT LLP
Arash Sadat (SBN 279282)
2 Camron Dowlats Shahi (SBN 308618)
Mir Raza (SBN 358311)
3 333 South Hope Street, 40th Floor
Los Angeles, CA 90071
4 Tel.: (213) 628-3856
Email: arash@msdlawyers.com
5 Email: camron@msdlawyers.com
Email: mir@msdlawyers.com

6 Attorneys for Plaintiff
7 Elizabeth To and the Putative Class

8
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF SANTA CLARA**
11

12 ELIZABETH TO, individually, and on behalf
of other members of the general public
13 similarly situated,

14 Plaintiff,

15 v.

16 INTUITIVE SURGICAL, INC., a Delaware
corporation; and DOES 1 through 10,
17 inclusive,

18 Defendants.
19
20
21
22
23
24
25
26
27
28

Case No. 24CV449420
Assigned to: Hon. Theodore C. Zayner

**CAMRON DOWLATSHAHI'S
DECLARATION IN SUPPORT OF
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
AND REPRESENTATIVE ACTION
SETTLEMENT**

*[Filed with Motion for Preliminary Approval
of Class and Representative Action
Settlement, Declaration of Plaintiff Elizabeth
To, and [Proposed] Order]*

HEARING INFORMATION:

DATE: July 16, 2025

TIME: 1:30 p.m.

DEPT: 19

Complaint Filed: October 14, 2024

Trial Date: None Set

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

2

3
4
5
6
7

8

9
10
11
12

13
14
15

16
17
18
19
20
21
22
23
24
25

26
27

1 regarding Plaintiff's purported claims. In order to facilitate an efficient settlement of the Action,
2 the parties agreed to attend mediation.

3 6. The Action was based on the theory that Defendant failed to pay Plaintiff and
4 putative class members premium pay, provide uninterrupted meal and rest periods, and furnish
5 accurate wage statements, among other wage and hour violations.

6 7. On December 19, 2024, the Parties participated in an all-day mediation presided
7 over by Nikki Tolt which led to an agreement to settle the Action. The Parties (*i.e.*, collectively
8 Plaintiff and Defendant) engaged in good faith, arm's-length negotiations concerning possible
9 resolution of the Action.

10 8. During that negotiation, Defendant denied, and continues to deny, each of the
11 allegations asserted in the litigation, has repeatedly asserted and continues to assert defenses to
12 Plaintiff's claims and contentions, and expressly denied and continues to deny that they engaged
13 in any wrongdoing or have any liability arising out of any of the facts or conduct alleged in the
14 litigation. Nevertheless, the Parties concluded, after considering the sharply disputed factual and
15 legal issues involved in this litigation, the risks associated with further prosecution, the substantial
16 benefits to be received pursuant to the compromise and settlement of the Action and thus
17 tentatively agreed upon terms to settle the litigation on a class and representative basis.

18 9. Prior to mediation, Plaintiff's Counsel obtained, through informal discovery,
19 Intuitive Surgical's meal and rest break policies, correspondence regarding such policies, and the
20 clock-in and clock-out records and payroll records for all employees from March 2019 through
21 March 2024. Plaintiff's investigation was sufficient to satisfy the criteria for court approval set
22 forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot*
23 *Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 ("*Dunk/Kullar.*")

24 10. In addition to informal discovery, Plaintiff's Counsel engaged in investigation and
25 discussions about the strengths and weaknesses of the claims and defenses of the Action, such as
26 obtaining a sampling of time and payroll records for putative class members and aggrieved
27 employees; the average hourly rate for putative class members and aggrieved employees; the
28 number of putative class members and aggrieved employees in certain time frames (including one

1 year before filing the Action); the number of shifts worked by putative class members;
2 Defendant's statements of wage-and-hour policies provided to putative class members and
3 aggrieved employees, including employee handbooks; and meal and rest break policies, among
4 other things.

5 11. The Court has not yet granted class certification.

6 12. The Parties, Class Counsel and Defense Counsel represent that they are not aware
7 of any other pending matter or action asserting claims that will be extinguished or affected by the
8 Settlement.

9 **The Proposed Settlement**

10 13. Subject to Court approval pursuant to Code of Civil Procedure section 382 and
11 California Rules of Court, rule 3.679, *et seq.*, Plaintiff and Defendant have agreed to settle the
12 Action by agreement upon the terms and conditions and for the consideration set forth in the
13 Settlement Agreement, a copy of which is attached to this declaration as **Exhibit 1** hereto. A
14 summary of the terms of the settlement are as follows:

- 15 • Defendant will stipulate, for the purposes of this settlement only, to certification of
16 a class defined as: all persons who are employed or were previously employed by
17 Defendant in California and classified as a non-exempt employee at any time from
18 October 14, 2020, through the date of the Court's Preliminary Approval or ninety
19 (90) days from the date the Agreement is fully executed, whichever is sooner
20 ("Class," "Class Period," and each individual in the class a "Class Member")
21 (Exhibit 1 at ¶ 1.5, 1.9, 1.12);
- 22 • Defendant shall pay \$4,500,000.00, which is referred to herein as the Gross
23 Settlement Amount (Exhibit 1 at ¶ 1.22);
- 24 • An Individual Class Payment will be calculated by (a) dividing the Net Settlement
25 Amount by the total number of Workweeks worked by all Participating Class
26 Members during the Class Period and (b) multiplying the result by the Participating
27 Class Member's Workweeks worked (Exhibit 1 at ¶ 3.2.4);
- 28 • The Settlement Administration costs, not to exceed \$16,950.00, will be paid out of

the Gross Settlement Amount (Exhibit 1 at ¶ 3.2.3);

- Class Counsel will apply for, and Defendant will not oppose, attorneys' fees of up to \$1,500,000.00, which represents thirty-three percent (33%) of the Gross Settlement Amount, and actual Costs not to exceed \$25,000.00, all of which will be paid out of the Gross Settlement Amount (Exhibit 1 at ¶ 3.2.2);
- Class Counsel will apply for, and Defendant will not oppose, an enhancement award of not more than \$5,000.00 to the Class Representative, which will be paid out of the Gross Settlement Amount (Exhibit 1 at ¶ 3.2.1);
- All Participating Class Members will release Intuitive Surgical and all other Released Parties from all claims that were alleged in or reasonably could have been alleged based on the facts occurring during the Class Period, stated in the PAGA Notice or the Operative Complaint. Except as set forth in Exhibit 1 at ¶ 5.3, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside of the Class Period (Exhibit 1 at ¶ 5.2);
- 20% of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). Each Wage Portion is subject to tax withholding and will be reported on an IRS W-2 Form. The remaining 80% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for statutory and civil penalties, statutory or other non-wage damages, and interest (the "Non-Wage Portion"). Each Non-Wage Portion is not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any taxes owed on their Individual Class Payment, excluding the Employer Payroll Taxes (Exhibit 1 at ¶ 3.2.4.1);
- Defendant has agreed to pay \$50,000.00 as PAGA penalties, seventy-five percent

(75%) or \$37,500.00 of which will be paid to the California Labor and Workforce Development Agency (“LWDA”) out of the Gross Settlement Amount, and twenty-five percent (25%) or \$12,500.00 of which will be distributed to Aggrieved Employees (Exhibit 1 at ¶ 3.2.5-3.2.5.1); and

- Participating Class Members will have one hundred eighty (180) days from the date of issuance of the check to cash their check. The Administrator will cancel all checks not cashed by the void date. For any check uncashed or cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller’s Unclaimed Property Fund in the name of the Class Member/Aggrieved Employee, thereby leaving no “unpaid residue” subject to the requirements of California Code of Civil Procedure Section 384, subd. (b). (Exhibit 1 at ¶ 4.4.1, 4.4.3).

Settlement Agreement and Accompanying Documents

14. Attached hereto as **Exhibit 1** is a true and correct copy of the Settlement Agreement fully executed by the Parties.

15. Attached to the Settlement Agreement as Exhibit A thereto is the proposed Notice of Pendency of Class Action Settlement and Final Hearing (“Class Notice”) to be distributed to the class members in English and Spanish.

16. The Parties have agreed to use ILYM Group, Inc., an experienced Settlement Administrator, to administer the settlement.

17. The Parties have agreed that the administration costs, not to exceed \$16,950, will be paid out of the Gross Settlement Amount. A copy of the proposed bid from ILYM Group, Inc., which outlines the proposed administration costs, is attached hereto as **Exhibit 2**.

18. On or about June 24, 2025, Plaintiff’s counsel submitted a copy of the Class and Representative Action Settlement to the California Labor and Workforce Development Agency (“LWDA”) in compliance with Labor Code section 2699, subdivision (1)(2). A true and correct copy of the confirmation from the LWDA in connection with Plaintiff is attached hereto as **Exhibit 3**.

The Settlement Was Negotiated at Arm's-Length and Is Not Collusive

19. I believe that the Settlement that has been reached, subject to this Court's approval, is the product of substantial effort by the Parties and their counsel. The settlement was reached after extensive factual and legal investigation and research, a review of pleadings, informal discovery, exchanges of documents and information, review of Defendant's employment policies, discussions with Plaintiff regarding Defendant's wage practices, correspondence and negotiation between counsel, settlement discussions prior to mediation, a full day of mediation, review of evidence and rulings in similar actions litigated elsewhere in the state, and a review of similar cases in the same industry elsewhere in the country.

20. The settlement amount is, of course, a compromise figure. It considered the risks related to liability, damages, and all the defenses asserted by Defendant.

21. Plaintiff's Counsel asserts that the wage and hour claims and the claims for resulting penalties would be certified. On the other hand, Defendant argued that Plaintiff cannot meet the requirements of class certification, as they claim that any wage discrepancies are not the product of an overarching policy or practice that was uniformly applied; that compliant meal and rest periods were made available; that Intuitive Surgical did not deter employees from taking meal and rest periods; that Intuitive Surgical's meal and rest period policies were compliant.

22. I am informed and believed that Intuitive Surgical further contends that class certification would not be warranted because individual liability issues predominate any class allegations.

23. While Plaintiff and I believe in Plaintiff's chances of success of certifying the claims if permitted, I recognize the potential risk, expense, and complexity posed by litigation on a class basis, especially in light of the purported arbitration agreements.

24. I am informed and believe that litigating Plaintiff's claims in this Action – claims that involve numerous Class Members during the Class Period working with Intuitive Surgical – would require substantial preparation and discovery and ultimately would involve the deposition and presentation of numerous more witnesses (including Class Members and expert witnesses), as well as the consideration, preparation, and analysis of expert reports. Therefore, I am informed

1 and believe that further class litigation, if permitted, would have carried with it significant expense
2 incurred by each side (above and beyond the tens of thousands of dollars of expense already
3 incurred).

4 25. I am informed and believe that Intuitive Surgical has a credible position on liability
5 in this case. Intuitive Surgical denies any wrongdoing of any kind associated with the claims
6 alleged in the Action, and further denies that, for any purpose other than that of settling this
7 lawsuit, the allegations in the Action are appropriate for class treatment.

8 26. I am informed and believe that in light of the sharply contested legal and factual
9 issues, the risks of continued litigation, and substantial benefits to Class Members under the
10 Settlement, the terms and conditions of this class settlement are fair and reasonable to all sides.

11 **The Settlement Amount Is Well Within the Range of Reasonableness**

12 27. I believe that the settlement amount reached in this case provides significant
13 recovery to participating class members based on the circumstances, and falls within the range of
14 reasonableness.

15 28. The financial remedies available to the Class stem from damages and/or penalties
16 for the claims for unpaid wages and meal and rest break violations. The following outlines my
17 firm's estimation of the maximum potential value of these claims and any basis for the discounting
18 thereof.

19 **Missed Meal Breaks:**

20 29. The allegation that Defendant deprived class members of meal and rest periods was
21 the driving force of this litigation.

22 30. I am informed and believe that Intuitive Surgical contends, in defense, that each of
23 the potential issues is individualized and there is no uniform pattern or practice of depriving
24 employees of meal or rest breaks meriting class certification.

25 31. Based on Defendant's analysis of the available payroll records, it was determined
26 that the number of workweeks in which meal periods could be missed was as high as 260,000.
27 Using this information and data provided by Defendant, an average (weighted) hourly wage of
28 about \$46.54, and assuming a violation every time a worker worked a full time shift five days per

1 week, every week, the liability exposure possible for this claim could exceed \$60,502,000 over the
2 Class Period.

3 **Missed Rest Breaks:**

4 32. In Plaintiff's experience, Class Members were, at times, not taking rest breaks
5 because there simply was not enough time to take them or they were pressured to work through
6 them. Some Class Members report that even when they were permitted (either by supervisors or
7 breaks in work) to take rest breaks, they were interrupted by coworkers or the demands of their
8 workload.

9 33. I am informed and believe that Intuitive Surgical contends that they have
10 maintained throughout the Class Period compliant rest period policies; that compliant rest breaks
11 always were made available to Class Members always took their rest breaks; and that individual
12 issues predominate as to why rest periods were not taken (if not taken).

