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**SUPERIOR COURT OF CALIFORNIA**

**COUNTY OF LOS ANGELES**

ANNETTE ARREDONDO,

PLAINTIFF,

v.

BIOMECHANICS PHYSICAL THERAPY, PC.,  
a California Corporation; and DOES 1 through  
10,

DEFENDANTS.

Case No. 19STCV26109

*Assigned for all purpose to the Honorable  
Daniel J. Buckley*

**FIRST AMENDED JOINT STIPULATION  
AND CLASS SETTLEMENT  
AGREEMENT**

1 IT IS HEREBY STIPULATED AND AGREED by and between Defendant  
2 BIOMECHANICS PHYSICAL THERAPY, PC. (hereinafter referred to as “Biomechanics” or  
3 “Defendant”), and Plaintiff ANNETTE ARREDONDO (hereinafter referred to as “Plaintiff”) on her  
4 behalf and on behalf of the other “Class Members” as defined herein and acting in her capacity as a  
5 representative under the Private Attorneys General Act (“PAGA”) (Labor Code section 2698 et seq.),  
6 on the other hand (hereafter collectively referred to as the “Parties”), subject to the approval of the  
7 Court pursuant to section 382 of the California *Code of Civil Procedure*, Rule 3.769 of the California  
8 *Rules of Court*, and California Labor Code section 2699, that the settlement of the Action (as defined  
9 herein) shall be effectuated and subject to the following terms and conditions:

10 The Parties hereby agree to supplant the Joint Stipulation of Class Action Settlement and  
11 Release entered into on or around January 22, 2021 with this First Amended Joint Stipulation and  
12 Class Settlement Agreement.

13 **I. SUMMARY OF SETTLEMENT TERMS**

14 Under the terms of the Settlement, Defendants will pay the Maximum Settlement Amount  
15 (“MSA”) of Two Hundred Forty Thousand Dollars (\$240,000.00), without reversion, in exchange for  
16 the full and final settlement and release of any and all claims that were or could have been alleged in  
17 the operative Complaint in this Action, and subject to the terms and conditions outlined in this  
18 Agreement (as defined herein). This is a no claims-made settlement and will be administered by  
19 Phoenix Settlement Administrators a third-party administrator. Defendant conditionally agrees to  
20 stipulate, solely for the limited purpose of consummating the terms of the Settlement contained in this  
21 Agreement, to have the Court certify a class of all current and former independent contractors who  
22 worked for Defendant in California at any time during the Class Period (as defined herein).

23 In addition, Plaintiff and Class Counsel will seek from the MSA: (1) attorneys’ fees in the  
24 amount of Eight Thousand Dollars and Zero Cents (\$80,000.00), representing 33.33% of the MSA;  
25 (2) litigation costs not to exceed Ten Thousand Dollars (\$10,000.00); and (3) enhancement payment  
26 for Plaintiff Annette Arredondo in the amount of Three Thousand Dollars (\$3,000.00). Furthermore,  
27 the Parties have agreed that Ten Thousand Dollars (\$10,000) from the Maximum Settlement Amount  
28 will be allocated as civil penalties under PAGA with 75% of this amount, Seven Thousand Five

1 Hundred Dollars (\$7,500.00), to be paid to the California Labor & Workforce Development Agency  
2 (“LWDA”) in satisfaction of any claim for civil penalties that may be owed to that agency under the  
3 PAGA. The other 25%, or Two Thousand Five Hundred Dollars (\$2,500), will be distributed to the  
4 PAGA Employees (as defined herein) on a pro-rata basis.

5 Finally, any and all costs associated with the administration of the Settlement, including but  
6 not limited to giving notice to the Class regarding the Settlement, processing any inquiries or disputes,  
7 and remitting payment of any funds to the Participating Class Members pursuant to the procedures  
8 outlined herein (“Settlement Administration Costs”), which shall not exceed Fifteen Thousand  
9 Dollars (\$15,000.00), will be paid from the MSA. Defendants will not be responsible for anything  
10 more than the MSA, however, payment of employer’s share of payroll taxes and other required  
11 withholdings, based on Settlement Payment(s) to the Class Members shall be paid by the Defendants  
12 in addition to the MSA. There will be no reversion of any funds to the Defendants.

