

SULLIVAN EMPLOYMENT LAW P.C.

Martin Sullivan, CA Bar No. 274279

martin@sullivanlawgrp.com

[145 S. Spring Street, Suite 850](#)

[Los Angeles, California 90012+801 Century Park East, Suite 850](#)

[Los Angeles, California 90067](#)

Telephone: (323) 645-5470

Attorneys for Plaintiffs, the Class, and Aggrieved Employees

SEYFARTH SHAW LLP

Andrew M. Paley (SBN 149699)

Email: apaley@seyfarth.com

Michael Afar (SBN 298990)

Email: mafar@seyfarth.com

2029 Century Park East, Suite 3500

Los Angeles, California 90067-3021

Telephone: (310) 277-7200

Facsimile: (310) 201-5219

Bailey K. Bifoss (SBN 278392)

Email: bbifoss@seyfarth.com

560 Mission Street, Suite 3100

San Francisco, California 94105

Telephone: (415) 397-2823

Facsimile: (415) 397-8549

Attorneys for Defendants ORTHONET WEST, INC.

and ORTHONET LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

NICOLE TRIAY, on behalf of herself and all
others similarly situated;

Plaintiff,

vs.

ORTHONET WEST, INC., a Delaware
corporation; and DOES 1 through 20, inclusive;

Defendants.

Case No.: **20STCV05181**

CLASS ACTION

**AMENDED JOINT STIPULATION OF
SETTLEMENT AND RELEASE**

[Assigned for All Purposes to:
The Hon. Stuart M. Rice, Dept. 1]

Complaint Filed: February 7, 2020

Trial Date: None set

This Class Action and Private Attorneys General Act (“PAGA”) Amended Settlement Agreement (“Settlement Agreement”) is made and entered into between Plaintiffs Nicole Triay, Cortney Godinez (nee Noell), Melissa De La Riva, and Darice Lopez (“Plaintiffs” or “Class Representatives”) on the one hand, individually and on behalf of the Settlement Class and Aggrieved Employees (as defined below), by and through their counsel of record, Martin Sullivan and Sullivan Employment Law, P.C. (“Class Counsel”), and Defendants OrthoNet West, Inc. and OrthoNet LLC (“Defendants”) on the other hand, by and through their counsel of record, Seyfarth Shaw LLP, subject to the approval of the Court, as provided below. This Settlement Agreement is intended by Plaintiffs and Defendants to fully, finally, and forever resolve, discharge, and settle the Released Claims (as defined below), upon and subject to the terms and conditions herein, as follows:

1. **Definitions.**

As used herein, for the purposes of this Settlement Agreement only, the following terms shall be defined as set forth below:

- 1.1 “Action” refers to the civil action entitled: *Nicole Triay, et al. v. OrthoNet West, Inc., et al.*, Case No. 20STCV05181, in the Superior Court of California, County of Los Angeles.
- 1.2 “Aggrieved Employee(s)” refers to all Class Members employed by Defendants at any time between January 7, 2019 through the date of Preliminary Approval of the Settlement (“PAGA Period”).
- 1.3 “Class” or “Class Members” refers to all non-exempt employees of Defendants in the State of California at any time between February 7, 2016 through date of Preliminary Approval of the Settlement (“Class Period”). The term “Class Member” refers to both Participating and Non-Participating Class Members, including Non-Participating Class Members who qualify as Aggrieved Employees. It shall be an opt-out class.
- 1.4 “Class Member Address Search” means the Administrator’s investigation and search for Class Member and Aggrieved Employee mailing addresses using all reasonably available sources, methods, and means including but not limited to the National Change of Address database, skip traces, and direct contact by the Administrator with Class Members or Aggrieved Employees.
- 1.5 “Class Counsel” refers to Martin Sullivan and Sullivan Employment Law, P.C.
- 1.6 “Class Counsel Fees and Costs Award” refers to costs incurred and attorneys’ fees sought by Class Counsel and agreed upon by the Parties for Class Counsel’s litigation and resolution of this Action, subject to Court approval.

- 1.7 “Class Settlement Notice” refers to the form of direct-mail notice to Class Members substantially in the form attached hereto as **Exhibit A**, as may be modified by the Court, entitled the Notice of Settlement of Class Action And Final Approval Hearing.
- 1.8 “Class Period” refers to February 7, 2016 through the date of Preliminary Approval of this Settlement. The Class Period shall be the Release Period for the Class.
- 1.9 “Class Representatives” refers to Nicole Triay, Cortney Godinez, Melissa De La Riva, and Darice Lopez.
- 1.10 “Effective Date” refers to the date the Court’s order approving the settlement and judgment thereon becomes final. For purposes of the Settlement Agreement, the Court’s Judgment “becomes final” upon the later of: (i) if no appeal is filed, the expiration date of the time for the filing or noticing of any appeal from, or other challenge to, the Court’s Judgment (*i.e.*, 61 calendar days after notice of entry of the Court’s Judgment); (ii) if an appeal is filed, the date affirmance of an appeal of the Judgment becomes final; or (iii) if an appeal is filed, the date of final dismissal of any appeal from the Judgment or the final dismissal of any proceeding on review of any court of appeal decision relating to the Judgment.
- 1.11 “Final Approval Hearing” refers to the hearing at which the Court will make a final determination whether the terms of the Settlement Agreement are fair, reasonable, and adequate for the Class and meet all applicable requirements for approval.
- 1.12 “Final Approval Order” refers to the final order by the Court approving the Settlement following the Final Approval Hearing.
- 1.13 “Gross Settlement Amount” (also referred to herein as “GSA”) refers to the maximum settlement payment Defendants shall be obligated to make except as provided in Paragraph 21 below: Seven Hundred Thousand Dollars And No Cents (\$700,000.00) plus all employer-side payroll taxes. The GSA shall include all Individual Class Payments, the Court-approved Service Awards to the Class Representatives, the Court-approved Settlement Administration Costs, the Court-approved PAGA Payment, and the Court-approved Class Counsel Fees and Costs Award. The GSA is non-reversionary.
- 1.14 “Individual Class Payment” means each Participating Class Member’s pro rata share of the Net Settlement Amount, calculated pursuant to the formula described in Paragraph 5.1.1 below.

- 1.15 “Individual PAGA Payment” means each Aggrieved Employee’s pro rata share of the PAGA Penalties, calculated pursuant to the formula described in Paragraph 5.2.2 below.
- 1.16 “Judgment” means the judgment entered by the Court based upon the Final Approval.
- 1.17 “LWDA Payment” means the \$7,500 amount the Parties have agreed to pay the Labor and Workforce Development Agency (“LWDA”) in connection with the settlement of Plaintiffs’ PAGA claims, representing 75% of the PAGA Payment.
- 1.18 “Net Settlement Amount” (also referred to herein as “NSA”) shall be defined as the GSA minus the Court-approved Service Awards to the Class Representatives, the Court-approved Settlement Administration Costs, the Court-approved Class Counsel Fees and Costs Award, and the PAGA Payment. The NSA is the maximum amount that shall be available for distribution to and on behalf of Class Members for Class Member Payments.
- 1.19 “Non-Participating Class Member” means any Class Member who opts out of the Settlement by sending the Settlement Administrator a valid and timely Request for Exclusion.
- 1.20 “Notice Packet” refers to the Class Action and Representative Settlement Notice as set forth herein in the form substantially similar attached as **Exhibit “A,”** and subject to approval by the Court.
- 1.21 “Operative Complaint” refers to the First Amended Class Action Complaint filed by Plaintiffs in the Action.
- 1.22 “PAGA Payment” means the \$10,000 amount the Parties have agreed to allocate to the resolution of any Aggrieved Employee’s claims arising under PAGA. Under PAGA, 75% of the PAGA Payment will be paid to the LWDA (the “LWDA Payment”). The remaining 25% of the PAGA Payment will be distributed to Aggrieved Employees (the “PAGA Penalties”).
- 1.23 “PAGA Penalties” means the \$2,500 amount the Parties have agreed to pay the Aggrieved Employees in connection with the settlement of Plaintiffs’ claims under PAGA, representing 25% of the PAGA Payment.
- 1.24 “PAGA Period” refers to January 7, 2019 through the date of Preliminary Approval of this Settlement. The PAGA Period shall be the Release Period for the Aggrieved Employees.
- 1.25 “Participating Class Member” means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.