13 34. Based on Defendant's analysis of payroll records, the average hourly wage for the
14 Class Period is approximately \$46.54. Assuming a 100% violation rate for missed rest breaks (*i.e.*,
15 that each Class Member missed at least one rest break on each of the approximately 1,300,000
16 shifts worked during the Class Period), the estimated exposure for rest break premiums totals
17 \$60,502,000 (1,300,000 shifts x \$46.54/hr.).

18 **Recovery of Penalties:**

19 35. Plaintiff contend that they and Class Members would have been entitled to recover
20 penalties for Intuitive Surgical's failure to issue compliant wage statements under California Labor
21 Code section 226, subdivision (e) and for Intuitive Surgical's failure to issue all earned wages
22 immediately upon termination or within 72 hours of resignation under California Labor Code
23 sections 201, 202, and 203. The penalties are derivative of the wage and hour claims. As a result
24 of Intuitive Surgical's alleged failure to provide compliant wage statements each pay period, each
25 aggrieved employee could recover up to a maximum of \$4,000.00 aggregate penalty pursuant to
26 Labor Code section 226, subdivision (e), depending on the number of pay periods he or she was
27 issued a non-compliant wage statement. As a result of Intuitive Surgical's alleged failure to pay all
28

1 earned wages immediately upon termination or within 72 hours of resignation, each former
2 employee could recover up to a maximum of a 30-day penalty.

3 36. However, there are certain inherent risks associated with these claims. With respect
4 to the wage statement claim, it commands a one-year statute of limitations period, which would
5 significantly weigh on this claim. With respect to the waiting time penalty claim, Plaintiff
6 anticipates that Intuitive Surgical would argue that the Labor Code requires that there be a willful
7 showing that the employer knew of its obligation and intentionally refused to act. *Naranjo v.*
8 *Spectrum Security Services* (2022) 13 Cal.5th 93, 126.)

9 **PAGA Penalties:**

10 37. Plaintiff also alleged that Defendant's conduct created liability under the Labor
11 Code Private Attorney General Act ("PAGA").

12 38. PAGA claims are extraordinarily difficult to evaluate because there are several
13 obstacles to the actual award of the civil penalty. First, it is arguably unclear whether penalties
14 continue to accrue until the court finds a violation to exist. Second, Labor Code § 2699(e)(1) and
15 (2) give trial courts immense discretion to access or lower the penalty amount. Indeed, several
16 courts have exercised their broad discretion and have dramatically limited PAGA awards. Third,
17 defendants routinely argue that, when other statutory penalties have been imposed, additional
18 penalties under PAGA are unjust (*e.g.*, in cases where damages are already "in play" based on
19 underlying wage violation claims, as we have here).

20 39. Thus, while the PAGA calculation herein for approximately 40,000 pay periods
21 could reach \$8,000,000, the likelihood of that sum ever being awarded, or anything even close to
22 it, is extremely slim. Despite this potential recovery, given that PAGA penalties would likely be
23 deemed duplicative of other penalties awardable here, given the extreme "haircuts" many courts
24 are giving to PAGA penalties and given the presence here of class action allegations (the absence
25 of which often being the reason so-called "Plan B" PAGA penalties are sought to begin with),
26 PAGA penalties were discounted.

27 //

28 //

1 40. Nevertheless, the amount of PAGA civil penalties to be paid from the Gross
2 Settlement Amount is fair to those affected, and is allocated at twenty-five percent (25%) to the
3 aggrieved employees (\$12,500.00) and seventy-five percent (75%) to LWDA (\$37,000.00).

4 **Gross Settlement Amount:**

5 41. My firm obtained a Gross Settlement Amount of \$4,500,000.00, inclusive of prior
6 payments to Class Members. This Gross Settlement Amount represents a significant recovery. I
7 believe this to be a fair, reasonable and adequate settlement for class members, when considering
8 all issues and risks related to liability, purported arbitration agreements signed by putative class
9 members, the hurdles to class certification and considering the case law regarding fair, reasonable,
10 and adequate settlements. *See, e.g., Officers for Justice v. Civil Service Comm'n* (9th Cir. 1982)
11 688 F.2d 615, 628 (“[i]t is well-settled law that a cash settlement amounting to only a fraction of
12 the potential recovery does not . . . render the settlement inadequate or unfair”).

13 42. My opinion that this settlement represents a result well within the range of
14 reasonableness for the class is based on its weighing of the maximum possible recovery against
15 the strengths of the defenses to class certification, liability, and damages as outlined herein.
16 Regarding the claims under the PAGA, I believe the allocation is reasonable based upon my
17 analysis of the claims in the Action and the relative role of the LWDA and the discretion courts
18 possess, and typically exercise, to reduce PAGA penalties.

19 **The Proposed Attorneys’ Fees and Costs Are Reasonable**

20 43. Plaintiff’s Counsel seeks an attorneys’ fees award of \$1,500,000.00, which is thirty-
21 three percent (33%) percent of the Gross Settlement Amount, and costs not to exceed \$25,000. I
22 believe the requested fee falls well within the historical range of attorneys’ fees awards under the
23 common fund theory, which is generally from 25% to 50%.

24 44. The requested fee is fair compensation for undertaking complex, risky, expensive,
25 and time-consuming litigation on a contingent fee basis.

26 45. Indeed, this case was litigated with conflict between counsel, including regarding
27 whether penalties could be obtained for aggrieved employees in the form of unpaid wages and the
28 approximate number of class members/violations.

1 46. Moreover, when information was obtained through informal means, extensive work
2 was performed by my firm, including: review of voluminous time and pay records (in conjunction
3 with Plaintiff) and analyses regarding the certifiability and merits of each of Plaintiff's claims, the
4 merits of those claims, and what damages would be recoverable. Additionally, thousands of
5 dollars were expended, including in filing fees, retention of statisticians, and to attend mediation to
6 try to resolve this Action.

7 47. As Plaintiff's Counsel, my firm bore, and continues to bear, the entire risk and cost
8 of litigation associated with this class action on a pure contingency basis.

9 48. The factual and legal issues posed in this case were evolving and difficult,
10 particularly in light of the disputes between the Parties regarding informal discovery and violation
11 rates. My firm has expended significant hours on this matter, including:

- 12 • the investigation of the matter, including extensive client interviews;
- 13 • seeking informal discovery from Defendant, including written policies, time records,
14 and pay records;
- 15 • meeting and conferring regarding mediation, and negotiating with opposing counsel
16 regarding the parameters thereof;
- 17 • analyzing written policies produced by Defendant;
- 18 • analyzing time and payroll records (in conjunction with Plaintiff) produced by
19 Defendant;
- 20 • analyzing other documents (including purported meal and rest break policies)
21 produced by Defendant;
- 22 • preparing for and attending mediation;
- 23 • negotiating a Memorandum of Agreement;
- 24 • negotiating and finalizing a long form settlement agreement;
- 25 • preparing a draft class notice and obtaining bids for administration;
- 26 • drafting and filing a Complaint in this Action; and
- 27 • preparing the instant Motion for Preliminary Approval.

28 //

1 49. We also anticipate devoting an additional fifty to one hundred hours to oversee the
2 settlement administration process through final approval and ensure that payments to Class
3 Members are properly made. If Defendant fails to meet its payment obligations, our office will
4 bear the burden of taking any necessary enforcement action.

5 50. Based on my past experience in wage and hour class action litigation, I believe that
6 my office is very likely to be called upon, after the Class Notice has been sent, to expend
7 substantial amounts of additional time to help Class Members understand the terms of the
8 proposed settlement, and to assist Class Members in the preparation and documentation of their
9 claims.

10 51. I also believe it to be likely that, even after final approval of the settlement has been
11 granted, my office will be called upon to expend additional amounts of time in the presentation and
12 resolution of contests and disputes relating to Class Members' claims under the terms of the
13 proposed settlement, as to the amounts of individual claims, and perhaps other individual issues.

14 52. Finally, I believe that my office will have to work with the Settlement
15 Administrator to submit a report to this Court regarding the distribution plan pursuant to Code of
16 Civil Procedure section 384 along with a proposed amended judgment, which will require further
17 time and cost to be expended.

18 53. I graduated with a Bachelor of Arts degree with a major in Political Science from
19 Purdue University in 2011. I received my Juris Doctorate from New York University School of
20 Law in 2015. I became an Active Member of the State Bar of California in 2016 and have been an
21 Active Member in good standing continuously since.

22 54. After graduating from law school, I worked as an associate at the global law firm
23 White & Case LLP, where I represented clients in complex civil litigation, including in class
24 actions. I then worked for Loeb & Loeb LLP, another global law firm, where I continued working
25 as a complex civil litigator, including in class and PAGA actions. I joined Mills Sadat Dowlat LLP
26 as a partner in 2021.

27 55. My current practice primarily involves employment law and advocating for the
28 rights of employees in wage-and-hour litigation through class and representative actions

1 56. My hourly rate is \$850. Many of Mills Sadat Dowlat LLP's hourly clients pay this
2 hourly rate for my work.

3 57. My firm has the experience, resources, and means necessary to allow us to provide
4 adequate representation as Class Counsel to all class members in this litigation.

5 58. Currently, my firm is acting as counsel in at least 80 wage and hour individual
6 actions and 16 wage and hour class actions.

7 59. In addition to the present case, Mills Sadat Dowlat LLP currently serves as lead
8 class counsel in multiple pending wage-and-hour class and representative actions across various
9 California jurisdictions. The firm is presently litigating several complex matters on behalf of
10 workers statewide, including: *Frank, et al. v. Golf and Tennis Pro Shop*, Case No. CVRI2401197
11 (Riverside County Superior Court, class size approx. 470); *Martinez v. Stanford By the Sea Eco*
12 *Resort, et al.*, Case No. 24CV00539 (Mendocino County Superior Court, class size approx. 196);
13 *Nations v. SAS Retail Services LLC*, Case No. C23-00122 (Contra Costa County Superior Court,
14 class size approx. 178); *Zhou v. Golden Bridge International Logistics, LLC*, Case No.
15 24STCV05766 (Los Angeles Superior Court, class size approx. 63); *Briones v. Shengyun LLC*,
16 Case No. 30-2024-01388222-CU-OE-CXC (Orange County Superior Court); and *Marshall v.*
17 *Tailored Shared Services, LLC*, et al., Case No. CIVSB2332636 (San Bernardino Superior Court).
18 These matters reflect our firm's ongoing commitment to representing employees in high-stakes
19 wage-and-hour litigation throughout the state.

20 60. Between October 2024 and June 2025, I, Camron Dowlatshahi:

- 21 • investigated the matter and conducted client interviews (1.0 hours);
- 22 • met and conferred with opposing counsel regarding mediation and the parameters
- 23 thereof (1.0 hours);
- 24 • analyzed written policies produced by Defendant (0.5 hours)
- 25 • assisted statisticians in analyzing time and payroll records produced by Defendant;
- 26 (0.5 hours)
- 27 • assisted in drafting the mediation brief (1.0 hours)
- 28 • prepared for and attended mediation (10.0 hours);

- negotiating and drafting a Memorandum of Agreement (1.0 hours);
- negotiating and finalizing a long form settlement agreement (1.0 hours);
- assisted in drafting and filing a Complaint and PAGA Letter in this Action (1.0 hours);
- corresponded with opposing counsel regarding mediation, informal discovery, the Memorandum of Agreement, the long form settlement agreement, settlement administration, and the Motion for Preliminary Approval (2.0 hours);and
- preparing the instant Motion for Preliminary Approval (5.0 hours).

61. I worked on this case with my partner, Arash Sadat. Mr. Sadat has been licensed to practice law in California since 2011. He received his Bachelor of Arts degree in Sociology from the University of California, Santa Barbara in 2004 and graduated cum laude from Loyola Law School, Los Angeles. From 2011 through 2016, he worked as an associate at White & Case LLP, a global law firm ranked in the AmLaw 10, where he specialized in complex commercial litigation and white-collar defense. While at White & Case LLP, he represented clients in a variety of business disputes, including in jury trials and arbitrations. Thereafter, he worked as an associate at Brown White & Osborn LLP, a Southern California litigation boutique. In 2017, he founded Sadat Law Group (now known as MSD). MSD specializes in employment litigation, business disputes, and probate litigation.

62. Over his 13 years of litigation practice, Mr. Sadat has represented clients such as Gerber Products Company, Nestlé USA, Comcast Corporation, LA Fitness International LLC, and the Houston Rockets professional basketball franchise in business and consumer class action litigation in various jurisdictions across the country. He has also represented clients in various high-profile matters including in post-judgment proceedings in *Log Cabin Republicans v. United States*, et al., No. 2:04-cv-08425 (C.D. Cal.), a case in which the trial court struck down on constitutional grounds the congressionally enacted “Don’t Ask, Don’t Tell” policy concerning LGBTQ+ servicemembers in the military. While a partner at MSD, Mr. Sadat has represented employees in hundreds of employment actions and has also represented clients such as Target Corporation and the Government of Japan, in addition to numerous other businesses in litigation in

1 California and elsewhere. His hourly rate is \$850, and many of MSD's hourly clients pay this rate
2 for his work.

3 63. California courts have previously approved the rates charged by Mr. Sadat. *See,*
4 *e.g., 147-151 W. 25th St., LLC v. GRG Collective, et al.* (Los Angeles Super. Ct. June 5, 2023)
5 Case No. 19STCV07425; *Johnson v. Reliant Property Management, Inc.* (Solano County Super.
6 Ct. May 22, 2023) Case No. FCM176825.

7 64. Between October 2024 and June 2025, Mr. Sadat:

- 8 • prepared for and attended mediation (10.0 hours);
- 9 • requested and analyzed Defendant's written policies (0.5 hours)

10 65. Under my supervision, Mir Raza, an associate attorney at Mills Sadat Dowlat LLP,
11 assisted in litigating the case, preparing for mediation, and drafting the Motion for Preliminary
12 Approval of Class and Representative Action Settlement.

13 66. Mr. Raza graduated magna cum laude from the University of California, Los
14 Angeles, with a Bachelor of Arts in Political Science and a minor in History in 2019. He earned
15 his Juris Doctor from Loyola Law School, Los Angeles in 2024. During law school, Mr. Raza
16 served as a law clerk for multiple government agencies, including the Los Angeles County
17 Counsel's Office, the Federal Public Defender's Office for the Central District of California, and
18 the National Labor Relations Board.

19 67. Mr. Raza became an Active Member of the State Bar of California in November
20 2024 and has been an Active Member in good standing continuously since. Mr. Raza is an
21 associate attorney at Mills Sadat Dowlat LLP and represents employees in all aspects of
22 employment litigation, including wage-and-hour class and representative actions involving claims
23 related to unpaid wages, meal and rest break violations, inaccurate wage statements, the California
24 Private Attorneys General Act, and unfair business practices. Mr. Raza's hourly rate is \$400.

25 68. Between October 2024 and June 2025, Mr. Raza:

- 26 • investigated the matter and conducted extensive client interviews (2.0 hours);
- 27 • met and conferred with opposing counsel regarding mediation and the parameters
28 thereof (1.0 hours);

- analyzed written policies produced by Defendant (0.5 hours)
- analyzed time and payroll records (in conjunction with Plaintiff) produced by Defendant; (0.5 hours)
- assisted in drafting the mediation brief (5.0 hours)
- prepared for and attended mediation (16.0 hours);
- assisted in drafting a Memorandum of Agreement (0.5 hours);
- assisted in drafting and filing a Complaint and PAGA Letter in this Action (0.5 hours);
- corresponded with opposing counsel regarding mediation, informal discovery, the Memorandum of Agreement, the long form settlement agreement, settlement administration, and the Motion for Preliminary Approval (2.0 hours); and
- preparing the instant Motion for Preliminary Approval (28.0 hours).

69. Under my supervision, Isabella Fiorentino, a paralegal employed by Mills Sadat Dowlat LLP, also assisted in preparing the Complaint and Motion for Preliminary Approval of Class Action Settlement. Ms. Fiorentino graduated cum laude from the University of Pennsylvania, College of Arts and Sciences with a Bachelor of Arts in Philosophy, Politics, and Economics and minors in Ancient History and Legal Studies and History from the College of Arts and Sciences and Wharton School, respectively. Ms. Fiorentino has been employed by MSD since 2023 and has nearly three years of experience in litigation support, specializing in matters relating to business litigation, employment actions, and personal injury. Ms. Fiorentino's hourly rate is \$250.

70. Between October 2024 to June 2025, Ms. Fiorentino:

- prepared for and assisted during mediation (10.0 hours)
- assisted with the execution of the Memorandum of Agreement, long form settlement agreement, and the instant Motion (3.0 hours)
- assisted statisticians with the analysis of time and payroll records (8.0 hours); and
- assisted in preparing and filing the Complaint and PAGA Letter (2.0 hours)

71. Plaintiff's counsel has spent a total of approximately 113.5 hours litigating this action. Those hours, and the reasonable hourly rates for each timekeeper, break down as follows:

Timekeeper	Hours	Rate	Amount
Camron Dowlatshahi	24	\$850	\$20,400
Arash Sadat	10.5	\$850	\$8,925
Mir Raza	56.0	\$400	\$22,400
Isabella Fiorentino	23	\$250	\$5,750
TOTALS	113.5		\$57,475

72. My firm has also reasonably incurred \$11,457.25 in litigation costs. Such costs were reasonably incurred because they were actually incurred and required to prosecute this Action. For example, they include, but are not limited to, the complaint filing fee and mediation fee. The complaint filing fee was required for Plaintiff to initiate this Action, and the mediation fee facilitated the Parties' settlement discussions, which ultimately led to the Agreement. The Parties have agreed to reimbursement of litigations costs not to exceed \$25,000.00, and any un-awarded litigation costs shall be allocated to the Net Settlement Amount by the Administrator.

73. The risk undertaken by my office in prosecuting this matter has been substantial. Specifically, if we had not succeeded in resolving this class action, we would have received no compensation for the considerable time and effort devoted to litigating the case. The risk of non-payment in these types of matters is very real and not uncommon. Additionally, dedicating resources to this case limited our ability to take on other matters that may have offered a higher likelihood of recovery with less risk.

74. Since most individuals cannot afford to retain counsel on an hourly basis, MSD represents the vast majority of its employment law clients on a contingency fee basis. Under this arrangement, we do not receive compensation unless we prevail at trial or secure a settlement for our clients.

1 75. Mills Sadat Dowlat LLP assumes the risk that we will not be compensated for our
2 time or costs unless we obtain a successful outcome for our client. For this reason, it would not be
3 sustainable for us to represent employees on a contingency basis if we were only awarded our
4 standard hourly rates following a successful outcome. To remain viable and continue representing
5 workers in employment matters, it is essential that we recover more than our hourly rates in cases
6 where we prevail.

7 76. Thus, the Court should preliminarily approve the requested attorneys' fees and
8 costs, which are justified by the results achieved, the complexity of the issues, the difficulty of the
9 case, and the great risk undertaken by Class Counsel. The requested attorneys' fees will not be
10 opposed by Defendant and are well within established guidelines.

11 77. I believe the fees and costs requested are justified by the results achieved, the
12 complexity of the issues, the difficulty of the case, and the great risk undertaken by my firm.

13 78. I believe the requested attorneys' fees and costs will not be opposed by Defendant.

14 **The Proposed Enhancement Award to Plaintiff as Class Representatives Is Reasonable**

15 79. I believe that Plaintiff is entitled to an enhancement award for her service as class
16 representatives, for answering extensive questions by Class Counsel, being available by phone
17 during mediation, and the risk in being the named plaintiff. Additionally, she will be providing
18 Defendant a general release of all claims in exchange for the enhancement award.

19 80. I am informed and believe that Defendant does not oppose the requested
20 enhancement to Plaintiff. Plaintiff devoted a great deal of time assisting Class Counsel in this
21 case, communicated with counsel frequently, and was a valuable participant in the strategy for and
22 success of the mediation. Plaintiff risked intrusive discovery and the payment of employer costs.

23 81. In my experience, the typical enhancement award in wage and hour class actions
24 ranges from approximately \$10,000.00 to \$40,000.00, although some awards are higher. In
25 contrast, Class Counsel seeks a very reasonable amount – not more than \$5,000.00 to the Named
26 Plaintiff for her service.

27 82. The Declaration of Plaintiff Elizabeth To in support of the requested enhancement
28 award is concurrently filed with this Motion.

1 meet the numerosity requirement. In fact, it is nearly enough for numerosity to be *presumed*
2 satisfied.

3 **Identifiable**

4 88. In this litigation, the class is identifiable because its definition is precise and
5 comprised of objective criteria rendering the Class Members discernable. The objective criteria
6 includes the nature of the position held by the Class Member (*i.e.*, non-exempt); the time period
7 during which the Class Member held the position (*i.e.*, from October 14, 2020, through the date of
8 the Court's Preliminary Approval or ninety (90) days from the date the Agreement is fully
9 executed, whichever is sooner); the state in which the Class Member worked (*i.e.*, California); and
10 the employer of the Class Member (*i.e.*, Defendant).

11 **Commonality**

12 89. In this litigation, common issues included, without limitation, whether Defendant
13 violated applicable wage and hour laws, *i.e.*, failed to make available meal or rest breaks or
14 compensation in lieu thereof.

15 90. I believe that because there are common issues at play, the commonality
16 requirement is satisfied for purposes of settlement.

17 **Typicality**

18 91. Plaintiff's claims are precisely the same as those of the class she seeks to represent:
19 like other members of the Class, she was employed by Defendant during the relevant time period
20 as a non-exempt employee, and Defendant's wage policies were uniformly applied to its non-
21 exempt employees.

22 92. I believe therefore that Plaintiff's claims are thus typical of those of other Class
23 Members.

24 **Adequacy of Representation**

25 93. I believe that no conflicts, disabling or otherwise, exist between the Class
26 Representative and Class Members because the Plaintiff has been damaged by the same alleged
27 conduct (*i.e.*, she was classified as a non-exempt employee, not paid for all time under Defendant's
28

control, etc.) and thus has the incentive to fairly represent all Class Members' claims to achieve the maximum possible recovery.

94. My firm consists of experienced attorneys who have a successful track record in litigating hundreds of employment law cases, including numerous wage and hour cases and class and representative actions as lead counsel.

95. After a thorough investigation and settlement discussions, the Parties arrived at terms that they viewed as being in the best interest of both the Class Members and the Parties.

96. I am informed and believe that Plaintiff's goals have been realized via redress for the employees whose wage and hour rights were violated.

97. While I am informed and believe that Defendant denies liability, it has nonetheless agreed to settle the matter to avoid any potential expense.

98. Should the Court refuse to grant preliminary approval of this Settlement, I am informed and believe that many of the Class Members may be denied any recourse for Defendant's alleged violations.

Superiority of the Class Action

99. I believe that this wage and hour class action meets all the criteria to deem it a superior vehicle for resolution of the issues it seeks to resolve. First, it pertains to a purported uniform practice including Defendant allegedly not making meal and rest breaks available to non-exempt employees, not paying meal and rest break premiums for missed meal and rest breaks,, which allows claims of many individuals to be resolved at the same time, eliminates the possibility of repetitious litigation and affords small claimants with a method of obtaining redress for claims which otherwise would be too insufficient to warrant individual litigation. It is also brought by a former employees who is not at as great a risk of retaliation as current employees who are less likely to seek such redress for themselves.

100. I am not aware of any other action against Defendant brought on an individual basis for redress, which would appear to signal that putative class members have little interest in personally controlling their claims.

//

101. I believe that a class action would also eradicate the concern of any inconsistent rulings.

102. I believe that because the class action meets all criteria for certification and a lesser standard of scrutiny applies when evaluating these criteria for settlement purposes.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct on June 24, 2025 at Los Angeles, California.


Camron Dowlatshahi

EXHIBIT 1

CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND CLASS NOTICE

This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between Plaintiff Elizabeth To (“Plaintiff”), and Defendant Intuitive Surgical, Inc. (“Defendant”). The Agreement refers to Plaintiff and Defendant, collectively, as “Parties,” or individually as “Party.”

1. ADDITIONAL DEFINITIONS.

- 1.1 “Action” means the Plaintiff’s lawsuit alleging wage and hour violations against Defendant captioned *Elizabeth To v. Intuitive Surgical Inc.*, Case No. 24CV449420, initiated on October 14, 2024, and pending in the Superior Court of the State of California for the County of Santa Clara.
- 1.2 “Administrator” means ILYM Group, Inc., the neutral third-party entity the Parties have agreed to appoint to administer the Settlement.
- 1.3 “Administration Expenses Payment” means the amount the Administrator shall be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with Preliminary Approval of the Settlement.
- 1.4 “Aggrieved Employee” means all persons who are employed or who were previously employed by Defendant in California and classified as a non-exempt employee during the PAGA Period.
- 1.5 “Class” means all persons who are employed or who were previously employed by Defendant in California and classified as a non-exempt employee during the Class Period.
- 1.6 “Class Counsel” means Arash Sadat, Brigitte Mills and Camron Dowlatsahi of Mills Sadat Dowlat LLP.
- 1.7 “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and litigation expenses, respectively, incurred to prosecute the Action.
- 1.8 “Class Data” means the following Class Member identifying information in Defendant’s possession: full name, last-known mailing address, Social Security number, and number of Class Period Workweeks and PAGA Pay Periods.
- 1.9 “Class Member” means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non-Participating Class Member who qualifies as an Aggrieved Employee).
- 1.10 “Class Member Address Search” means the Administrator’s investigation and search for Class Member current mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of

Address database, skip traces, and direct contact by the Administrator with Class Members.