- 1.26 “Parties” refers to Plaintiffs and Defendants collectively.
- 1.27 “Plaintiffs’ Released Claims” are those claims defined in Paragraph 11.3 that are released solely by Plaintiffs against the Released Parties.
- 1.28 “Preliminary Approval” refers to the date the Court grants preliminary approval of the Settlement.
- 1.29 “Preliminary Approval Order” refers to the Court’s Order granting Preliminary Approval of the Settlement.
- 1.30 “Released Class Claims” are those claims defined in Paragraph 11.1 that are released by Settlement Class Members.
- 1.31 “Released PAGA Claims” are those claims defined in Paragraph 11.2 that are released by Aggrieved Employees.
- 1.32 “Released Parties” means: Defendant OrthoNet West, Inc., Defendant OrthoNet LLC, and each of their predecessors, successors, subsidiaries, parent companies, other corporate affiliates, and assigns, and all of ~~its~~their owners, shareholders, members, officers, directors, employees, agents, servants, registered representatives, attorneys, insurers, successors and assigns, and any other persons acting by, through, under or in concert with any of them.
- 1.33 “Request for Exclusion” means a Class Member’s submission of a written request to be excluded from the Class Settlement in accordance with Paragraph 14.
- 1.34 “Response Deadline” refers to a date that is 50 calendar days after the date that the Notice Packet is initially mailed to Class Members and Aggrieved Employees, and is the deadline by which any Class Member may postmark his or her Objection to the Settlement, request for exclusion from the Settlement, or workweek and/or pay period dispute subject to any extensions as provided in Paragraph 12.3.6 below.
- 1.35 “Service Award” refers to the Court’s award of a monetary payment to Plaintiffs for their services as Class Representatives as described in Paragraph 7, to be paid from the Gross Settlement Amount, and in return for executing Plaintiffs’ Released Claims as set forth in Paragraph 11.3.
- 1.36 “Settlement” refers to the settlement of the Action on behalf of the Settlement Class under the terms and conditions set forth in this Settlement Agreement.
- 1.37 “Settlement Administration Costs” refers to the costs that the Parties agree to pay the Settlement Administrator, subject to Court approval, for its fees and costs to perform the notice, claims administration, and distribution

functions further described in this Settlement Agreement. The Parties anticipate that the Settlement Administration Costs will not exceed \$8,500.

- 1.38 “Settlement Administrator” or “Administrator” refers to the third-party administrator mutually selected by the parties, subject to Court approval, to perform the notice, claims administration, and distribution functions further described in this Settlement Agreement. The Parties agree to use ~~CPT Group, Inc.~~ or ILYM Group, Inc. subject to Court approval. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Settlement Administrator other than a professional relationship arising out of prior experiences administering settlements.

2. Procedural History and Recitals.

- 2.1 On or about February 7, 2020, Plaintiff Triay filed a Class and Representative Action Complaint.
- 2.2 Plaintiff’s Complaint alleged causes of action for: (1) failure to pay minimum wages; (2) failure to pay overtime wages; (3) failure to authorize and permit compliant rest periods and/or pay rest period premiums; (4) failure to provide compliant meal periods and/or pay meal period premiums; (5) failure to provide complete and accurate wage statements; (6) waiting time penalties; (7) violations of California’s Unfair Competition Law, Business & Professions Code section 17200 *et seq.* (“UCL”); and (8) violation of PAGA.
- 2.3 On or about May 31, 2022, Plaintiff Triay filed the Operative First Amended Complaint adding Plaintiff Godinez, Plaintiff De La Riva, and Plaintiff Lopez. The Operative Complaint alleges the same causes of action set forth in the original Class Action Complaint.
- 2.4 On October 4, 2021, the Parties participated in a mediation session before mediator Lou Marlin, an experienced mediator who has mediated numerous wage-hour class actions. The case did not resolve at mediation and significant litigation continued for more than two years. Ultimately, the Parties reached a resolution in principle on December 8, 2023.
- 2.5 Defendants deny each of the claims in the Operative Complaint, and further deny that they are liable to Plaintiffs, the Class, or Aggrieved Employees and further deny that, for any purpose other than settling the Action, this Action is appropriate for class action or representative treatment.
- 2.6 Prior to and following mediation Plaintiffs obtained, through formal and informal discovery, relevant wage and hour policies and procedures, such as meal and rest break policies, and time and payroll records for the entire Class. The Parties agree that Plaintiffs’ 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*”). Class Counsel represents that he has thoroughly investigated the class claims against Defendants. Class Counsel represents that he has conducted his own investigation into the underlying facts, events, and issues related to the subject matter of this Action. Class Counsel represents that he has further undertaken an extensive analysis of the legal principles applicable to the claims asserted against Defendants, and the potential defenses thereto. Plaintiffs and Defendants have had an opportunity to evaluate their respective positions on the merits of the claims asserted.

- 2.7 Class Counsel also has engaged in intensive arms-length negotiations with counsel for Defendants with a view toward achieving substantial benefits for the Class, while avoiding the cost, delay and uncertainty of further litigation, trial, and appellate review.
- 2.8 As a consequence of said negotiations, and of Class Counsel’s investigation, analysis and discovery, Plaintiffs and Class Counsel determined to enter into this Settlement Agreement on the terms and conditions hereinafter set forth, believing such Settlement to be fair, reasonable, and adequate and in the best interests of Class Members. Plaintiffs and Class Counsel have determined to execute this Settlement Agreement and urge approval by the Court of the proposed Settlement after considering: (1) the substantial factual and legal defenses asserted by Defendants to the claims asserted in the Action; (2) the potential difficulties Plaintiffs and Class Members would encounter in establishing the elements of their claims; (3) the substantial benefits that Class Members shall receive pursuant to the proposed Settlement; (4) the fact that the proposed Settlement ensures that Class Members shall receive relief in the most expeditious and efficient manner practicable, and thus much sooner than would be possible were the claims to be litigated successfully through trial and appeal; and (5) the fact that the proposed Settlement allows persons who would otherwise fall within the definition of the Class, if they so desire, to opt out of the Settlement and individually pursue the claims alleged in the Action.
- 2.9 As set forth above, without admitting any wrongdoing or liability, Defendants are willing to agree to the terms of the proposed Settlement provided that all of the Released Claims (as defined below) are settled and compromised, in order to fully resolve all issues relating to the subject matter of the Action.
- 2.10 The Court has not granted class certification in this Action.

NOW THEREFORE, in consideration of the covenants and agreements set forth herein, and of the release and dismissal of all Released Claims, Plaintiffs, on behalf of themselves and as the Class Representatives on behalf of the Class and Aggrieved Employees, Class Counsel, and Defendants agree to the terms and provisions of this Settlement Agreement, subject to the approval of the Court.

3. **Stipulation to Certification and Limitation on Effect of Settlement.**

- 3.1 The Settlement shall not constitute, in this or any other proceeding, an admission of any kind by Defendants, including without limitation, that certification of a class is appropriate or proper or that Plaintiffs could establish any of the requisite elements for class or representative action treatment of any of the claims in the Action. For purposes of this Settlement only, the Parties stipulate to the certification of the Class under California Code of Civil Procedure Section 382. In the event that the Settlement is not finally approved, or the Settlement is otherwise terminated, Defendants expressly reserve all rights to challenge certification of a class on all available grounds.

4. **Establishment of the GSA.**

- 4.1 Under the Settlement, Defendants shall pay a GSA of no more than \$700,000 plus all employer-side payroll taxes owed on the Wage Portion of the Individual Class Payments.
- 4.2 This Settlement shall be made on a non-claims-made basis and will be non-reversionary.
- 4.3 Payment by Defendants pursuant to this Settlement Agreement shall settle all Released Claims between the Released Parties and Settlement Class Members (including all Aggrieved Employees), including all Individual Class Payments, the Court-approved Service Awards to the Class Representatives, the Court-approved Settlement Administration Costs, the Court-approved PAGA Payment, and the Court-approved Class Counsel Fees and Costs Award.

5. **Calculation of the NSA and Distribution of Settlement Proceeds.**

- 5.1 This Settlement shall be a “non-claims-made” settlement. Each Class Member will be entitled to a share of the NSA for the Individual Class Payment in accordance with the formula set forth below. Payments will be made from the NSA only to Participating Class Members, as set forth herein. Assuming the Court approves the maximum amounts sought to be deducted from the GSA, the NSA is estimated to be \$351,500.

- 5.1.1 Each Participating Class Member will be paid a portion of the NSA in accordance with the following formula:

The pro rata portion of the NSA to be distributed to each Settlement Class Member shall be determined by dividing the total number of workweeks worked during the Class Period into the NSA to arrive at a value per workweek for each eligible Settlement Class Member. The value per workweek shall be multiplied by the number of

workweeks worked by each Settlement Class Member during the Class Period. For purposes of payment, workweeks shall be determined based on hire dates, termination dates, and re-hire dates, as applicable.

In accordance with section 14.3, the Individual Class Payment allocated to any Class Member who submits a valid and timely Request for Exclusion shall revert to the Net Settlement Amount and be distributed on a pro rata basis to Participating Class Members.

- 5.2 Subject to Court-approval, a PAGA Payment in the amount of \$10,000 shall be paid from the GSA with 75% (\$7,500) allocated to the LWDA Payment and 25% (\$2,500) allocated to PAGA Penalties.

- 5.2.1 Each Aggrieved Employee will be entitled to a share of the PAGA Penalties (aka the 25% of the PAGA Payment payable to Aggrieved Employees) in accordance with the formula set forth below. Payments will be made from the PAGA Penalties only to Aggrieved Employees as set forth herein. Assuming the Court approves the PAGA Payment stipulated to by the Parties, the PAGA Penalties are estimated to be \$2,500.

- 5.2.2 Each Aggrieved Employee will be paid a portion of the PAGA Penalties in accordance with the following formula:

The pro rata portion of the PAGA Penalties to be distributed to each Aggrieved Employee shall be determined by dividing the total number of pay periods worked during the PAGA Period into the PAGA Penalties to arrive at a value per pay period for each eligible Aggrieved Employee. The value per pay period shall be multiplied by the number of pay periods worked by each Aggrieved Employee during the PAGA Period. For purposes of payment, pay periods shall be determined based on hire dates, termination dates, and re-hire dates, as applicable.