- 1.11 “Class Notice” means the COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed by the Administrator to Class Members in English in the form, without material variation, attached hereto as **Exhibit A** and incorporated by reference into this Agreement.
- 1.12 “Class Period” means the period from October 14, 2020, through the date of the Court’s Preliminary Approval or ninety (90) days from the date the Agreement is fully executed, whichever is sooner.
- 1.13 “Class Representative” means Elizabeth To, the named Plaintiff in the Complaint in the Action who is seeking Court approval to serve as the Class Representative.
- 1.14 “Class Representative Service Payment” means the payment to the Class Representative for initiating the Action and providing services in support of the Action.
- 1.15 “Complaint” means the Complaint filed or caused to be filed by Plaintiff on or about October 14, 2024.
- 1.16 “Court” means the Superior Court of California for the County of Santa Clara.
- 1.17 “Defendant” means Intuitive Surgical, Inc, the named Defendant in the Complaint in the Action.
- 1.18 “Defense Counsel” means Kenneth D. Sulzer and Remy Kessler of Constangy, Brooks, Smith & Prophete, LLP.
- 1.19 “Effective Date” means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Final Approval Order; and (b) the Judgment becomes final. The Judgment is final as of the latest of the following occurrences: (a) if no Participating Class Member objects to the Settlement, the day the Court enters Judgment; (b) if one or more Participating Class Members objects to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or (c) if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur.
- 1.20 “Final Approval” or “Final Approval Order” means the Court’s Order Granting Final Approval of the Settlement.
- 1.21 “Final Approval Hearing” means the Court’s hearing on the Motion for Final Approval of the Settlement.
- 1.22 “Gross Settlement Amount” means Four Million Five Hundred Thousand Dollars and Zero Cents (\$4,500,000.00), which is the total amount Defendant agrees to pay

under the Settlement. The Gross Settlement Amount shall be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payment and the Administration Expenses Payment.

- 1.23 “Individual Class Payment” means the Participating Class Member’s pro rata share of the Net Settlement Amount calculated according to the number of Workweeks such Participating Class Member worked during the Class Period.
- 1.24 “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of twenty-five percent (25%) of the PAGA Penalties calculated according to the number of PAGA Pay Periods such Aggrieved Employee worked during the PAGA Period.
- 1.25 “Judgment” means the judgment entered by the Court based upon the Final Approval.
- 1.26 “LWDA” means the California Labor and Workforce Development Agency, the agency entitled to receive seventy-five percent (75%) of the PAGA Penalties under California Labor Code section 2699(i).
- 1.27 “LWDA PAGA Payment” means the seventy-five percent (75%) of the PAGA Penalties to be paid to the LWDA under California Labor Code section 2699(i).
- 1.28 “Net Settlement Amount” means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: the Individual PAGA Payments, LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder shall be paid to Participating Class Members as Individual Class Payments.
- 1.29 “Non-Participating Class Member” means any Class Member who opts out of the Settlement by sending the Administrator a valid and timely Request for Exclusion.
- 1.30 “PAGA Pay Period” means any Pay Period during which an Aggrieved Employee worked for Defendant for at least one day during the PAGA Period.
- 1.31 “PAGA Period” means the period from October 11, 2023, through the date of the Court’s Preliminary Approval.
- 1.32 “PAGA” means the California Labor Code Private Attorneys General Act of 2004 (Labor Code §§ 2698, *et seq.*).
- 1.33 “PAGA Notice” means Plaintiff’s October 11, 2024 letter to Defendant and the LWDA providing notice pursuant to California Labor Code section 2699.3(a).
- 1.34 “PAGA Penalties” means Fifty Thousand Dollars and Zero Cents (\$50,000.00), the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated as follows: twenty-five percent (25%) to the Aggrieved Employees

(\$12,500.00) and seventy-five percent (75%) to the LWDA (\$37,500.00), in settlement of PAGA claims.

- 1.35 “Participating Class Member” means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.
- 1.36 “Plaintiff” means Elizabeth To, the named Plaintiff in the Action.
- 1.37 “Preliminary Approval” means the Court’s Order Granting Preliminary Approval of the Settlement.
- 1.38 "Preliminary Approval Order" means the proposed Order Granting Preliminary Approval of the Settlement.
- 1.39 “Released Class Claims” means the claims being released as described in Paragraph 5.2 below.
- 1.40 “Released PAGA Claims” means the claims being released as described in Paragraph 5.3 below.
- 1.41 “Released Parties” means Defendant and each of its former and present directors, partners officers, employees, shareholders, owners, members, agents, representatives, attorneys, insurers, predecessors, successors, assigns, parent companies, subsidiaries, and affiliated and related entities.
- 1.42 “Request for Exclusion” means a Class Member’s submission of a written request to be excluded from the Settlement that is signed by the Class Member.
- 1.43 "Response Deadline" means sixty (60) days after the Administrator mails the Class Notice to Class Members and Aggrieved Employees and shall be the last date on which Class Members may: (a) fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail objections to the Settlement. Class Members to whom Class Notices are resent after having been returned undeliverable to the Administrator shall have an additional fourteen (14) days beyond the Response Deadline has expired.
- 1.44 “Settlement” means the disposition of the Action effected by this Agreement and the Judgment.
- 1.45 “Workweek” means any week during which a Class Member worked for Defendant for at least one day during the Class Period.

2. RECITALS.

- 2.1 On October 14, 2024, Plaintiff commenced this Action by filing a Complaint alleging causes of action against Defendant for: (1) failure to pay minimum wage for all hours worked, (2) failure to pay overtime compensation, (3) failure to provide meal periods, (4) failure to provide rest periods, (5) failure to indemnify necessary business expenses, (6) waiting time penalties (7) failure to provide

accurate wage statements, (8) violation of the Business and Professions Code Unfair Competition Law, and (9) violation of the PAGA. Defendant denies the allegations in the Complaint, denies any failure to comply with the laws identified in the Complaint and denies any and all liability for the causes of action alleged.

- 2.2 Pursuant to California Labor Code section 2699.3(a), Plaintiff gave timely written notice to Defendant and the LWDA of her PAGA claims by sending the PAGA Notice.
- 2.3 On December 23, 2024, the Parties participated in an all-day mediation presided over by Nikki Tolt, Esq., which led to this Agreement to settle the Action.
- 2.4 Prior to mediation, Plaintiff obtained, through informal discovery: (1) Plaintiff's personnel file, (2) Plaintiff's time and payroll records, (3) Defendant's policies and operating procedures regarding the (a) payment of wages, (b) timekeeping policies (including recording hours), (c) issuance of wage statements, (d) reimbursement of business expenses, and (e) termination wages, and (4) the payroll and time records for all Class Members and Aggrieved Employees. Plaintiff's investigation was sufficient to satisfy the criteria for Court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 ("*Dunk/Kullar*").
- 2.5 The Court has not granted or denied class certification in the Action.
- 2.6 The Parties, Class Counsel and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that shall be extinguished or affected by the Settlement.

3. MONETARY TERMS.

- 3.1 **Gross Settlement Amount.** Defendant promises to pay the Gross Settlement Amount and to separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments. Defendant shall have no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraph 4.2 of this Agreement. The Administrator shall disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount shall revert to Defendant.
- 3.2 **Payments from the Gross Settlement Amount.** The Administrator shall make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval Order:
 - 3.2.1 **To Plaintiff:** Class Representative Service Payment to the Class Representative of not more than Five Thousand Dollars and Zero Cents (\$5,000.00) (in addition to any Individual Class Payment the Class Representative is entitled to receive as a Participating Class Member and

any Individual PAGA Payment). Defendant shall not oppose Plaintiff's request for a Class Representative Service Payment that does not exceed this amount. As part of the Motion for Final Approval, Plaintiff shall seek Court approval for the Class Representative Service Payment. If the Court approves a Class Representative Service Payment that is less than the amount requested, the Administrator shall allocate the remainder to the Net Settlement Amount. The Administrator shall pay the Class Representative Service Payment using an IRS Form 1099. Plaintiff shall assume full responsibility and liability for employee taxes owed on the Class Representative Service Payment.

- 3.2.2 **To Class Counsel:** A Class Counsel Fees Payment of not more than one-third of the Gross Settlement Amount, which is currently estimated to be One Million Five Hundred Thousand Dollars and Zero Cents (\$1,500,000.00), and a Class Counsel Litigation Expenses Payment of not more than Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00). Defendant shall not oppose requests for these payments provided that they do not exceed these amounts. As part of the Motion for Final Approval, Plaintiff shall seek approval of the Class Counsel Fees Payment and Class Counsel Litigation Expenses. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment that is less than the amounts requested, the Administrator shall allocate the remainder to the Net Settlement Amount. The Released Parties shall have no liability to Class Counsel or any other counsel for Plaintiff arising from any claim to any portion of any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator shall pay the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment using one or more IRS 1099 Forms. Class Counsel shall assume full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and Plaintiff and her counsel shall hold Defendant harmless, and shall indemnify Defendant, from any dispute or controversy regarding any division or sharing of any of these payments.
- 3.2.3 **To the Administrator:** An Administrator Expenses Payment not to exceed Sixteen Thousand Nine Hundred Fifty Dollars and Zero Cents \$16,950.00, except for a showing of good cause and as approved by the Court.
- 3.2.4 **To Each Participating Class Member:** An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks.

3.2.4.1 Tax Allocation of Individual Class Payments. Twenty percent (20%) of each Participating Class Member's Individual Class Payment shall be allocated to settlement of wage claims (the "Wage Portions"). The Wage Portions shall be subject to tax withholding and shall be reported by the Administrator on IRS W-2 Forms. Eighty percent (80%) of each Participating Class Member's Individual Class Payment shall be allocated to settlement of claims for interest, non-wage damages and penalties (the "Non-Wage Portions"). The Non-Wage Portions shall not be subject to tax withholdings and shall be reported by the Administrator on IRS 1099 Forms. Participating Class Members shall assume full responsibility and liability for any employee taxes owed on their Individual Class Payment.

3.2.4.2 Effect of Non-Participating Class Members on Calculation of Individual Class Payments. Non-Participating Class Members shall not receive any Individual Class Payments. The Administrator shall retain amounts equal to their Individual Class Payments in the Net Settlement Amount for distribution to Participating Class Members

3.2.5 To the LWDA and Aggrieved Employees: PAGA Penalties shall be paid from the Gross Settlement Amount. PAGA Penalties shall be allocated to Individual PAGA Payments and to the LWDA PAGA Payment.

3.2.5.1 The Administrator shall calculate each Individual PAGA Payment by: (a) dividing the amount of the Aggrieved Employees' twenty-five (25%) share of PAGA Penalties by the total number of PAGA Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Pay Periods. The Individual PAGA Payments shall not be subject to tax withholdings. Aggrieved Employees shall assume full responsibility and liability for any taxes owed on their Individual PAGA Payments.

3.2.5.2 If the Court approves PAGA Penalties of less than the amount requested, the Administrator shall allocate the remainder to the Net Settlement Amount for distribution to Aggrieved Employees. The Administrator shall report the Individual PAGA Payments on IRS 1099 Forms.

4. SETTLEMENT FUNDING AND PAYMENTS.

4.1 Class Data. Not later than thirty (30) days after the Court grants Preliminary Approval of the Settlement, Defendant shall deliver the Class Data to the

Administrator in the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator shall maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. Defendant shall have a continuing duty to immediately notify Class Counsel if it discovers that the Class Data omitted Class Member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which Defendant must send the Class Data to the Administrator, the Parties and their counsel shall expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.

- 4.2 **Funding of Gross Settlement Amount.** Defendant shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Defendant's share of payroll taxes, by transmitting the funds to the Administrator no later than fourteen (14) days after the Effective Date.
- 4.3 **Payments from the Gross Settlement Amount.** Within fourteen (14) days after Defendant funds the Gross Settlement Amount, the Administrator shall mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment. Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment and the Class Representative Service Payment shall not precede disbursement of Individual Class Payments and Individual PAGA Payments.
 - 4.4.1 The Administrator shall issue checks for the Individual Class Payments and Individual PAGA Payments and send them to the Participating Class Members and Aggrieved Employees via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check shall be voided. The Administrator shall cancel all checks not cashed by the void date. The Administrator shall send checks for Individual Class Payments to all Participating Class Members (including those for whom Class Notice was returned undelivered). The Administrator shall send checks for Individual PAGA Payments to all Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved Employees (including those for whom Class Notice was returned undelivered). To the extent proper and feasible, the Administrator may send Participating Class Members a single check combining the Individual Class Payment and the Individual PAGA Payment. Before mailing any checks, the Settlement Administrator shall

update the recipients' mailing addresses using the National Change of Address Database.