- 5.2.3. If the Court approves a PAGA Payment of less than the amount requested, the Settlement Administrator will allocate the remainder to the NSA. Any change in in the requested PAGA Payment is not a material term of this Agreement. If the Court approves a lesser or greater amount than that requested, the other terms of this Agreement shall remain in effect. However, some approval of a PAGA Payment is a material term of this Agreement. If the Court does not approve any PAGA Payment without leave to amend, then the entire Agreement will be, at Defendants' sole discretion, void and unenforceable. In such case, the Parties shall be returned to their respective statuses as of the date and time immediately prior to the execution of this Agreement and the Parties shall proceed in all

respects as if this Agreement had not been executed except that the costs of administration shall be borne by Defendants.

- 5.3 Payments to Class Members and Aggrieved Employees pursuant to this Settlement Agreement are not intended by the Parties to be compensation for purposes of determining eligibility, vesting, participation, or contributions with respect to any employee benefit plan. For purposes of this Agreement, the term “benefit plan” means every ERISA “employee benefit plan,” as defined in the Employee Retirement and Income Security Act of 1974 (“ERISA”), 29 U.S.C. section 1002(3). The term also includes any 401(k) plan, bonus, pension, stock option, stock purchase, stock appreciation, welfare, profit sharing, retirement, disability, vacation, severance, hospitalization, insurance, incentive, deferred compensation, or any other similar benefit plan, practice, program, or policy, regardless of whether any such plan is considered an ERISA employee benefit plan.

6. Class Counsel Fees and Costs Award.

Class Counsel shall move for Class Counsel Fees and Costs Award contemporaneous with the motion for the Final Approval Order requesting, and to which Defendants agree to not oppose, Class Counsel Fees that are equal to or less than \$280,000 (*i.e.*, 40% of the GSA), plus a Costs Award up to \$27,500. Defendants retain the right to oppose a request for Class Counsel Fees exceeding 40% of the GSA or a request for Costs Award in excess of \$27,500. Released Parties shall have no liability to Class Counsel or any other Plaintiffs’ Counsel arising from any claim to any portion of any Class Counsel Fee Payment and/or Class Counsel Costs Award. If the Court awards a lower amount of Class Counsel Fees or Costs Award requested by Class Counsel, the other terms of this Agreement shall apply. Should the Court approve Class Counsel Fees or Costs Award in an amount less than that set forth herein, the unapproved portion or portions shall revert to the NSA and be apportioned to Settlement Class Members as described in Paragraph 5.1.1 of this Settlement Agreement. The award of Class Counsel Fees or Costs Award in the amounts sought is not a material term of this Agreement and the award of any of these items at less than requested by Class Counsel does not give rise to a basis to abrogate this Agreement.

7. Service Awards.

Class Counsel shall file a motion requesting a Service Award, to which Defendants agree not to object, of up to \$22,500 to Plaintiffs collectively (\$7,500 to Plaintiff Triay; and \$5,000 each to Plaintiffs Godinez, De La Riva, and Lopez) from the GSA in consideration for serving as Class Representatives and in exchange for Plaintiffs’ Released Claims. Defendants retain the right to object to a request for a Service Award in excess of this amount. If the Court awards a lower amount for the Service Award requested by Plaintiffs’ counsel, the other terms of this Agreement shall apply. Should the Court approve a Service Award in an amount less than that set forth herein, the unapproved portion or portions shall revert to the NSA and be apportioned to Settlement Class Members as described in Paragraph 5.1.1 of this Settlement Agreement. The award of any Service

Award in the amount sought is not a material term of this Agreement and the award of an amount less than requested by Plaintiffs does not give rise to a basis to abrogate this Agreement.

8. Costs of Settlement Administration.

The Parties agree to mutually select CPT Group, Inc. or ILYM Group, Inc. as the Settlement Administrator in this Action. This administration duty shall include without limitation, setting up an escrow account for funding of the Settlement, obtaining tax identification number(s) for Defendants applicable to the Settlement, calculating the Individual Class and PAGA Payments, performing an initial Class Member Address Search upon receipt of the Class Member mailing addresses, mailing the Notice Packets, performing one skip trace on Notice Packets returned as undeliverable, providing a toll-free telephone number to communicate with Class Members about the Settlement, reviewing and processing requests by Class Members to opt out of the settlement, reviewing and submitting to Class Counsel and Defendants' Counsel any received objections, mailing the Individual Class and PAGA Payments and tax forms to the Settlement Class Members and Aggrieved Employees, and making all required distributions to Settlement Class Members. The Settlement Administrator will report payment of the Individual Class Payments and Individual PAGA Payments to all required taxing and other authorities, and requisite reporting documentation to the applicable taxing agencies, and issue appropriate tax forms. The Settlement Administrator will establish a Qualified Settlement Fund ("QSF"), pursuant to U.S. Treasury Regulation Section 468B(g) of the Internal Revenue Service for the purposes of administering the Settlement. All Settlement Administration Costs shall be taken from the GSA. The Parties expect Settlement Administration Costs to not exceed \$8,500. Any unapproved amount of Settlement Administration Costs shall be allocated to the NSA and apportioned to the Class Members as described in Paragraph 5.1.1 of this Settlement Agreement. The award of Settlement Administrator Costs in the amount sought is not a material term of this Agreement and the award of an amount less than requested by Plaintiffs does not give rise to a basis to abrogate this Agreement.

The Settlement Administrator will establish, 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 and Costs Award and Service Awards, the Final Approval Order and the Judgment. The Settlement Administrator will also maintain and monitor an email address and a toll-free telephone number to receive Class Member calls, faxes and emails.

9. Payment Procedure.

- 9.1 Funding the Settlement. Within 30 calendar days after the Effective Date, Defendants will deposit money into an account, through the Settlement Administrator, in an amount equal to the GSA, plus any amounts necessary to fully pay Defendants' share of payroll taxes.

- 9.2 Qualified Settlement Fund. The Settlement Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund (“QSF”) under US Treasury Regulation section 468B-1.
- 9.3 Payments to Class Members, Aggrieved Employees, the LWDA, Class Counsel, Class Representatives, and Taxing Authorities. Within 10 calendar days after the funding of the Settlement, the Settlement Administrator will pay: (1) the NSA to the Settlement Class Members per the terms of this Settlement Agreement and the Final Approval Order; (2) the Court-approved PAGA Payment to Aggrieved Employees and the LWDA; (3) the Court-approved Class Counsel Fees and Costs Award; (4) the Court-approved Settlement Administration Costs; and (5) the Court-approved Service Awards to the Class Representatives. Disbursement of the Class Counsel Fees and Costs Award, the Settlement Administration Costs, and Service Awards shall not precede disbursement of the Individual Class and PAGA Payments. The Settlement Administrator shall also, within the time periods prescribed by law and/or regulations, remit all applicable tax withholdings (if any) to the appropriate taxing authorities. Before mailing any checks, the Settlement Administrator must perform a Class Member Address Search.
- 9.4 Checks to Class Members. The Administrator will issue checks for the Individual Class Payments and/or Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (180 days after the date of mailing) when the check will be voided. The Administrator will send checks for Individual Class Payments to all Participating Class Members (including those for whom Class Notice was returned undelivered). The Administrator will 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). The Administrator may send Participating Class Members a single check combining the Individual Class Payment and the Individual PAGA Payment.
- 9.5 Uncashed Class Payments. In the event that a Class Member Payment check is not cashed within 180 calendar days from the date initially mailed by the Settlement Administrator, such funds shall be distributed to the State of California’s Unclaimed Property Fund to be held in the name of each expired check payee, thereby leaving no “unpaid residue” subject to the requirements of California Code of Civil Procedure Section 384, subd. (b). In such event, release of Released Claims will remain binding upon the affected Settlement Class Member. The Settlement Administrator will cancel all checks not cashed by the void date. All uncashed Individual PAGA Payments will be distributed to the LWDA. The requirement that any uncashed Class Member checks be distributed to the State of California’s Unclaimed Property Fund to be held in the name of each

expired check payee pursuant to applicable unclaimed property laws and distribution of uncashed Individual PAGA Payments to the LWDA are not material terms of this Settlement and an order from the Court requiring the Parties to distribute unclaimed funds to a *cy pres* shall not give rise to a basis on which to abrogate the settlement provided that no “unpaid residue” remains within the meaning of California Code of Civil Procedure section 384.

- 9.6 Returned Checks. The Settlement Administrator must conduct a Class Member Address Search for all other Class Members whose checks are returned undelivered without USPS forwarding address. Within 7 days of receiving a returned check the Administrator must 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 Class Members whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Class Member whose original check was lost or misplaced, requested by the Class Member prior to the void date unless the Settlement Class Member’s check has already been cashed.

10. Tax Treatment.

- 10.1 Tax Treatment of Claimed Portion of Settlement Payments. One-half (50%) of the Net Settlement Amount attributable to the Class Settlement Award will be allocated to the settlement of disputed claims for wages (the “Wage Portion”), and one half (50%) of the Net Settlement Amount attributable to the Class Settlement Award will be allocated to the settlement of disputed non-wage claims – *i.e.* penalties and interest (the “Non-Wage Portion”). All of the PAGA Payment will be allocated to the settlement of disputed non-wage claims. The Settlement Administrator will issue to Class Members a Form W-2 for the Wage Portion of all Settlement Payments and a Form 1099 for the Non-Wage Portion of all Settlement Payments. Class Members shall assume full responsibility and liability for the payment of taxes due on such amounts.
- 10.2 Tax Treatment of Class Representative Service Awards. Plaintiffs will each receive an IRS Form 1099 for their individual Service Award, and will be responsible for payment of any taxes owing on said amount. Plaintiffs shall assume full responsibility and liability for the payment of taxes due on such Service Award
- 10.3 Tax Treatment of Attorneys’ Fees And Cost Award. Class Counsel will receive an IRS Form 1099 for any amount awarded to Class Counsel in the Class Counsel Fees or Costs Awards and will be responsible for payment of any taxes owing on said amounts. Class Counsel shall assume full responsibility and liability for the payment of taxes due on such amounts.