- 4.4.2 The Administrator shall conduct a Class Member Address Search for all Participating Class Members and Aggrieved Employees whose checks are returned undelivered without USPS forwarding address. Within seven (7) days of receiving a returned check, the Administrator shall re-mail checks to the USPS forwarding address provided or to an address ascertained through the Class Member address search. The Administrator need not take further steps to deliver checks to Participating Class Members and Aggrieved Employees whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Participating Class Member and/or Aggrieved Employee whose original check was lost or misplaced, as requested by the Participating Class Member and/or Aggrieved Employee prior to the void date.
- 4.4.3 For any Participating Class Member and/or Aggrieved Employee whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Class Member/Aggrieved Employee, thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384(b).
- 4.4.4 The payment of Individual Class Payments and Individual PAGA Payments shall not obligate Defendant to confer any additional benefits or make any additional payments to Participating Class Members or Aggrieved Employees (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

5. RELEASE OF CLAIMS. Effective on the date when Defendant fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiff, Participating Class Members, and Aggrieved Employees shall release claims against Defendant and all other Released Parties as follows:

- 5.1 **Plaintiff's General Release.** Plaintiff and her respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally release and discharge Defendant and all other Released Parties from all claims, transactions, or occurrences that occurred through the date of the Judgment, including, but not limited to: (a) all claims relating or pertaining to Plaintiff's employment with Defendant, including, but not limited to, her separation from employment; (b) all claims that were, or reasonably could have been, alleged based on the facts contained in the Complaint and (c) all PAGA claims that were, or reasonably could have been, alleged based on facts contained in the Complaint

and Plaintiff's PAGA Notice ("Plaintiff's Release"). Plaintiff's Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested retirement benefits, unemployment benefits, disability benefits, social security benefits, and workers' compensation benefits. Plaintiff acknowledges that she may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them.

5.1.1 Plaintiff's Waiver of Rights Under California Civil Code Section 1542.

For purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions, rights, and benefits, if any, of Section 1542 of the California Civil Code, which reads:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, AND THAT IF KNOWN BY HIM OR HER WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

5.2 Release by Participating Class Members: All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Defendant and all other Released Parties from all claims that were alleged, or reasonably could have been alleged, based on the facts alleged in the Complaint, including claims for: (1) unpaid regular, overtime and minimum wages, (2) meal period violations, (3) rest period violations, (4) failure to timely pay all wages due during employment and/or at the time of separation of employment; (5) business expense reimbursements, (6) wage statement violations, (7) failure to maintain accurate and complete payroll and/or personnel records; (7) waiting time penalties, and (8) violation of the Business and Professions Code Unfair Competition Law during the Class Period. Participating Class Members (other than Plaintiff) only release claims for the duration of the Class Period. Except as set forth in Section 5.3 of this Agreement, Participating Class Members also do not release any other claims, including claims for vested retirement benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits, or claims based on facts occurring outside the Class Period.

5.3 Release by Aggrieved Employees: All Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, Defendant and all other Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the facts alleged in the Complaint and the PAGA Notice, including for: (1) unpaid regular, overtime

and minimum wages, (2) meal period violations, (3) rest period violations, (4) failure to timely pay all wages due during employment and/or at the time of separation of employment; (5) business expense reimbursements, (6) wage statement violations, (7) failure to maintain accurate and complete payroll and/or personnel records; (7) waiting time penalties, and (8) violation of the Business and Professions Code Unfair Competition Law. Aggrieved Employees (other than Plaintiff) only release PAGA claims for the duration of the PAGA Period. Aggrieved Employees who submit Requests for Exclusion shall remain bound by the Released PAGA Claims.

6. MOTION FOR PRELIMINARY APPROVAL. The Parties agree to cooperate in filing with the Court a motion seeking Preliminary Approval of the Settlement (“Motion for Preliminary Approval”).

- 6.1 **Class Counsel Responsibilities.** Class Counsel shall timely prepare and deliver to Defense Counsel for its review all documents necessary for obtaining Preliminary Approval, and conditionally certifying the Class for settlement purposes only, including, but not limited to: (i) drafts of the notice of Motion for Preliminary Approval, memorandum of points and authorities in support of the Motion for Preliminary Approval that includes an analysis of the Settlement under *Dunk/Kullar*, and supporting declarations; and (ii) a draft Preliminary Approval Order.
- 6.2 **Further Responsibilities of Class Counsel.** Class Counsel also shall be responsible for: (i) expeditiously finalizing and filing the Motion for Preliminary Approval no later than thirty (30) days after the full execution of this Agreement, (ii) obtaining a prompt hearing date for the Motion for Preliminary Approval, and for appearing in Court to advocate in favor of the Motion for Preliminary Approval, (iii) delivering the Court’s Preliminary Approval Order to the Administrator, and (iv) providing the LWDA with all documents and notices required under the PAGA in connection with the Settlement.
- 6.3 **Duty to Cooperate.** If the Parties disagree on any aspect of the proposed Motion for Preliminary Approval and/or the supporting declarations and documents, Class Counsel and Defense Counsel shall expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant Preliminary Approval or conditions Preliminary Approval on any material change to this Agreement, Class Counsel and Defense Counsel shall expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court’s concerns.

7. SETTLEMENT ADMINISTRATION.

- 7.1 **Selection of Administrator.** The Parties have jointly selected ILYM Group, Inc. to serve as the Administrator and verified that, as a condition of appointment, ILYM Group, Inc. agrees to be bound by this Agreement, and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of the Administration Expenses Payment. The Parties and their counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences, if any, administering settlements.
- 7.2 **Employer Identification Number.** The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports to state and federal tax authorities.
- 7.3 **Qualified Settlement Fund.** The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund (“QSF”) under US Treasury Regulation section 468B-1.
- 7.4 **Notice to Class Members.**
 - 7.4.1 No later than seven (7) days after receipt of the Class Data, the Administrator shall notify Class Counsel and Defense Counsel that the list has been received and state the number of Class Members, Aggrieved Employees, Workweeks, and PAGA Pay Periods in the Class Data.
 - 7.4.2 Using best efforts to perform as soon as possible, and in no event later than fourteen (14) days after receiving the Class Data, the Administrator shall send to all Class Members identified in the Class Data, via first-class United States Postal Service (“USPS”) mail, the Class Notice substantially in the form attached to this Agreement as **Exhibit A**. The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment and any Individual PAGA Payment payable to the Class Member/Aggrieved Employee, and the number of Workweeks and PAGA Pay Periods (if applicable) used to calculate these amounts. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database.
 - 7.4.3 Not later than five (5) days after the Administrator’s receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. The Administrator shall have no obligation to make further attempts to locate or send Class Notices to Class Members whose Class Notice is returned by the USPS a second time.

- 7.4.4 The deadline for Class Members' written objections to the Settlement, challenges to Workweeks and/or PAGA Pay Periods, and Requests for Exclusion shall be extended an additional fourteen (14) days beyond the sixty (60) days otherwise provided in the Class Notice for all Class Members whose Class Notice is re-mailed. The Administrator shall inform the Class Member of the extended deadline with the re-mailed Class Notice.
- 7.4.5 If the Administrator, Defense Counsel or Class Counsel is contacted by or otherwise discovers any persons who believe they should have been included in the Class Data and should have received Class Notice, the Parties shall expeditiously meet and confer in person or by telephone, and in good faith in an effort to agree on whether to include them as Class Members. If the Parties agree, such persons shall be deemed Class Members entitled to the same rights as other Class Members, and the Administrator shall send, via email or overnight delivery, a Class Notice requiring them to exercise options under this Agreement not later than fourteen (14) days after receipt of the Class Notice, or the deadline dates in the Class Notice, whichever are later.

7.5 Requests for Exclusion (Opt-Outs).

- 7.5.1 Class Members who wish to exclude themselves from (opt-out of) the Class Settlement shall send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than sixty (60) days after the Administrator mails the Class Notice (plus an additional fourteen (14) days for Class Members whose Class Notice is re-mailed). A Request for Exclusion may be in the form of a letter or other statement in writing from a Class Member or his/her representative that reasonably communicates the Class Member's election to be excluded from the Settlement and includes the Class Member's full name, home address, email address and telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline.
- 7.5.2 The Administrator shall not reject a Request for Exclusion because it fails to contain all of the information specified in the Class Notice. The Administrator shall accept any Request for Exclusion if the Administrator can reasonably ascertain the identity of the person as a Class Member and the Class Member's desire to be excluded. The Administrator's determination shall be final and not appealable or otherwise susceptible to challenge. If the Administrator has reason to question the authenticity of a Request for Exclusion, the Administrator may demand additional proof of the Class Member's identity. The Administrator's determination of authenticity shall be final and not appealable or otherwise susceptible to challenge.

7.5.3 Each Class Member who does not submit a timely and valid Request for Exclusion shall be deemed to be a Participating Class Member under this Agreement and shall be entitled to all benefits and bound by all terms and conditions of the Settlement, including the Participating Class Member's releases under Paragraphs 5.2 and 5.3 of this Agreement, regardless of whether the Participating Class Member actually receives the Class Notice or objects to the Settlement.

7.5.4 Each Class Member who submits a valid and timely Request for Exclusion shall be deemed a Non-Participating Class Member and shall not receive an Individual Class Payment or have the right to object to the Class components of the Settlement. Because PAGA claims are subject to claim preclusion upon entry of the Judgment, Non-Participating Class Members who are Aggrieved Employees shall still be deemed to have released the claims identified in Paragraph 5.3 of this Agreement and shall be entitled to receive an Individual PAGA Payment.

7.6 **Challenges to Calculation of Workweeks and PAGA Pay Periods.** Each Class Member shall have sixty (60) days after the Administrator mails the Class Notice (plus an additional fourteen (14) days for Class Members whose Class Notice is re-mailed) to challenge the number of Workweeks and/or PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice. The Class Member may challenge the allocation by communicating with the Administrator via fax, email or mail. The Administrator shall encourage the challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator shall be entitled to presume that the Workweeks and PAGA Pay Periods contained in the Class Notice are correct so long as they are consistent with the Class Data. The Administrator's determination of each Class Member's allocation of Workweeks and/or PAGA Pay Periods shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall promptly provide copies of all challenges to calculation of Workweeks and/or PAGA Pay Periods to Defense Counsel and Class Counsel and the Administrator's determination of the challenges.

7.7 **Objections to Settlement.**

7.7.1 Only Participating Class Members may object to this Agreement, including contesting the fairness of the Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Class Representative Service Payment.

7.7.2 Participating Class Members may send written objections to the Administrator by fax, email, or mail. In the alternative or in the addition, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing.

A Participating Class Member who elects to send a written objection to the Administrator must do so not later than sixty (60) days after the Administrator's mailing of the Class Notice (plus an additional fourteen (14) days for Class Members whose Class Notice is re-mailed).

7.7.3 Non-Participating Class Members have no right to object to the Agreement.

7.8 **Administrator Duties.** The Administrator has a duty to perform and observe all tasks to be performed and observed by the Administrator contained in this Agreement or otherwise.

7.8.1 **Website, Email Address and Toll-Free Number.** The Administrator shall establish and maintain and use an internet website to post information of interest to Class Members, including the date, time and location for the Final Approval Hearing and copies of the Settlement Agreement, Motion for Preliminary Approval, the Preliminary Approval Order, the Class Notice, the Motion for Final Approval, the Motion for Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and Class Representative Service Payment, the Final Approval Order and the Judgment. The Administrator shall also maintain and monitor an email address and a toll-free telephone number to receive Class Member calls, faxes and emails.

7.8.2 **Requests for Exclusion (Opt-outs) and Exclusion List.** The Administrator shall promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not later than seven (7) days after the expiration of the deadline for submitting Requests for Exclusion, the Administrator shall email a list to Class Counsel and Defense Counsel containing: (a) the names and other identifying information of Class Members who have timely submitted valid Requests for Exclusion ("Exclusion List"); (b) the names and other identifying information of Class Members who have submitted invalid Requests for Exclusion; (c) copies of all Requests for Exclusion (whether valid or invalid).

7.8.3 **Weekly Reports.** The Administrator shall, on a weekly basis, provide written reports to Class Counsel and Defense Counsel that, among other things, tally the number of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for Exclusion (whether valid or invalid) received, objections received, challenges to Workweeks and/or PAGA Pay Periods received and/or resolved, and checks mailed for Individual Class Payments and Individual PAGA Payments ("Weekly Report"). The Weekly Reports shall include or provide the Administrator's assessment of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and objections received.

- 7.8.4 **Workweek and/or PAGA Pay Period Challenges.** The Administrator shall have the authority to address and make final decisions consistent with the terms of this Agreement on all Class Member/Aggrieved Employee challenges over the calculation of Workweeks and/or PAGA Pay Periods. The Administrator's decision shall be final and not appealable or otherwise susceptible to challenge.
- 7.8.5 **Administrator's Declaration.** Not later than fourteen (14) days after the Response Deadline, the Administrator shall provide to Class Counsel and Defense Counsel a signed declaration suitable for filing in Court attesting to its due diligence and compliance with all of its obligations under this Agreement, including, but not limited to, its mailing of the Class Notice, the total number of Class Notices returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the total number of Requests for Exclusion received (both valid or invalid), and the number of written objections to the Settlement. The Administrator also shall attach the Exclusion List. The Administrator shall supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel shall be responsible for filing the Administrator's declaration(s) and the Requests for Exclusion with the Court.
- 7.8.6 **Final Report by Settlement Administrator.** Within ten (10) days after the Administrator disburses all funds from the Gross Settlement Amount, the Administrator shall provide Class Counsel and Defense Counsel with a final report detailing its disbursements by employee identification number only of all payments made under this Agreement. At least fifteen (15) days before any deadline set by the Court, the Administrator shall prepare and submit to Class Counsel and Defense Counsel a signed declaration suitable for filing with the Court attesting to its disbursement of all payments required under this Agreement. Class Counsel shall be responsible for filing the Administrator's declaration with the Court.