- 10.4 No Tax Advice. Defendants are not giving any tax advice in connection with the Settlement or any payments to be made pursuant to this Settlement. Each Settlement Class Member agrees to indemnify, and hold harmless Defendants from any liability for taxes, fees, costs, or assessments resulting from his or her failure to timely pay his or her share of taxes, interest, fees, or penalties owed.

11. Releases.

Upon full payment by Defendants of the GSA to the Settlement Administrator, and in exchange for the consideration set forth in this Settlement Agreement, Plaintiffs and the Settlement Class Members agree to release those claims set forth herein as applicable.

- 11.1 Release by Participating Class Members: By operation of the entry of the Court's Final Approval Order and judgment, each Participating Class Member and each of their respective executors, administrators, representatives, agents, heirs, successors, assigns, trustees, ~~spouses,~~ or guardians will release the Released Parties from any and all claims, rights, demands, charges, complaints, causes of action, obligations, or liability ~~of any and every kind or nature, contingent or accrued, and,~~ irrespective of theory of recovery, that arose during the Class Period and which were or could have been brought based on the facts or claims alleged in Plaintiffs' Operative Complaint ~~any version of the complaints filed in the Action or enumerated in Plaintiffs' letters to the LWDA requesting authorization to be deputized as private attorney generals for the purposes of pursuing a PAGA claim (the "LWDA Letters").~~ The released claims include ~~but are not limited to~~ claims for failure to pay wages, including minimum wages and overtime and including ~~but not limited to~~ wages due based on alleged time rounding and/or "boot-up time," failure to pay wages (including overtime wages) at the correct rate, failure to provide meal periods, failure to authorize and permit rest periods, short/late meal and rest periods, failure to relieve employees of all duties during meal and/or rest periods, failure to pay for time worked off the clock during meal periods, failure to properly compensate meal or rest break premiums at the regular rate, failure to furnish accurate wage statements, recordkeeping violations, failure to timely pay wages during employment, failure to timely pay wages at separation, claims related to wages and premium pay based on failure to properly calculate the regular rate of pay, as well as claims derivative and/or related to these claims, liquidated damages, conversion of wages, and claims arising under Business and Professions Code section 17200 arising from the Labor Code violations released herein. Participating Class Members shall further waive their right to pursue individual lawsuits as to any of the claims released herein against the Released Parties to the extent such claims accrued during the Class Period.

- 11.2 Release by Aggrieved Employees: As to claims for civil or statutory penalties for violation of PAGA, the State of California, all Aggrieved

Employees including Plaintiffs shall release the Released Parties for all claims for penalties under PAGA during the PAGA Period that were or could have been alleged in the Action based on the facts or claims ~~alleged in any version of the Complaint and/or enumerated~~ stated in the Operative Complaint and/or Plaintiffs' letters to the LWDA requesting authorization to be deputized as private attorney generals for the purposes of pursuing a PAGA claim (the "LWDA Letters") ~~the LWDA Letters~~, irrespective of the underlying theory of recovery supporting the claim for PAGA penalties.

- 11.3 Plaintiffs' Release: In addition to the foregoing releases, Plaintiffs agree to a general release of all claims, known or unknown, under federal, state, and/or local law, statute, ordinance, regulation, common law, or other source of law, including but not limited to claims arising from or related to Plaintiffs' employment with Defendants and their compensation while employed by Defendants which occurred at any time including before or during the Class Period. This general release includes a waiver of rights under section 1542 of the California Civil Code. Plaintiffs make this release understanding the significance of this waiver. Section 1542 provides:

"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."

- 11.4 Plaintiffs warrant and represent that they have not assigned or transferred to any person or entity any of Plaintiffs' Released Claims or any rights, claims, or causes of action arising out of Plaintiffs' Released Claims. In addition, Plaintiffs shall defend, hold harmless, and indemnify the Released Parties, or any of them, from and against any claims, damages, litigation, causes of action, and expenses, including reasonable attorneys' fees, resulting from any breach by either of the Plaintiffs of this warranty and representation, or any breach by either of the Plaintiffs of their release of Plaintiffs' Released Claims.
- 11.5 Prohibition on Subsequent Assertion of Released Claims. Plaintiffs, to the fullest extent allowed by law, are prohibited from asserting a Plaintiffs' Released Claim, and from commencing, joining in, or voluntarily assisting in a lawsuit or adversary proceeding against the Released Parties, based on Plaintiffs' Released Claims. Excluded from this prohibition are any instances where any individual is legally compelled to testify through service of a subpoena or other process. Settlement Class Members, to the fullest extent allowed by law, are prohibited from asserting a Released Claim, and from commencing, joining in, or voluntarily assisting in a

lawsuit or adversary proceeding against the Released Parties, based on Released Claims. Excluded from this prohibition are any instances where any individual is legally compelled to testify through service of a subpoena or other process.

12. Class Settlement Notice and Claims Administration.

12.1 Duties of Settlement Administrator. The Parties agree to CPT Group, Inc. or ILYM Group, Inc. as the Settlement Administrator to perform the notice and other settlement claims administration functions set forth below.

12.1.1 Weekly Reports. The Settlement Administrator shall provide Defendants' counsel and Class Counsel with weekly summary reports, including the total number of Class Settlement Notices that were returned as undeliverable, the total number of objections and requests to opt out of the settlement, and the amounts not claimed by Class Members as a result of the submission of timely and valid requests to opt out of the settlement, if any, and/or any uncashed or undeliverable Settlement Checks. The Settlement Administrator shall maintain records of its work, which shall be available for inspection upon request by Defendants' counsel or Class Counsel.

12.1.2 Workweek and/or Pay Period Challenges. The Administrator has authority to address and make final decisions consistent with the terms of this Agreement on all Class Member challenges over the calculation of workweeks and/or pay periods. The Administrator's decision shall be final and not appealable or otherwise susceptible to challenge.

12.1.3 Requests for Exclusion. The Administrator will promptly review on a rolling basis opt-out requests to ascertain their validity. Not later than 5 days after the expiration of the deadline for submitting opt-out requests, the Settlement 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 submitted (whether valid or invalid).

12.1.4 Administrator's Declaration. Not later than 14 days before the date by which Plaintiffs are required to file their Motion for Final Approval, the Settlement Administrator will 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 Class Notice, the Class Notices returned as undelivered,

the re-mailing of Class Notices, attempts to locate Class Members, the total number of Requests for Exclusion it received (both valid or invalid), the number of written objections and attach the Exclusion List. The Settlement Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator's declaration(s) in Court.

12.1.5 Final Report by Settlement Administrator. Within 10 days after the Settlement Administrator disburses all funds in the GSA, the Settlement Administrator will provide Defense Counsel with a final report detailing its disbursements by employee identification number of all payments made under this Agreement. At least 15 days before any deadline set by the Court, the Settlement Administrator will prepare, and submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all payments required under this Agreement. Class Counsel is responsible for filing the Administrator's declaration in Court.

12.2 Identification of Class Members.

12.2.1 Within 20 calendar days of the entry of the Preliminary Approval Order, Defendants shall provide the Settlement Administrator with the following Class Data, to the extent that it possesses the information.

- (1) the names, last known addresses, and last known telephone numbers of each Class Member;
- (2) the social security number of each Class Member;
- (3) the start and ending dates of employment for each Class Member;
- (4) the number of workweeks worked by each Class Member during the Class Period; and
- (5) the number of pay periods worked by each Aggrieved Employee during the PAGA Period.
- (6) To protect Class Members' privacy rights, the Administrator must 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 Settlement Administrator employees who need access to the Class Data to effect and perform under this Agreement.

- 12.2.2 If Defendants and the Settlement Administrator determine, based upon further review of available data, that a person previously identified as being a Class Member should not be so included or identify a person who should have been included as a Class Member but was not so included, Defendants and the Settlement Administrator shall promptly delete or add such person as appropriate and immediately notify Class Counsel prior to such deletions or additions (and the reasons therefor).
- 12.2.3 If the Settlement Administrator, Defendants, 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 will 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 will be Class Members entitled to the same rights as other Class Members, and the Settlement Administrator will send, via email or overnight delivery, a Class Notice requiring them to exercise options under this Agreement not later than 14 days after receipt of Class Notice, or the deadline dates in the Class Notice, which ever are later.
- 12.2.4 Other than the obligations set forth in this Settlement Agreement, Defendants shall have no additional obligation to identify or locate any Class Member or have any liability in connection with the provision of information to the Settlement Administrator or otherwise.

12.3 Notice to Class Members

- 12.3.1 Class Settlement Notice. The Class Settlement Notice shall be a pre-printed notice, in substantially the form attached hereto as **Exhibit A** and to be approved by the Court. In addition to other information contained on the Class Settlement Notice, the Class Settlement Notice shall state the number of workweeks and/or pay periods that the Class Member worked in California during the Class Period and/or PAGA Period. The workweeks and pay periods shall be determined according to Defendants' records. The Class Settlement Notice also shall include an estimate of the Class Member's Individual Class Payment and/or PAGA Payment and an explanation of the pro rata distribution formula.
- 12.3.1.1 Challenges to the Calculation of Workweeks / Pay Periods. Each Class Member shall have until the Response Deadline (plus an additional 14 days for Class Members whose Notice is remailed) to challenge the number of workweeks and pay periods (if any) allocated to the Class Member in the Class

Notice. The Class Member may challenge the allocation by communicating with the Settlement Administrator via fax, email or mail, and may but is not required to use the form attached to this Agreement as **Exhibit C**. The Administrator must encourage the challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the workweeks and/or 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 pay periods shall be final and not appealable or otherwise susceptible to challenge. The Settlement Administrator shall promptly provide copies of all challenges to calculation of workweeks and/or pay periods to Defense Counsel and Class Counsel and the Settlement Administrator's determination the challenges.

- 12.3.2 Upon its receipt of the Class Data, the Settlement Administrator shall perform a Class Member Address Search and update any addresses.
- 12.3.3 No later than 3 business days after receipt of the Class Data, the Settlement Administrator shall notify Class Counsel that the list has been received and state the number of Class Members and workweeks in the Class Data.
- 12.3.4 The Settlement Administrator shall provide the Notice Packet by first class mail, forwarding requested, to the Class Members at the addresses identified through the process described above. This mailing shall occur no later than 14 days after the Settlement Administrator receives the Class Data. The first page of the Class Notice shall estimate the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Settlement Class Member, and the number of workweeks and/or pay periods used to calculate these amounts. Before mailing Notice Packets, the Settlement Administrator shall update Class Member addresses as necessary following a Class Member Address Search.
- 12.3.5 Not later than 3 business days after the Settlement Administrator's receipt of any Notice Packet returned as undeliverable, the Settlement Administrator shall re-mail the 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 has no obligation to make further attempts to locate or send Class Notice to Class

Members whose Class Notice is returned by the USPS a second time.

12.3.6 The deadlines for Class Members' written objections, Challenges to workweeks and/or pay periods, and Requests for Exclusion will be extended an additional 14 days beyond the 50 days otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice.

12.4 Notice to the LWDA. Class Counsel shall timely transmit to the LWDA all necessary PAGA documents concerning this Settlement, including this Agreement.

13. Objections to the Settlement.

13.1 Any Class Member who does not submit a valid and timely request to opt out of the settlement (*i.e.*, a Participating Class Member) may object to the Settlement. Any Participating Class Member who wishes to object to the Settlement must submit a written objection by fax, email, or mail to the Settlement Administrator no later than the Response Deadline.

13.2 The objection must include the case name and number and must set forth, in clear and concise terms, a statement of the reasons why the objector believes that the Court should find that the Settlement is not in the best interest of the Class Members and the reasons why the Settlement should not be approved, including the legal and factual arguments supporting the objection. The Settlement Administrator will promptly serve copies of any objection or notice of intention to appear on Class Counsel and Defense Counsel.

13.3 Settlement Class Members shall be entitled to appear and/or object at the Final Approval Hearing regardless of whether they have submitted a timely written objection and notice of intention to appear pursuant to this Section. Settlement Class Members may appear at the Final Approval Hearing, either in person or through a lawyer retained at their own expense.

13.4 Each Party retains the right to respond to any objection raised by a Participating Class Member, including the right to file responsive documents in Court no later than five court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.

14. Requests for Exclusion (Opt Outs)

14.1 In order to opt out of the Settlement, the Class Member must timely submit by fax, email, or mail, an opt-request request (the "Request for Exclusion") to the Settlement Administrator by the Response Deadline. Class Members

may but are not required to use the form attached to this agreement as **Exhibit B** to opt out of the Settlement.

- 14.2 The Request for Exclusion should state the Class Member's name, address, telephone number, and signature. However, the Settlement Administrator may not reject a Request for Exclusion as invalid because it fails to contain all the information specified in the Class Notice. The Settlement Administrator shall accept any Request for Exclusion as valid if the Settlement Administrator can reasonably ascertain the identity of the person as a Class Member and the Class Member's desire to be excluded. The Settlement Administrator's determination shall be final and not appealable or otherwise susceptible to challenge. If the Settlement Administrator has reason to question the authenticity of a Request for Exclusion, the Settlement Administrator may demand additional proof of the Class Member's identity. The Settlement Administrator's determination of authenticity shall be final and not appealable or otherwise susceptible to challenge.
- 14.3 Class Members who submit a valid and timely Request for Exclusion shall not be permitted to object to the Settlement or appeal and shall not receive any Individual Class Payment from the Net Settlement Amount. [The Individual Class Payment allocated to any Class Member who submits a valid and timely Request for Exclusion shall revert to the Net Settlement Amount and be distributed on a pro rata basis to Participating Class Members.](#) Class Members who opt out also shall not be bound by the Class Release provisions in this Agreement or the Final Approval Order. Each Class Member who does not opt out of the Settlement shall remain qualified to receive an Individual Class Payment and shall be subject to being bound by the applicable Released Class Claims provisions in this Agreement or the Final Approval Order, regardless of whether the Class Member actually receives the Class Notice or objects to the Settlement.
- 14.4 Except for persons who elect to opt out of the Class in the manner and within the time limits specified above and in the Class Settlement Notice, all Class Members shall be deemed to be within the Class for all purposes under this Settlement Agreement, shall be bound by the terms and conditions of this Settlement Agreement (including the release provisions in Paragraph 11.1), including all orders issued pursuant thereto, and shall be deemed to have waived all unstated objections and unstated opposition to the fairness, reasonableness, and adequacy of this Settlement Agreement, and any of its terms.
- 14.5 Because future PAGA claims are subject to claim preclusion upon entry of the Judgment, Class Members who are Aggrieved Employees (including Non-Participating Class Members) are deemed to release the claims identified in Paragraph 11.2 of this Agreement and are eligible for an Individual PAGA Payment.

15. Application for Preliminary Approval Order.

After the Parties' execution of this Agreement, Plaintiffs shall file for preliminary approval of the proposed Settlement, requesting a Preliminary Approval Order that contains the following provisions:

- (1) preliminarily approving the Settlement Agreement and its terms;
- (2) approving the form of the Class Settlement Notice, and finding that the proposed method of disseminating the Class Settlement Notice meets the requirements of due process and is the best notice practicable under the circumstances;
- (3) establishing the procedures and the deadline by which Class Members may assert objections to the Settlement or opt out of the Settlement;
- (4) establishing a deadline to submit papers/briefing in response to any objections and for Plaintiffs to submit papers/briefing in support of final approval of the Settlement Agreement including the Service Awards for the Class Representatives and the Class Counsel Fees and Costs Award;
- (5) appointing Class Counsel, the Settlement Administrator, and the Class Representatives; and
- (6) setting a date for the Final Approval Hearing.

Counsel for Defendants will be given an opportunity to comment on said motion prior to filing, and such comments shall be implemented to the extent they are deemed reasonable by Plaintiffs and Class Counsel.

16. Final Approval Order and Judgment.

If the Settlement shall be finally approved by the Court following the Final Approval Hearing, the Parties hereto shall jointly request that the Court enter a Final Approval Order and Judgment, which includes the following provisions:

- (1) confirming certification of the Settlement Class for settlement purposes;
- (2) finding that the dissemination of the Class Notice, in the form and manner ordered by the Court was accomplished as directed, and met the requirements of due process;
- (3) finally approving the Settlement Agreement and the Settlement as fair, reasonable and adequate and directing consummation of the Settlement in accordance with its terms and provisions;

The Judgment shall include the following provisions:

- (1) directing the Parties to implement the terms of the Settlement Agreement;
- (2) releasing and discharging the Released Parties from any and all liability with respect to the Plaintiffs' Released Claims, Released Class Claims, and Released PAGA Claims as hereinabove provided, except for full payment of the Gross Settlement Amount;
- (3) resolving and settling all of Plaintiffs' Released Claims as hereinabove provided, with the release precluding them from instituting, commencing, directly or indirectly, as an individual or collectively, representatively, derivatively, or on behalf of themselves, or in any other capacity of any kind whatsoever, any action in this Court, any other state court, or any arbitration or mediation proceeding or any other similar proceeding, against any Released Party that asserts any claims that are Plaintiffs' Released Claims under the terms of the Settlement;
- (4) resolving and settling all the Released Class and PAGA Claims by all Settlement Class Members and Aggrieved Employees as hereinabove provided, with the release precluding them from instituting, commencing, or continuing to prosecute, directly or indirectly, as an individual or collectively, representatively, derivatively, or on behalf of himself or herself, or in any other capacity of any kind whatsoever, any action in this Court, any other state court, or any arbitration or mediation proceeding or any other similar proceeding, against any Released Party that asserts any claims that are Released Class or PAGA Claims under the terms of the Settlement;
- (7) awarding the Service Awards to the Class Representative, Class Counsel Fees and Costs Award to Class Counsel, and Settlement Administration Costs to the Settlement Administrator, as determined by the Court;
- (8) reserving continuing and exclusive jurisdiction over all matters related to the administration and consummation of the terms of this Settlement and enforcement of the Judgment; and
- (9) ~~dismissing the Action with prejudice~~entering Judgment in the Action.