8. CLASS SIZE ESTIMATES AND ESCALATOR CLAUSE.

- 8.1 **Number of Workweeks:** Based on its records, Defendant estimates that Class Members worked a total of approximately Two Hundred Sixty Thousand (260,000) Workweeks from the start of the Class Period through October 14, 2024, and the number of Workweeks is expected to increase pro rata.
- 8.2 **Escalator:** The Gross Settlement Amount was agreed upon based on Defendant's representation in Paragraph 8.1 above. If the actual number of Workweeks worked by all Class Member through October 14, 2024 increases by ten percent (10%) or more, the end date of the Released Class Claims shall be adjusted to equal Two

Hundred Sixty Thousand (260,000) Workweeks, plus pro rate growth, plus 10 percent (10%).

9. **DEFENDANT'S RIGHT TO WITHDRAW.** If the number of valid Requests for Exclusion identified on the Exclusion List exceeds 10 percent (10%) of the total of all Class Members by number or value, Defendant may, but is not obligated, elect to withdraw from the Settlement. The Parties agree that, if Defendant withdraws, the Settlement shall be void *ab initio*, have no force or effect whatsoever, and that neither Party shall have any further obligation to perform under this Agreement; provided, however, Defendant shall remain responsible for paying all Settlement Administration Expenses incurred to that point. Defense Counsel shall notify Class Counsel and the Court of Defendant's election to withdraw not later than fourteen (14) days after the end of the opt out period by providing notice to Plaintiff's Counsel.
10. **MOTION FOR FINAL APPROVAL.** Not later than sixteen (16) court days before the calendared Final Approval Hearing, Plaintiff shall file with the Court a motion for final approval of the Settlement that includes a request for approval of the Class settlement and PAGA settlement under Labor Code section 2699(l), a Proposed Final Approval Order and a proposed Judgment (collectively, "Motion for Final Approval"). Plaintiff shall provide drafts of the Motion for Final Approval to Defense Counsel as soon as practicable prior to its filing. Class Counsel and Defense Counsel shall expeditiously meet and confer in person or by telephone, and in good faith, to resolve any disagreements concerning the Motion for Final Approval.
 - 10.1 **Response to Objections.** Each Party shall retain the right to respond to any objection to the Settlement raised by a Participating Class Member, including the right to file responsive documents with the Court no later than five (5) court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.
 - 10.2 **Duty to Cooperate.** If the Court does not grant Final Approval or conditions Final Approval on any material change to the Settlement (including, but not limited to, the scope of the releases to be provided by Participating Class Members or Aggrieved Employees), the Parties shall expeditiously work together in good faith to address the Court's concerns by revising the Agreement as necessary to obtain Final Approval. The Court's decision to award less than the amounts requested for the Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Administration Expenses Payment shall not constitute a material modification to the Agreement within the meaning of this paragraph.
 - 10.3 **Continuing Jurisdiction of the Court.** The Parties agree that, after entry of Judgment, the Court shall retain jurisdiction over the Parties, the Action, and the Settlement solely for purposes of: (i) enforcing this Agreement and/or the

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

10.4 **Waiver of Right to Appeal.** Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment reflected set forth in this Settlement, the Parties, their respective counsel, and all Participating Class Members who did not object to the Settlement as provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the Parties' obligations to perform under this Agreement shall be suspended until such time as the appeal is finally resolved and the Judgment becomes final.

10.5 **Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment.** If the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material modification of this Agreement (including, but not limited to, the scope of release to be provided by Participating Class Members or Aggrieved Employees), this Agreement shall be null and void. The Parties shall nevertheless expeditiously work together in good faith to address the appellate court's concerns and to obtain Final Approval and entry of Judgment, sharing, on a fifty-fifty (50-50) basis, any additional Administration Expenses Payment reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify the Court's award of the Class Representative Service Payment or any payments to Class Counsel shall not constitute a material modification of the Judgment within the meaning of this paragraph, as long as the Gross Settlement Amount remains unchanged.

11. **AMENDED JUDGMENT.** If any amended judgment is required under California Code of Civil Procedure section 384, the Parties shall work together in good faith to jointly submit and a proposed amended judgment.

12. **ADDITIONAL PROVISIONS.**

12.1 **No Admission of Liability, Class Certification, or Representative Manageability for Other Purposes.** This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Defendant that any of the allegations in the Complaint or PAGA Notice have merit or that Defendant has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that Defendant's defenses in the Action have merit. The Parties agree that class certification and representative treatment is for purposes of this Settlement only.

If, for any reason the Court does grant Preliminary Approval, Final Approval or enter Judgment, Defendant reserves the right to contest certification of any class for any reasons and to assert all available defenses to the claims in the Action, and Plaintiff reserves the right to move for class certification on any grounds available and to contest Defendant's defenses. The Settlement, this Agreement, and the Parties' willingness to settle the Action shall have no bearing on, and shall not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

- 12.2 **Confidentiality Prior to Preliminary Approval.** Plaintiff, Class Counsel, Defendant and Defense Counsel separately agree that, until the Motion for Preliminary Approval of Settlement is filed, they and each of them shall not disclose, disseminate and/or publicize, or cause or permit another person to disclose, disseminate or publicize, any of the terms of the Agreement directly or indirectly, specifically or generally, to any person, corporation, association, government agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses, all of whom shall be instructed to keep this Agreement confidential; (2) to the extent necessary to report income to appropriate taxing authorities; (3) in response to a court order or subpoena; or (4) in response to an inquiry or subpoena issued by a state or federal government agency. Each Party agrees to immediately notify each other Party of any judicial or agency order, inquiry, or subpoena seeking such information. Plaintiff, Class Counsel, Defendant and Defense Counsel separately agree not to, directly or indirectly, initiate any conversation or other communication, before the filing of the Motion for Preliminary Approval, with any third party regarding this Agreement or the matters giving rise to this Agreement, except to respond only that "the matter has been resolved," or words to that effect. This paragraph does not restrict Class Counsel's communications with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.
- 12.3 **No Solicitation.** The Parties separately agree that they and their respective counsel and employees shall not solicit any Class Member to opt out of or object to the Settlement, or appeal from the Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel's ability to communicate with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.
- 12.4 **Integrated Agreement.** Upon execution of this Agreement by all Parties and their counsel, this Agreement, together with its attached exhibit, shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.
- 12.5 **Attorney Authorization.** Class Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiff and Defendant, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant

to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement, including any amendments to this Agreement.

- 12.6 **Cooperation.** The Parties and their counsel shall cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Agreement, submitting supplemental evidence and points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties shall seek the assistance of a mediator and/or the Court for resolution.
- 12.7 **No Prior Assignments.** The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.
- 12.8 **No Tax Advice.** Neither Plaintiff, Class Counsel, Defendant nor Defense Counsel is providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.
- 12.9 **Modification of Agreement.** This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their authorized representatives, and approved by the Court.
- 12.10 **Agreement Binding on Successors.** This Agreement shall be binding upon, and inure to the benefit of, the successors of each of the Parties.
- 12.11 **Applicable Law.** All terms and conditions of this Agreement and its exhibit shall be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.
- 12.12 **Cooperation in Drafting.** The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement shall not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
- 12.13 **Confidentiality.** To the extent permitted by law, all agreements made, and orders entered during Action and in this Agreement, relating to the confidentiality of information shall survive the execution of this Agreement.
- 12.14 **Use and Return of Class Data.** Information provided to Class Counsel pursuant to California Evidence Code Section 1152, and all copies and summaries of the Class Data provided to Class Counsel by Defense Counsel in connection with the mediation of the Action, other settlement negotiations, or in connection with the

Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than ninety (90) days after the date when the Court discharges the Administrator's obligation to provide a declaration confirming the final pay out of all Settlement funds, Plaintiff shall destroy all paper and electronic versions of Class Data received from Defendant unless, prior to the Court's discharge of the Administrator's obligation, Defendant makes a written request to Class Counsel for the return, rather than the destruction, of Class Data.

- 12.15 **Headings.** The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
- 12.16 **Calendar Days.** Unless otherwise noted, all references to "days" in this Agreement shall be considered calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or court holiday, such date or deadline shall be extended to the first court day thereafter.
- 12.17 **Notice.** All notices, demands or other communications between the Parties in connection with this Agreement shall be in writing and deemed to have been duly given as of the third court day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

To Plaintiff:

Arash Sadat
arash@msdlawyers.com
Brigitte Mills
brie@msdlawyers.com
Camron Dowlatsahi
camron@msdlawyers.com
333 South Hope St., 40th Floor
Los Angeles, CA 90071

To Defendant:

Kenneth D. Sulzer
ksulzer@constangy.com
Remy Kessler
rkessler@constangy.com
**CONSTANGY, BROOKS, SMITH
& PROPHETE, LLP**
2029 Century Park East, Suite 1100
Los Angeles, CA 90067

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

12.19 **Stay of Litigation.** The Parties agree that upon the full execution of this Agreement, the Action should be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon execution of this Agreement, and pursuant to Code of Civil Procedure section 583.330, the date to bring this Action to trial under Code of Civil Procedure section 583.310 shall be extended for the entire period of this settlement process.

Dated: March 14, 2025


Elizabeth To (Mar 14, 2025 13:43 PDT)
Plaintiff ELIZABETH TO

3/17/2025
Dated: March __, 2025

Signed by:

DE2B29F605704C9...

for:
Defendant INTUITIVE SURGICAL, INC.

Dated: March 10, 2025

MILLS SADAT DOWLAT LLP


Arash Sadat
Brigitte Mills
Camron Dowlatsahi
Attorneys for Plaintiff, the Class and Aggrieved
Employees

Dated: March 17, 2025

**CONSTANGY, BROOKS, SMITH &
PROPHETE, LLP**


Kenneth D. Sulzer
Remy Kessler
Attorneys for Defendant

EXHIBIT A

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

Elizabeth To v. Intuitive Surgical, Inc.,

Santa Clara County Superior Court, Case No. 24CV449420

The Superior Court for the State of California authorized this Notice. Read it carefully!

This is not junk mail, spam, advertisement, or solicitation by a lawyer. You are not being sued.

You may be eligible to receive money from an employee class action lawsuit (“Action”) against Defendant Intuitive Surgical, Inc. (“Defendant”) for alleged wage and hour violations. The Action was filed by a former non-exempt employee of Defendant (“Plaintiff”) and seeks payment of back wages and other relief for a class of all non-exempt employees who worked for Defendant in California (“Class Members”) during the Class Period (October 14, 2020, through [REDACTED]); and penalties under the California Labor Code Private Attorneys General Act of 2004 (“PAGA”) (Labor Code §§ 2698, et seq.) for all non-exempt employees who worked for Defendant in California (“Aggrieved Employees”) during the PAGA Period (October 11, 2023, through [REDACTED]).

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

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

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

The Court has already preliminarily approved the proposed Settlement and approved this Notice. The Court has not yet decided whether to grant final approval of the Settlement. Your legal rights are affected whether you do or do not act. Read this Notice carefully. You will be deemed to have carefully read and understood it. At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement and how much of the Settlement will be paid to Plaintiff and Plaintiff’s attorneys (“Class Counsel”). The Court will also decide whether to enter a judgment that requires Defendant to make payments under the Settlement and requires Class Members and Aggrieved Employees to give up their rights to assert certain claims against Defendant.

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

1. **Do Nothing.** You do not have to do anything to participate in the proposed Settlement and still be eligible for an Individual Class Payment and/or an Individual PAGA Payment. As a Participating Class Member, though, you will give up your right to directly assert Class Period wage claims and PAGA Period penalty claims against Defendant.
2. **Opt-Out of the Class Settlement.** You can exclude yourself from the Class Settlement (opt-out) by submitting a written Request for Exclusion or otherwise notifying the Administrator (named on page 5 below) in writing. If you opt-out of the Settlement, you will not receive an Individual Class Payment. You will, however, preserve your right to directly pursue Class Period wage claims against Defendant, and, if you are an Aggrieved Employee, remain eligible for an Individual PAGA Payment. You cannot opt-out of the PAGA portion of the proposed Settlement.

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

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

You Do Not Have to Do Anything to Participate in the Settlement. If you do nothing, you will be a Participating Class Member, eligible for an Individual Class Payment and an Individual PAGA Payment (if any). In exchange, you will give up your right to directly assert the wage claims against Defendant that are covered by this Settlement (“Released Claims”).

You Can Opt-Out of the Class Settlement, but not the PAGA Settlement. The Opt-Out Deadline is **DATE**. If you don’t want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. Once excluded, you will be a Non-Participating Class Member and no longer eligible for an Individual Class Payment. Non-Participating Class Members cannot object to any portion of the proposed Settlement. See Section 6 of this Notice.