20. **Effect of Settlement Not Being Final.**

In the event that the Settlement does not become Final then the Settlement Agreement shall become null and void, and all negotiations, proceedings, and statements relating thereto shall be without prejudice as to the rights of any and all Parties hereto, and all Parties and their respective predecessors and successors shall be deemed to have reverted to their respective positions in the Action as of the date and time immediately prior to the execution of this Settlement Agreement, and shall retain all rights to make all arguments regarding the merits of the claims and the appropriateness of the case for class and/or representative action treatment. If the Court does not approve either preliminarily

or finally any material term or condition of the Settlement Agreement, or if the Court effects a material change to the Settlement, then this entire Settlement Agreement will be, at the Parties' discretion, voidable and unenforceable.

21. Escalator.

Based on their records, Defendants ~~estimate-verify~~ that there are ~~100-85~~ Class Members and ~~13,425[insert-number]~~ 15,000 total workweeks during the Class Period. ~~The Parties previously agreed that if the actual number of workweeks during the Class Period exceeds 15,000 total workweeks this estimate by more than 10% (i.e., at least 16,501 total workweeks worked by Participating Class Members during the Class Period), Defendants shall would have the option in their sole and absolute discretion to either: (a) increase the Gross Settlement Amount proportionately for each additional workweek worked by Participating Class Members over 16,501 workweeks; or (b) agree that the Class Period shall cut off as of the date the number of workweeks worked by Participating Class Members is at least 16,501.~~ Based upon current records, the Parties represent that their² escalator clause is not triggered

~~Based upon the current records, Defendants verify that the actual workweeks are [###,###] as of October 21, 2024, do not exceed 16,501, and therefore the escalator clause is not triggered~~

~~[OR]~~

~~Based upon the current records, Defendants verify that the actual workweeks are [] as of October 21, 2024, which exceeds 16,501, and therefore the escalator clause requires an increase in the GSA to [\$###,###,###,##].~~

22. Tolerance of Requests for Exclusion.

Notwithstanding any other provision of this Settlement Agreement, Defendants shall retain the right, in the exercise of their sole discretion, to nullify the Settlement within 15 calendar days after expiration of the Response Deadline, if more than 5% of Class Members choose to validly and timely request to opt out of this Settlement. The Parties agree that, if Defendants withdraw, the Settlement shall be void *ab initio*, have no force or effect whatsoever, and that neither Party will have any further obligation to perform under this Settlement Agreement; provided, however, that Defendants will remain responsible for paying all Settlement Administration Costs incurred to that point.

23. No Admissions.

The Parties understand and agree that this Settlement Agreement is the result of a good faith compromise settlement of disputed claims, and no part of this Settlement Agreement or any conduct or written or oral statements made in connection with this Settlement and this Settlement Agreement, whether or not the Settlement is finally approved and/or consummated, may be offered as or construed to be an admission or concession of any kind by Defendants, or any of the Class Members, Released Parties, or Plaintiffs. This Settlement and this Settlement Agreement shall not constitute an admission

Commented [A1]: The Court has ordered: "Based on current records, the parties and/or administrator must review and verify the workweek total and confirm the end date of the Class Period"

Isn't the workweek figure static given no California employees over the past several years. What is the workweek count so we can confirm to the Court what it is and whether the escalator clause is triggered or not

on behalf of Defendants of any form of liability or the accuracy of any allegation made by Plaintiffs or Class Counsel.

24. Waiver of Right to Appeal.

Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the Class Counsel Fees and Costs Award reflected set forth in this Settlement, the Parties, their respective counsel, and all Settlement 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 will be suspended until such time as the appeal is finally resolved and the Judgment becomes final.

25. No Solicitation

The Parties agree that they and their respective counsel and employees will not solicit any Class Members 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.

26. Amended Judgment.

If any amended judgment is required under Code of Civil Procedure section 384, the Parties will work together in good faith to jointly submit and file a proposed amended judgment.

27. Appellate Court Orders

If any 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 granted by Class Members), this Agreement shall be null and void. The Parties shall nevertheless expeditiously work together in good faith to address the reviewing court's concerns and to obtain Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administration Expenses 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.

28. Avoidance of Undue Publicity.

The Parties and their counsel agree that they will not issue any press releases, initiate any contact with the press, respond to any press inquiry or have any communication with the press about the fact, amount, or terms of the settlement. If counsel for any party

receives an inquiry about the Settlement from the media, counsel may respond only after the motion for preliminary approval has been filed and only by confirming the accurate terms of the Settlement. Class Counsel agrees not to identify Defendants in any way in any website, blog, article, or social media. Nothing in this provision shall prevent Defendants from making any required disclosure or Class Counsel from referencing the Settlement in adequacy filings. Neither Plaintiffs nor Class Counsel will publicize the Settlement in any way, except that nothing in this Settlement Agreement shall preclude Class Counsel from communicating with members of the Settlement Class about the Agreement or in submitting filings with the Court in furtherance of obtaining approval of the Settlement. Nor shall anything herein restrict Class Counsel from including publicly available information regarding this Settlement in future judicial submissions regarding Class Counsel's qualifications and experience or otherwise allowing the Judgment to become known to Class Members.

29. Extensions of Time.

Without further order of the Court, the Parties hereto may agree in writing to reasonable extensions of time to carry out any of the provisions of the Settlement.

30. Construction.

This Settlement Agreement was entered into after substantial good faith, arms-length negotiations between the Parties' counsel. This Settlement Agreement has been entered into without any coercion and under no duress. The Parties acknowledge and agree that all Parties had an equal hand in drafting this Settlement Agreement so that it shall not be deemed to have been prepared or drafted by one party or another.

31. Good Faith.

The Parties to this Settlement Agreement agree that it reflects their good faith compromise of the claims raised in the Action, or those that could have been raised in the Action, based upon their assessment of the mutual risks and costs of further litigation and the assessments of their respective counsel. The Parties to this Settlement Agreement pledge their good faith and fair dealing in supporting the approval of this Settlement by the Court, are represented by competent counsel, and have had an opportunity to consult with counsel prior to execution of this Settlement Agreement.

32. Due Authority of Attorneys.

Each of the attorneys executing this Settlement Agreement on behalf of one or more Parties hereto warrants and represents that he or she has been duly authorized and empowered to execute this Settlement Agreement on behalf of each such respective Party and to bind them to the terms hereof.

33. Entire Agreement.

This Settlement Agreement (including all Exhibits hereto) sets forth the entire agreement of the Parties with respect to its subject matter and supersedes any and all other

prior agreements and all negotiations leading up to the execution of this Settlement Agreement, whether oral or written, regarding the subjects covered herein. The Parties acknowledge that no representations, inducements, warranties, promises, or statements relating to the subjects covered herein, oral, or otherwise, have been made by any of the Parties which are not embodied or incorporated by reference herein.

34. Use and Return of Class Data

Information provided to Class Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the Class Data provided to Class Counsel by Defendants in connection with the mediation, 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 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, Plaintiffs shall destroy all paper and electronic versions of Class Data received from Defendants unless, prior to the Court's discharge of the Administrator's obligation, Defendants make a written request to Class Counsel for the return, rather than the destructions, of Class Data.

35. Modification or Amendment.

This Settlement Agreement may not be modified or amended except in a writing signed by all signatories and their counsel hereto or their successors in interest [and as approved by the Court](#).

36. Successors.

This Settlement Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, successors and assigns, and upon any corporation, partnership, or other entity into or with which any Party hereto may merge, combine or consolidate.

37. Counterparts.

This Settlement Agreement may be executed in counterparts, by facsimile or electronically, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

38. Waivers.

The waiver by any Party of any breach of this Settlement Agreement shall not be deemed or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, of this Settlement Agreement.

39. **Governing Law.**

This Settlement Agreement shall be governed by and construed, enforced, and administered in accordance with the internal laws of the State of California.

40. **Headings.**

The headings contained in this Settlement Agreement are for convenience and reference purposes only, and shall not be given weight in its construction.

41. **Continuing Jurisdiction.**

The Court in which the Parties will seek approval of the Settlement shall retain continuing jurisdiction over the Action to ensure the continuing implementation and enforcement of the provisions of this Settlement Agreement under applicable law, including, but not limited to, California Code of Civil Procedure section 664.6.

42. **Stay of Litigation**

The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.

43. **Notices.**

Any notices, requests, demands, or other communications required or permitted to be given pursuant to this Settlement Agreement, other than notice to the Class or Class Members, shall be in writing and mailed or emailed as follows: (1) to Class Representatives, the Class, and Class Counsel to the attention of Martin Sullivan, Sullivan Employment Law P.C., 1801 Century Park East, Suite 850, Los Angeles, California 90067, martin@sullivanlawgrp.com; (2) to Defendants and counsel for Defendants, to the attention of Andrew M. Paley, Seyfarth Shaw LLP, 2029 Century Park East, Suite 3500, Los Angeles, California 90067-3021, (310) 277-7200, apaley@seyfarth.com or any alternative address provided.

IN WITNESS WHEREOF, this Settlement Agreement has been duly executed by and on behalf of the Parties, as follows:

Dated: _____

By: _____

Nicole Triay
On behalf of herself, as Plaintiff, the Class, and the
Aggrieved Employees

Dated: _____ By: _____
Cortney Godinez (nee Noell)
On behalf of herself, as Plaintiff, and the Class

Dated: _____ By: _____
Melissa De La Riva
On behalf of herself, as Plaintiff, and the Class

Dated: _____ By: _____
Darice Lopez
On behalf of herself, as Plaintiff, and the Class

Dated: _____ By: _____
For OrthoNet West, Inc.

Dated: _____ By: _____
For OrthoNet LLC

Dated: _____ By: _____
Martin Sullivan
Counsel for Plaintiffs

Dated: _____ By: _____
Andrew Paley
Counsel for Defendants

EXHIBIT A

NOTICE OF SETTLEMENT OF CLASS ACTION AND FINAL APPROVAL HEARING

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

***Nicole Triay, et al. v. OrthoNet West, Inc., et al.; Los Angeles County Superior Court Case
Number 20STCV05181***

***The Superior Court for the State of California authorized this Notice. Read it carefully! It is
not junk mail, spam, an 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 OrthoNet West, Inc. and OrthoNet LLC (“OrthoNet”) for alleged wage and hour violations. The Action was filed by former OrthoNet West employees, Nicole Triay, Cortney Godinez (nee Noell), Melissa De La Riva, and Darice Lopez (“Plaintiffs”) and seeks (1) payment of back wages and other relief for a class of hourly employees (“Class Members”) who worked for OrthoNet [in California](#) during the Class Period (from February 7, 2016 to [\[Date of Preliminary Approval\]](#)); and (2) penalties under the California Private Attorney General Act (“PAGA”) for all hourly employees who worked for OrthoNet [in California](#) during the PAGA Period (January 7, 2019 to [\[Date of Preliminary Approval\]](#)) (“Aggrieved Employees”).

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

Based on OrthoNet’s records, and the Parties’ current assumptions, **your Individual Class Payment is estimated to be \$ [REDACTED] (less 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 OrthoNet’s records you are not eligible for an Individual PAGA Payment under the Settlement because you didn’t work during the PAGA Period.)

The above estimates are based on OrthoNet’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 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. Your legal rights are affected whether you act 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

Questions? Please Call: [\[REDACTED\]](#)
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to finally approve the Settlement and how much of the Settlement will be paid to Plaintiffs and Plaintiffs’ attorneys (“Class Counsel”). The Court will also decide whether to enter a judgment that requires OrthoNet to make payments under the Settlement and requires Class Members and Aggrieved Employees to give up their rights to assert certain claims against OrthoNet.

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

- (1) **Do Nothing.** You don’t have to do anything to participate in the proposed Settlement and 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 assert Class Period wage claims and PAGA Period penalty claims against OrthoNet.
- (2) **Opt-Out of the Class Settlement.** You can exclude yourself from the Class Settlement (opting-out) by submitting the written Request for Exclusion or otherwise notifying the Administrator in writing. If you opt-out of the Settlement, you will not receive an Individual Class Payment. You will, however, preserve your right to personally pursue Class Period wage claims against OrthoNet to the extent otherwise permitted by law, 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.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

You don’t 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 assert the wage claims against OrthoNet 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 	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. OrthoNet must pay Individual PAGA Payments to all Aggrieved Employees and the Aggrieved Employees must give up their rights to pursue Released Claims (defined below).
Participating Class Members can object to the Class	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

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Settlement. The Objection Deadline is [REDACTED].	include a determination of how much will be paid to Class Counsel and Plaintiffs who pursued the Action on behalf of the Class. See Section 7 of this Notice.
You can participate in the Final Approval Hearing.	The Court's Final Approval Hearing is scheduled to take place on [REDACTED]. You don't 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 verbally object to the Settlement at the Final Approval Hearing. See Section 8 of this Notice.
You can challenge the calculation of your workweek / pay periods. Written challenges must be submitted by [REDACTED].	The amount of your Individual Class Payment and PAGA Payment (if any) depends 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 Class Period Workweeks and the number of PAGA Period Pay Periods you worked according to OrthoNet's records is stated on the first page of this Notice. If you disagree with either of these numbers, you must challenge it by [REDACTED]. See Section 4 of this Notice.

1. WHAT IS THE ACTION ABOUT?

Plaintiffs are former OrthoNet West employees. The Action accuses OrthoNet of violating California labor laws by failing to pay minimum wages, overtime, failing to authorize and permit rest periods or pay rest period premiums, failing to provide meal periods or pay meal period premiums, failing to provide complete and accurate wage statements, waiting time penalties, and violations of California's Unfair Competition Law, Business & Professions Code section 17200. Based on the same claims, Plaintiffs have also asserted a claim for civil penalties under the California Private Attorneys General Act (Labor Code §§ 2698, et seq.) ("PAGA"). Plaintiffs are represented by attorneys in the Action: Martin Sullivan of Sullivan Employment Law, P.C. ("Class Counsel.")

OrthoNet 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 OrthoNet or Plaintiffs are correct on the merits.

In the meantime, Plaintiffs and OrthoNet hired an experienced, neutral mediator and negotiated extensively between Class Counsel and OrthoNet's counsel in an effort to resolve the Action by

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negotiating an to end the case 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, Plaintiffs and OrthoNet 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, OrthoNet does not admit any violations or concede the merit of any claims.

Plaintiffs and Class Counsel strongly believe the Settlement is a good deal for you because they believe that: (1) OrthoNet 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 Final Approval.

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

- a. OrthoNet Will Pay \$700,000 as the Gross Settlement Amount (Gross Settlement). OrthoNet has agreed to deposit the Gross Settlement into an account controlled by the Administrator of the Settlement. The Administrator will use the Gross Settlement 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 California Labor and Workforce Development Agency (“LWDA”). Assuming the Court grants Final Approval, OrthoNet will fund the Gross Settlement not more than 30 days after the Effective Date of the Agreement as defined therein.
- b. Court Approved Deductions from Gross Settlement. At the Final Approval Hearing, Plaintiffs and/or Class Counsel will ask the Court to approve the following deductions from the Gross Settlement, the amounts of which will be decided by the Court at the Final Approval Hearing:
 1. Up to \$280,000 (40% of the Gross Settlement) to Class Counsel for attorneys’ fees and up to \$27,500 for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Action without payment.
 2. Up to \$22,500 as Class Representative Award for filing the Action, working with Class Counsel and representing the Class. The Class Representative Award will be split between the Plaintiffs (\$7,500 to Nicole Triay; \$5,000 each to Melissa De La Riva, Cortney Godinez (nee Noell), and Darice Lopez). A Class Representative Award will be the only monies Plaintiffs will receive other than Plaintiffs’ Individual Class Payment and any Individual PAGA Payment.
 3. Up to \$8,500 to the Administrator for services administering the Settlement.

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4. Up to \$10,000 for PAGA Penalties, allocated 75% to the LWDA PAGA Payment and 25% in Individual PAGA Payments to the Aggrieved Employees based on their PAGA Period Pay Periods.

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

- c. 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”) by making Individual Class Payments to Participating Class Members based on their Class Period Workweeks.
- d. Taxes Owed on Payments to Class Members. Plaintiffs and OrthoNet are asking the Court to approve an allocation of 50% of each Individual Class Payment to taxable wages (“Wage Portion”) and 50% to penalties and interest (“Non-Wage Portion.”). The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms. OrthoNet will separately pay employer payroll taxes it owes on the Wage Portion. 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 Plaintiffs and OrthoNet 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 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.

- e. 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 don’t 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 in your name. If the monies represented by your check is sent to the Controller’s Unclaimed Property, you should consult the rules of the Fund for instructions on how to retrieve your money.
- f. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated as a Participating Class Member, participating fully in the Class Settlement, unless you notify the Administrator in writing, not later than [REDACTED], 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 [REDACTED] Response Deadline. The Request for Exclusion should be a letter from a Class Member or his/her representative setting forth a Class Member’s name, present address, telephone number, and a simple statement electing to be excluded from the Settlement. Excluded Class Members (*i.e.*, Non-Participating Class Members) will not receive

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Individual Class Payments, but will preserve their rights to personally pursue wage and hour claims against OrthoNet to the extent otherwise permitted by law.

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 OrthoNet based on the PAGA Period facts alleged in the Action.