You Cannot Opt-out of the PAGA Portion of the Proposed Settlement. Defendant must pay Individual PAGA Payments to all Aggrieved Employees and the Aggrieved Employees must give up their rights to pursue PAGA Released Claims (defined below).

Participating Class Members Can Object to the Class Settlement, but not the PAGA Settlement. Written objections must be submitted by **DATE**. All Class Members who do not opt-out (“Participating Class Members”) can object to any aspect of the proposed Settlement. The Court’s decision whether to finally approve the Settlement will include a determination of how much will be paid to Class Counsel and Plaintiff who pursued the Action on behalf of the Class. You are not personally responsible for any payments to Class Counsel or Plaintiff. Other than the PAGA portion of this Settlement, you can object to any aspect of this Settlement. See Section 7 of this Notice.

You Can Participate at the Final Approval Hearing. The Court’s Final Approval Hearing is scheduled to take place on **DATE**. You do not have to attend, but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court’s virtual appearance platform. Participating Class Members can also verbally object to the Settlement at the Final Approval Hearing. See Section 8 of this Notice.

You Can Challenge the Calculation of Your Workweeks/Pay Periods. Written challenges must be submitted by **DATE**. The amount of your Individual Class Payment and PAGA Payment (if any) depend on how many workweeks you worked at least one day during the Class Period and how many Pay Periods you worked at least one day during the PAGA Period, respectively. The number of Workweeks and number of Pay Periods you worked according to Defendant’s records is stated on the first page of this Notice. If you disagree with either of these numbers, you must challenge it, if at all, by **DATE**. See Section 4 of this Notice.

1. WHAT IS THE ACTION ABOUT?

Plaintiff is a former non-exempt employee of Defendant. The Action accuses Defendant of violating California labor laws for (1) failure to pay minimum wage for all hours worked, (2) failure to pay overtime compensation, (3) failure to provide meal periods, (4) failure to provide rest periods, (5) failure to indemnify necessary business expenses, (6) wage statement violations, (7) waiting time penalties, (8) failure to provide accurate wage statements, and (9) violation of the Business and Profession Code Unfair Competition Law. Based on the same claims, Plaintiff has also asserted a claim for civil penalties under the PAGA. Plaintiff is represented by attorneys (“Class Counsel”) in the Action.

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

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

So far, the Court has made no determination whether Defendant violated any laws. In the meantime, Plaintiff and Defendant hired an experienced, neutral mediator to help resolve the Action by negotiating an end to the Action by agreement (settle the case) rather than continuing the expensive and time-consuming process of litigation. The negotiations were successful. By signing a lengthy written settlement agreement (“Agreement”) and agreeing to jointly ask the Court to enter a Judgment ending the Action and enforcing the Agreement, Plaintiff and Defendant have negotiated a proposed Settlement that is subject to the Court’s Final Approval. Both sides agree the proposed Settlement is a compromise of disputed claims. By agreeing to settle, Defendant does not admit any violations of law or concede the merit of any claims.

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

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

Defendant Will Pay \$4,500,000.00 as the Gross Settlement Amount (“Gross Settlement Amount”). Defendant has agreed to deposit the Gross Settlement Amount into an account controlled by the Administrator of the Settlement. The Administrator will use the Gross Settlement Amount to pay the Individual Class Payments, Individual PAGA Payments, Class Representative Service Payment, Class Counsel’s attorney’s fees and expenses, the Administrator’s expenses, and penalties to be paid to the LWDA. Assuming the Court grants Final Approval, Defendant will fund the Gross Settlement not more than 14 days after the Judgment entered by the Court becomes final. The Judgment will be final on the date the Court enters Judgment, or a later date if Participating Class Members object to the proposed Settlement or the Judgment is appealed.

Court Approved Deductions from Gross Settlement Amount. At the Final Approval Hearing, Plaintiff and/or Class Counsel will ask the Court to approve the following deductions from the Gross Settlement Amount. The Court will decide these amounts at the Final Approval Hearing:

- Up to \$1,500,000.00 (one-third of the Gross Settlement Amount) to Class Counsel for attorneys’ fees and up to \$25,000.00 for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Action without payment.
- Up to \$5,000.00 as a Class Representative Service Payment to Plaintiff for filing the Action, working with Class Counsel and representing the Class. A Class Representative Service Payment will be the only monies Plaintiff will receive other than Plaintiff’s Individual Class Payment and any Individual PAGA Payment.
- Up to \$ [REDACTED] to the Administrator for services administering the Settlement.
- Up to \$50,000.00 for PAGA Penalties, 75% of which would be allocated to the LWDA as an LWDA PAGA Payment and 25% of which would be allocated to the Aggrieved Employees as Individual PAGA Payments based on the number of pay periods they worked for Defendant in California for at least one day during the PAGA Period (the “PAGA Pay Periods”).

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

Net Settlement Distributed to Class Members. After making the above deductions in amounts approved by the Court, the Administrator will distribute the rest of the Gross Settlement (the “Net Settlement Amount”) by making Individual Class Payments to Participating Class Members based on their Class Period Workweeks.

Taxes Owed on Payments to Class Members. Plaintiff and Defendant are asking the Court to approve an allocation of 20% of each Individual Class Payment to taxable wages (“Wage Portion”) and 80% to penalties and interest (“Non-Wage Portion”). The Wage Portions are subject to withholdings and will be reported on IRS W-2 Forms. Defendant will separately pay employer payroll taxes it owes on the Wage Portions. The Individual PAGA Payments are counted as penalties rather than wages for tax purposes. The Administrator will report the Individual PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.

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

Need to Promptly Cash Payment Checks. The front of every check issued for Individual Class Payments and Individual PAGA Payments will show the date when the check expires (the “Void Date”). If you do not cash it by the Void Date, your check will be automatically cancelled, and the monies will be deposited with the California Controller’s Unclaimed Property Fund (the “Fund”) in your name. If the payment represented by your check is sent to the Fund, you should consult the rules of the Fund for instructions on how to retrieve your money.

Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated as a Participating Class Member, participating fully in the Settlement, unless you notify the Administrator in writing, not later than **DATE**, that you wish to opt-out. The easiest way to notify the Administrator is to send a written and signed Request for Exclusion by the Response Deadline. The Request for Exclusion should be a letter from a you or your representative setting forth your name, present address, telephone number, and a simple statement electing to be excluded from the Settlement. Excluded Class Members (“Non-Participating Class Members”) will not receive Individual Class Payments, but will preserve their rights to personally pursue wage and hour claims against Defendant.

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

The Proposed Settlement Will be Void if the Court Denies Final Approval. It is possible the Court will decline to grant Final Approval of the Settlement or decline to enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiff and Defendant have agreed that, in either case, the Settlement will be void and, in turn, Defendant will not pay any money and Class Members/Aggrieved Employees will not release any claims against Defendant.

Administrator. The Court has appointed a neutral company, **[REDACTED]** (the “Administrator”), to send this Notice, calculate and make payments, and process Class Members’ Requests for Exclusion. The Administrator will also decide Class Member challenges over Workweeks/Pay Periods, mail and re-mail settlement checks and tax forms, and perform other tasks necessary to administer the Settlement. The Administrator’s contact information is contained in Section 9 of this Notice.

Participating Class Members’ Release. After the Judgment is final and Defendant has fully funded the Gross Settlement Amount and separately paid all employer payroll taxes, Participating Class Members will be legally barred from asserting any of the claims released under the Settlement. This means that unless you opted out by validly excluding yourself from the Class

Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendant or related entities for wages and penalties during the Class Period and PAGA Period based on the facts alleged in the Action and resolved by this Settlement.

All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Defendant and all other Released Parties from (i) all claims that were alleged, or reasonably could have been alleged, based on the facts alleged in the Complaint, including claims for: (1) unpaid regular, overtime and minimum wages, (2) meal period violations, (3) rest period violations, (4) failure to timely pay all wages during employment and/or at the time of separation of employment, (5) business expense reimbursements, (6) wage statement violations, (7) failure to maintain accurate and complete payroll and/or personnel records, (8) waiting time penalties, and (9) violation of the Unfair Competition Law during the Class Period. Except as set forth in Section 5.2 of the Settlement Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

Aggrieved Employees' PAGA Release. After the Court's judgment is final, and Defendant has paid the Gross Settlement, all Aggrieved Employees will be barred from asserting PAGA claims against Defendant, whether or not they exclude themselves from the Settlement. This means that all Aggrieved Employees, including those who are Participating Class Members and those who opt-out of the Class Settlement, cannot sue, continue to sue, or participate in any other PAGA claim against Defendant or its related entities based on the facts alleged in the Action and resolved by this Settlement for the PAGA Period.

All Aggrieved Employees release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, Defendant and all other Released Parties, from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the facts alleged in the Complaint and the PAGA Notice, including for (1) unpaid regular, overtime and minimum wages, (2) meal period violations, (3) rest period violations, (4) failure to timely pay all wages during employment and/or at the time of separation of employment, (5) business expense reimbursements, (6) wage statement violations, (7) failure to maintain accurate and complete payroll and/or personnel records, (8) waiting time penalties, and (9) violation of the Unfair Competition Law during the PAGA Period.

4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENTS?

Individual Class Payments. The Administrator will calculate Individual Class Payments by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members, and (b) multiplying the result by the number of Workweeks worked by each individual Participating Class Member.

Individual PAGA Payments. The Administrator will calculate Individual PAGA Payments by (a) dividing \$12,500.00 by the total number of PAGA Pay Periods worked by all Aggrieved

Employees and (b) multiplying the result by the number of Pay Periods worked by each individual Aggrieved Employee.

Workweek/Pay Period Challenges. The number of Workweeks you worked during the Class Period and the number of PAGA Pay Periods you worked during the PAGA Period, as recorded in Defendant's records, are stated on the first page of this Notice. You have until **DATE** to challenge the number of Workweeks and/or Pay Periods credited to you. You can submit your challenge by signing and sending a letter to the Administrator via mail, email or fax. Section 9 of this Notice has the Administrator's contact information.

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

5. HOW WILL I GET PAID?

Participating Class Members. The Administrator will send, by U.S. mail, a single check, to the extent possible, to every Participating Class Member (*i.e.*, every Class Member who does not opt-out) including those who also qualify as Aggrieved Employees. The single check will combine the Individual Class Payment and the Individual PAGA Payment. Otherwise, two checks will be sent.

Non-Participating Class Members. The Administrator will send, by U.S. mail, a single Individual PAGA Payment check to every Aggrieved Employee who opts out of the Settlement (*i.e.*, every Non-Participating Class Member).

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

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

Submit a written and signed letter with your name, present address, telephone number, and a simple statement that you do not want to participate in the Settlement. The Administrator will exclude you based on any writing you submit communicating your request to be excluded. Be sure to personally sign your request, identify the Action as *Elizabeth To v. Intuitive Surgical, Inc.*, Santa Clara County Superior Court Case No. 24CV449420, and include your identifying information (full name, address, telephone number, approximate dates of employment, and social security number for verification purposes). You must make the request yourself. If someone else makes the request for you, it will not be valid. The Administrator must be sent your request to be excluded by **DATE**, or it will be invalid. Section 9 of the Notice has the Administrator's contact information.

7. HOW DO I OBJECT TO THE SETTLEMENT?

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

A Participating Class Member who disagrees with any aspect of the Settlement or the Motion for Final Approval may wish to object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class Counsel or Plaintiff are too high or too low. The deadline for sending written objections to the Administrator is **DATE**. Be sure to tell the Administrator what you object to, why you object, and any facts that support your objection. Make sure you identify the Action *Elizabeth To v. Intuitive Surgical, Inc.*, Santa Clara County Superior Court Case No. 24CV449420, and include your name, current address, telephone number, and approximate dates of employment with Defendant and sign the objection. Section 9 of this Notice has the Administrator's contact information.

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

8. CAN I ATTEND THE FINAL APPROVAL HEARING?

You can, but do not have to, attend the Final Approval Hearing on **DATE** at **TIME** in Department 19 of the Santa Clara County Superior Court, located at 191 N. First Street, San Jose, CA 95113. At the Hearing, the judge will decide whether to grant Final Approval of the Settlement and how much of the Gross Settlement Amount will be paid to Class Counsel, Plaintiff, and the Administrator. The Court will invite comment from objectors, Class Counsel and Defense Counsel before making a decision. You can attend (or hire a lawyer to attend) either personally or virtually. Check the Court's website for the most current information.

It is possible the Court will reschedule the Final Approval Hearing. You should check the Court's website beforehand to verify the date and time of the Final Approval Hearing.

9. HOW CAN I GET MORE INFORMATION?

The Settlement Agreement sets forth everything Defendant and Plaintiff have promised to do under the proposed Settlement. The easiest way to read the Settlement Agreement, the Judgment or any other Settlement documents is to go to [\[redacted\]](#) website at ([url](#)). You can also telephone or send the Administrator an email using the contact information listed below, or consult the Santa Clara County Superior Court website by going to <https://santaclara.courts.ca.gov> (Online Services

and then Case Information Online) and entering the Case Number for the Action, 24CV449420. You can also make personally review documents pertaining to the Action in the Clerk's Office of the Court.

DO NOT CONTACT THE COURT TO OBTAIN INFORMATION OR TO ASK QUESTIONS ABOUT THIS NOTICE OR THE SETTLEMENT.

Class Counsel:

Arash Sadat
arash@msdlawyers.com
Brigitte Mills
bric@msdlawyers.com
Camron Dowlatsahi
camron@msdlawyers.com
MILLS SADAT DOWLAT LLP
333 S. Hope Street, 40th Floor
Los Angeles, CA 90071

Settlement Administrator:

[REDACTED]

Email Address:

Mailing Address:

Telephone:

Fax Number:

10. WHAT IF I LOSE MY SETTLEMENT CHECK(S)?

If you lose or misplace your settlement check(s) before cashing it/them, the Administrator will replace it/them as long as you request a replacement before the Void Date on the face of the original check(s). If your check is already void you should consult the Fund for instructions on how to retrieve the money.

11. WHAT IF I CHANGE MY ADDRESS?

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

2025.03.07 - Intuitive Surgical - Class and PAGA Settlement Agreement and Class Notice

Final Audit Report

2025-03-14

Created:	2025-03-10
By:	Isabella Fiorentino (isabella@msdlawllp.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAAmEY2Te2uPLkHweJ2cW7zYP2n9tRmvCp5

"2025.03.07 - Intuitive Surgical - Class and PAGA Settlement Agreement and Class Notice" History

-  Document created by Isabella Fiorentino (isabella@msdlawllp.com)
2025-03-10 - 4:34:00 PM GMT
-  Document emailed to Elizabeth To (elizabeth.t.to@gmail.com) for signature
2025-03-10 - 4:34:08 PM GMT
-  Email viewed by Elizabeth To (elizabeth.t.to@gmail.com)
2025-03-10 - 10:12:38 PM GMT
-  Email viewed by Elizabeth To (elizabeth.t.to@gmail.com)
2025-03-14 - 8:15:43 PM GMT
-  Document e-signed by Elizabeth To (elizabeth.t.to@gmail.com)
Signature Date: 2025-03-14 - 8:43:47 PM GMT - Time Source: server
-  Agreement completed.
2025-03-14 - 8:43:47 PM GMT

EXHIBIT 2

ILYM | GROUP, Inc.

CLASS ACTION ADMINISTRATION

Case Name: Elizabeth To v. Intuitive Surgical, Inc.

Wednesday, February 12, 2025

Requesting Attorney:

Isabella Fiorentino
Mills Sadat Dowlat LLP
isabella@msdlawyers.com
213.279.7590

ILYM Group Contact:

Lisa Mullins
ILYM Group, Inc.
Lisa@ilymgroup.com
714.878.8836

Estimate For Administrative Solutions

KEY ASSUMPTIONS	
Total Number of Class Members	2,213
Estimated Percentage of Remails	15%
Certified Spanish Translation	No
ILYM Group Static Website	Yes
Case Duration (Years)	1

Summary of ILYM Group, Inc.'s Fees & Expenses

Case Startup:	\$1,300.00
Project Management:	\$3,040.00
Notification & Mailing:	\$4,224.85
Distribution (Includes EIN, Bank Acct * /QSF Setup):	\$6,905.15
Case Conclusion:	\$1,480.00

Not-To-Exceed ILYM Fees & Expenses: \$16,950.00

ILYM | GROUP, Inc.

CLASS ACTION ADMINISTRATION

Case Name: Elizabeth To v. Intuitive Surgical, Inc.

Wednesday, February 12, 2025

Requesting Attorney's Name: Isabella Fiorentino

Activity	Rate Type	Unit Cost	Volume	Amount
----------	-----------	-----------	--------	--------

CASE STARTUP				
Initial Setup - Import and Formatting of Data*	Hourly	\$150.00	4	\$600.00
Programming of Class Database	Hourly	\$175.00	4	\$700.00

**ILYM assumes that data will be in a standard format. Client will be notified immediately if not in standard format to correct data or ILYM can convert to standard format @ \$150.00 per hour.*

Subtotal \$1,300.00

PROJECT MANAGEMENT				
Project Manager (Case notification and maintenance)	Hourly	\$120.00	6	\$720.00
Staff Hours for Processing Returned Mail	Hourly	\$70.00	2	\$140.00
Staff Hours for Processing Opt-Outs, Disputes & Objection(s)	Hourly	\$70.00	2	\$140.00
Report Processing	Hourly	\$70.00	2	\$140.00
NCOA	Flat Rate	\$550.00	1	\$550.00
Toll Free Customer Service Representative	Flat Fee	\$600.00	1	\$600.00
ILYM Group Static Website	Flat Fee	\$750.00	1	\$750.00
Weekly Reports	Flat Rate	\$750.00	1	Waived

Subtotal \$3,040.00

NOTIFICATION & MAILING				
Fulfillment of Notice, English only	Per Piece	\$1.00	2,213	\$2,213.00
USPS First Class Postage	Per Piece	\$0.65	2,213	\$1,438.45
Re-Mails (Forward/Skip trace Undeliverables)	Per Piece	\$1.40	288	\$402.77
Storage, Photocopies, Deliveries	Flat Fee	\$170.63	1	\$170.63

Subtotal \$4,224.85

ILYM | GROUP, Inc.

CLASS ACTION ADMINISTRATION

Case Name: Elizabeth To v. Intuitive Surgical, Inc.

Wednesday, February 12, 2025

Requesting Attorney's Name: Isabella Fiorentino

Activity	Rate Type	Unit Cost	Volume	Amount
DISTRIBUTION (Includes EIN, Bank Acct * /QSF Setup)				
Distribution Setup & Management	Hourly	\$150.00	5	\$750.00
Account Reconciliation & Distribution Reporting	Hourly	\$125.00	5	\$625.00
Check, Stub & Release - Print & Mail (W2/1099)	Per Check	\$0.80	2,213	\$1,770.40
USPS First Class Postage	Per Piece	\$0.65	2,213	\$1,438.45
Re-Mails (Forward/Skip trace Undeliverables up to 10%)	Per Piece	\$1.00	221	\$221.30
Preparation of Taxes	Hourly	\$120.00	5	\$600.00
Annual Filing of Tax Return	Per Year	\$1,500.00	1	\$1,500.00

**Additional Bank fees may apply*

Subtotal \$6,905.15

CASE CONCLUSION				
Data Manager Final Reporting	Hourly	\$100.00	2	\$200.00
Project Manager Final Reporting	Hourly	\$120.00	4	\$480.00
Process Unclaimed Funds	Flat Fee	\$550.00	1	\$550.00
Declaration	Hourly	\$125.00	2	\$250.00

Subtotal \$1,480.00

Not-To-Exceed ILYM Fees & Expenses: \$16,950.00

ILYM Group's Terms and Conditions

All services to be provided by ILYM Group, Inc. (hereinafter, "ILYM") to Client shall be subject to the following terms and conditions:

Services: Subject to the terms hereof, ILYM agrees to provide the Client with Administration Services (hereinafter, "services") as specified in the Proposal provided to Client to which these Terms and Conditions are attached. The estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make provision for any services or class members/size not delineated in the request for proposal or stipulations. Such services do not in any way constitute legal services or advice. ILYM is performing its services as an Independent Contractor and neither it nor its employees shall be deemed to be employees of the Client.

Mailing and Data Conversion: ILYM's database administration assumes the Client will provide complete data that includes all information required to send notifications and complete the administration process. Data must be provided in a complete, consistent, standardized electronic format. ILYM's standard format is Microsoft Excel, however, ILYM may accept other formats at its discretion. Further developments or enhancements to non-standardized data will be billed to Client by ILYM on a time and materials basis, according to ILYM's Standard Rates.

Charges for Services: Charges to the Client for services shall be on a time and materials basis at our prevailing rates, as the same may change from time to time. Any fee estimates set forth in the proposal are estimates only, based on information provided by Client to ILYM. Actual fees charged by ILYM to Client may be greater or less than such estimate, and Client shall be responsible for the payment of all such charges and expenses in accordance with Section 5 hereof. Charges incurred related to resolving post distribution withholdings and related corrective files due to voids and re-issues of payments and related correspondence with state and federal taxing authorities will not be charged to the Client to the extent that funds are received from the taxing authorities offset these charges. ILYM may derive financial benefits from financial institutions in connection with the deposit and investment of settlement funds with such institutions, including without limitation, discounts on eligible banking services and fees, and loans at favorable rates.

Indemnification: Client will indemnify and hold ILYM (and the officers, employees, affiliates and agents harmless against any Losses incurred by ILYM, arising out of, in connection with, or related to (i) any breach of the terms by Client; (ii) the processing and handling of any payment by ILYM in accordance with Client's instructions, including without limitation, the imposition of any stop payment or void payment on any check or the wrongful dishonor of a check by ILYM pursuant to Client's instructions.

Payment of Charges: ILYM reserves the right to request payment of postage charges and 50% of the final administration charges at the start of the case. ILYM bills are due upon receipt unless otherwise negotiated and agreed to with the Client. In the event settlement terms provide that ILYM is to be paid out of the Settlement Fund, ILYM will request that Counsel endeavor to make alternate payment arrangements for ILYM charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the Settlement Account is funded by, or no later than the time of disbursement. Decisions of the court and actions of the parties, including disapproval or withdrawal of a settlement, do not affect the Client's liability to ILYM for payment of services. Services are not provided on a contingency fee basis.

Confidentiality: ILYM maintain reasonable and appropriate security measures and safeguards to protect the security and confidentiality of Client data provided to ILYM by Client in connection herewith. Should ILYM ever be notified of any judicial order or other proceedings in which a third party seeks to obtain access to the confidential data created by or for the Client, ILYM will promptly notify the Client, unless prohibited by applicable law. The Client shall have the option to (1) provide legal representation at the Client's expense to avoid such access or (2) promptly reimburse ILYM for any of its costs, including attorneys' fees, reasonably incurred in avoiding, attempting to avoid or providing such access and not paid by the entity seeking the data. If ILYM is required, pursuant to a court order, to produce documents, disclose data, or otherwise act in contravention of the obligations imposed by this Agreement, or otherwise, with respect to maintaining the confidentiality, proprietary nature and secrecy of the produced documents or disclosed data, ILYM will not be liable for breach of said obligation.

Data Rights: ILYM does not convey nor does the Client obtain any right in the programs, system data, or materials utilized or provided by ILYM in the ordinary course of business in the performance of this Agreement.

Document Retention: Unless directed otherwise in writing by Client, ILYM will destroy undeliverable mail on the effective date of the settlement or the date that the disposition of the case is no longer subject to appeal or review, whichever is later. ILYM will maintain claim forms and other correspondence for one year after final distribution of funds or benefits, or until the date that the disposition of the case is no longer subject to appeal or review, whichever is later.

Limitation of damages: ILYM is not responsible to the Client for any special, consequential or incidental damages incurred by Client. Any liability of ILYM to the Client shall not exceed the total amount billed to the Client for the particular services that give rise to any loss.

Termination: The services to be provided under this Agreement may be terminated, at will by the Client upon at least 30 calendar days' prior written notice to ILYM. The Client's obligation to pay for services or projects in progress at the time of notice of withdrawal shall continue throughout that 30 day period. ILYM may terminate this Agreement (i) with 10 calendar days' prior written notice, if the Client is not current in payment of charges or (ii) in any event, upon at least 3 months' prior written notice to the Client.

Notice: Any notice required or permitted hereunder shall be in writing and shall be delivered personally, or sent by registered mail, postage prepaid, or overnight courier service to the permissible officer or principal of ILYM or the Client, as applicable, and shall be deemed given when so delivered personally, or, if mailed, five days after the date of deposit in United States mail, or, if sent by courier, one business day after delivery to such courier service.

Force Majeure: To the extent performance by ILYM of any of its obligations hereunder is substantially prevented by reason of any act of God or by reason of any other matter beyond ILYM's reasonable control, then such performance shall be excused and this Agreement, at ILYM's option, be deemed suspended during the continuation of such condition and for a reasonable time thereafter.

Waiver of Rights: No failure or delay on the part of a party in exercising any right hereunder will operate as a waiver of, or impair, any such right. No single or partial exercise of any such right will preclude any other or further exercise thereof or the exercise of any other right. No waiver of any such right will be effective unless given in a signed writing.

Jurisdiction: The parties hereto submit to the jurisdiction of the Court of the applicable case for purposes of any suit, action or proceeding to enforce any provision of, or based on any right arising out of, this Agreement. The parties hereto hereby waive any objection to the laying of venue of any such suit, action or proceeding in the Court.

Entire Agreement: These terms and conditions and the proposal embody the entire agreement between the parties with respect to the subject matter hereof, and cancels and supersedes all prior negotiations, representations, and agreements related thereto, either written or oral, except to the extent they are expressly incorporated herein. No changes in, additions to, or waivers of, the terms and conditions set forth herein will be binding upon any party, unless approved in writing by such party's authorized representative.

EXHIBIT 3