- g. 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 enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiffs and OrthoNet have agreed that, in either case, the Settlement will be void: OrthoNet will not pay any money and Class Members will not release any claims against OrthoNet.
- h. Administrator. The Court has appointed a neutral company, [ILYM Group, Inc.](#) (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, 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.
- i. Participating Class Members’ Release. After the Judgment is final and OrthoNet has fully funded the Gross Settlement (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 OrthoNet or related entities for wages based on the Class Period facts ~~and PAGA penalties based on PAGA Period facts,~~ as alleged in the Action and resolved by this Settlement.
- j. The Participating Class Members will be bound by the following release:

Each Participating Class Member and each of their respective executors, administrators, representatives, agents, heirs, successors, assigns, trustees, ~~spouses,~~ or guardians will release the Released Parties from any and all claims, rights, demands, charges, complaints, causes of action, obligations, or liability ~~of any and every kind or nature, contingent or accrued, and,~~ irrespective of theory of recovery, that arose during the Class Period and which were or could have been brought based on the facts or claims alleged in [Plaintiffs’ Operative Complaint](#) ~~any version of the complaints filed in the Action or enumerated in Plaintiffs’ letters to the LWDA requesting authorization to be deputized as private attorney generals for the purposes of pursuing a PAGA claim (the “LWDA Letters”).~~ The released claims include ~~but are not limited to~~ claims for failure to pay wages, including minimum wages and overtime and including ~~but not limited to~~ wages due based

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on alleged time rounding and/or “boot-up time,” failure to pay wages (including overtime wages) at the correct rate, failure to provide meal periods, failure to authorize and permit rest periods, short/late meal and rest periods, failure to relieve employees of all duties during meal and/or rest periods, failure to pay for time worked off the clock during meal periods, failure to properly compensate meal or rest break premiums at the regular rate, failure to furnish accurate wage statements, recordkeeping violations, failure to timely pay wages during employment, failure to timely pay wages at separation, claims related to wages and premium pay based on failure to properly calculate the regular rate of pay, as well as claims derivative and/or related to these claims, liquidated damages, conversion of wages, and claims arising under Business and Professions Code section 17200 arising from the Labor Code violations released herein. Participating Class Members shall further waive their right to pursue individual lawsuits as to any of the claims released herein against the Released Parties to the extent such claims accrued during the Class Period.

k-j. Aggrieved Employees’ PAGA Release. After the Court’s judgment is final, and OrthoNet has paid the Gross Settlement (and separately paid the employer-side payroll taxes), all Aggrieved Employees will be barred from asserting PAGA claims against OrthoNet, whether or not they exclude themselves from the Settlement. This means that all Aggrieved Employees, including those who opt-out of the Class Settlement, cannot sue, continue to sue, or participate in any other PAGA claim against OrthoNet or its related entities based on the PAGA Period facts alleged in the Action and resolved by this Settlement.

The Aggrieved Employees’ Releases is as follows:

As to claims for civil or statutory penalties for violation of PAGA, the State of California, all Aggrieved Employees including Plaintiffs shall release the Released Parties for all claims for penalties under PAGA during the PAGA Period that were or could have been alleged in the Action based on the facts ~~or claims enumerated~~ stated in Plaintiffs’ First Amended Complaint and letters to the LWDA requesting authorization to be deputized as private attorney generals for the purposes of pursuing a PAGA claim (the “LWDA Letters”), alleged in any version of the Complaint and/or the LWDA Letters irrespective of the underlying theory of recovery supporting the claim for PAGA penalties. ~~The release of claims shall include a Civil Code Section 1542 release as to the released claims only.~~

4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?

- a. 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. If any Class Member opts out of the Settlement, that Class

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Member's Individual Class Payment will be distributed on a pro rata basis to all Participating Class Members.

- b. Individual PAGA Payments. The Administrator will calculate Individual PAGA Payments by (a) dividing \$2,500 by the total number of PAGA Pay Periods worked by all Aggrieved Employees and (b) multiplying the result by the number of PAGA Period Pay Periods worked by each individual Aggrieved Employee.
- c. Workweek/Pay Period Challenges. The number of Class Workweeks you worked during the Class Period and the number of PAGA Pay Periods you worked during the PAGA Period, as recorded in OrthoNet's records, are stated in the first page of this Notice. You have until [REDACTED] 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 OrthoNet's calculation of Workweeks and/or Pay Periods based on OrthoNet'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 OrthoNet's Counsel. The Administrator's decision is final. You can't appeal or otherwise challenge its final decision.

5. HOW WILL I GET PAID?

- a. Participating Class Members. The Administrator will send, by U.S. mail, a single check 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.
- b. 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 Class 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 communicating your request be excluded. Be sure to personally sign your request, identify the Action as *Triay v. OrthoNet*, and include your

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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 [REDACTED], 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 Plaintiffs and OrthoNet are asking the Court to approve. At least [REDACTED] days before the [REDACTED] Final Approval Hearing, Class Counsel and/or Plaintiffs will file in Court (1) a Motion for Final Approval that includes, among other things, the reasons why the proposed Settlement is fair, and (2) a Motion for Fees, Litigation Expenses and Service Award stating (i) the amount Class Counsel is requesting for attorneys' fees and litigation expenses; and (ii) the amount Plaintiffs are requesting as a Class Representative Service Award. 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 ([url](#)).

A Participating Class Member who disagrees with any aspect of the Agreement, the Motion for Final Approval and/or Motion for Fees, Litigation Expenses and Service Award may wish to object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class Counsel or Plaintiffs are too high or too low. **The deadline for sending written objections to the Administrator is [REDACTED].** 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 as *Triay v. OrthoNet* and include your name, current address, telephone number, and approximate dates of employment for OrthoNet 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 (immediately below) for specifics regarding the Final Approval Hearing.

8. CAN I ATTEND THE FINAL APPROVAL HEARING?

You can, but don't have to, attend the Final Approval Hearing on [REDACTED] at [REDACTED] in Department [REDACTED] of the Los Angeles Superior Court, located at 312 North Spring Street, Los Angeles, CA 90012. At the Hearing, the judge will decide whether to grant Final Approval of the Settlement and how much of the Gross Settlement will be paid to Class Counsel, Plaintiffs, 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 via LACourtConnect (<https://www.lacourt.org/lacc/>). Check the Court's website for the most current information.

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It's possible the Court will reschedule the Final Approval Hearing. You should check the Administrator's website [REDACTED] beforehand or contact Class Counsel to verify the date and time of the Final Approval Hearing.

9. HOW CAN I GET MORE INFORMATION?

The Agreement sets forth everything OrthoNet and Plaintiffs have promised to do under the proposed Settlement. The easiest way to read the Agreement, the Judgment or any other Settlement documents is to go to [REDACTED] ILYM Group, Inc.'s website at [REDACTED]. You can also telephone or send an email to Class Counsel or the Administrator using the contact information listed below, or consult the Superior Court website by going to (<http://www.lacourt.org/casesummary/ui/index.aspx>) and entering the Case Number for the Action, Case No. 20STCV05181. You can also make an appointment to personally review court documents in the Clerk's Office at the Stanley Mosk Courthouse by calling (213) 830-0800.

DO NOT TELEPHONE THE SUPERIOR COURT TO OBTAIN INFORMATION ABOUT THE SETTLEMENT.

Class Counsel:

SULLIVAN EMPLOYMENT LAW P.C.
Martin Sullivan, CA Bar No. 274279
martin@sullivanlawgrp.com
145 S. Spring Street, Suite 850
Los Angeles, California 90012
Telephone: (323) 645-5470

...

Settlement Administrator:

...

10. WHAT IF I LOSE MY SETTLEMENT CHECK?

If you lose or misplace your settlement check before cashing it, the Administrator will replace it as long as you request a replacement before the void date on the face of the original check. If your check is already void you should consult the Unclaimed Property Fund for instructions on how to retrieve the funds

11. WHAT IF I CHANGE MY ADDRESS?

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

Questions? Please Call: [REDACTED]

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EXHIBIT B

SUPERIOR COURT OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES

TRIAY ET AL. v. ORTHONET WEST, INC. ET AL., CASE NO. 20STCV05181

REQUEST FOR EXCLUSION

If you do not want to participate in the above-referenced Settlement, you may but are not required to use this form to indicate your desire to opt out of the settlement. In order to opt out of the Settlement, you must submit by fax, email, or mail an opt-out request to the Settlement Administrator by <<INSERT DATE>>. The request to opt out should state your name, address, telephone number, and signature.

You may not opt out of the PAGA portion of the Settlement.

INSERT ADMIN INFO

☐

IT IS MY DECISION TO BE EXCLUDED FROM THE SETTLEMENT REFERENCED ABOVE. I UNDERSTAND THAT I WILL NOT RECEIVE MY INDIVIDUAL SETTLEMENT PAYMENT UNDER THE SETTLEMENT, BUT THAT I WILL STILL RECEIVE MY PAGA PAYMENT IF I AM ELIGIBLE FOR SUCH PAYMENT UNDER THE TERMS OF THE SETTLEMENT.

(Date)

(Signature)

(Address)

(Type or Print Name)

(City, State, Zip)

EXHIBIT C

SUPERIOR COURT OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES

TRIAY ET AL. v. ORTHONET WEST, INC. ET AL., CASE NO. 20STCV05181

DISPUTE FORM

If you wish to dispute the number of workweeks and/or pay periods attributed to you and/or the amount of your estimated settlement payment as set forth in the enclosed Notice of Proposed Class Action Settlement, you may but are not required to use this form to do so. In order to dispute the number of workweeks and/or pay periods attributed to you and/or the amount of your estimated settlement payment, you must submit your challenge by fax, email, or mail to the Settlement Administrator by <<INSERT DATE>>. Your challenge should include the reason that you believe the number of workweeks and/or pay periods attributed to you and/or the amount of your estimated settlement payment is incorrect, as well as any documentary support for your position.

INSERT ADMIN INFO

Please complete, sign, date and return this form only if you wish to dispute the number of workweeks and/or pay periods attributed to you and/or the amount of your estimated settlement payment as set forth in the enclosed Notice of Proposed Class Action Settlement.

1. Please explain the basis for your workweek, pay period, and/or settlement amount dispute in the space provided below, attaching additional pages if necessary, and include copies of any supporting evidence or documentation with this form:

(Date)

(Signature)

(Address)

(Type or Print Name)

(City, State, Zip)

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