## 13 **II. DEFINITIONS**

14 As used in this Stipulation and Settlement Agreement (hereinafter the “Agreement”), the  
15 following terms shall have the meanings specified below:

16 1. “Action” means this lawsuit, and the operative Complaint in the matter entitled  
17 *Annette Arredondo v. Biomechanics Physical Therapy, PC.; DOES 1 through 10, DEFENDANTS*,  
18 Los Angeles County Superior Court Case No. 19STCV26109.

19 2. “Agreement” or “Settlement” means this Joint Stipulation and Class Settlement  
20 Agreement, including any attached exhibits.

21 3. “Allocation Form” means the Court-approved Allocation Form, substantially in the  
22 form of the Allocation Form attached as Exhibit 2 and incorporated by reference herein, which will  
23 be mailed to Class Members only which advises them of their number of Workweeks and their  
24 settlement share. The Class Members do not have to submit anything to receive their settlement share.

25 4. “Class,” “Class Member,” or “Class Members” means all current and former  
26 independent contractors who worked for Defendant in California at any time during the Class Period.

27 5. “Class Counsel” means Justin Lo and Edward Kim of Work Lawyers, PC, 22939  
28 Hawthorne Blvd. Ste. 202, Torrance, CA 90505.

6. “Class Counsel Costs” means the amounts to be paid, after Court approval, to Class Counsel for costs incurred by Class Counsel in this Action.

7. “Class Counsel Fees” means the amount to be paid, after Court approval, to Class Counsel for attorneys’ fees.

8. “Class Notice” or “Notice of Settlement” means the form to be prepared by the Parties and sent to the Class Members, after the Court preliminarily approves the terms contained in the Agreement informing them of the material terms of the Agreement, why they are receiving the notice, and what their options are to object, or be excluded from the Settlement. The Class Notice is attached hereto as Exhibit 1. This mailing shall also include the Allocation Form as defined herein.

9. “Class Notice Period” or “Notice Period” means a period of forty-five (45) calendar days after the original date of the Settlement Administrator’s mailing of the Notice of Settlement.

10. “Class Period” means from July 26, 2015 up to and including the date of preliminary approval of this Settlement.

11. “Complaint” or “Operative Complaint” means the First Amended Complaint filed on June 28, 2021 in this Action.

12. “Counsel for Defendant,” “Defense Counsel,” or “Defendant’s Counsel” means Alfred J. Landegger, Esq., and Evelyn Zarraga, Esq., of LANDEGGER RIVAS VERANO & DAVIS, ALC, 15760 Ventura Blvd., Suite 1200, Encino, California 91436, Telephone No.: (818) 986-7561; Facsimile No.: (818) 986-5147.

13. “Court” means the Los Angeles County Superior Court in which the Action is currently pending, the Honorable Daniel J. Buckley presiding, and located at Spring Street Courthouse, 312 North Spring St. Los Angeles, California 90012. Court shall also mean any other Court that acquires proper jurisdiction of this Action.

14. “Distributable Amount,” “Net Settlement Amount,” or “NSA” means the amount that is distributable to the Participating Class Members and PAGA Employees, and equals the MSA less Class Counsel Fees, Class Counsel Costs, Enhancement Payment, LWDA Payment, and Settlement Administration Costs.

15. “Effective Date” means the later of (a) the date of entry of Order granting final

1 approval of this Settlement, if no objection to the Settlement is filed, (b) the date on which the time  
2 for all appeals from objections to the Settlement has expired, if one or more objections to the  
3 Settlement are filed, and not withdrawn, and (c) if an appeal is taken, the date on which the appeal is  
4 settled, withdrawn or dismissed, or any reviewing court issues a decision, the time for further appeal  
5 has expired, and the trial court has regained jurisdiction.

6 16. "Enhancement Payment" means the payment in the amount of Three Thousand Dollars  
7 (\$3,000.00) to Plaintiff, in addition to whatever payment he is otherwise entitled to as an Participating  
8 Class Member.

9 17. "Final Approval Hearing" refers to the hearing during which the Parties will seek final  
10 approval of this Agreement.

11 18. "Final Judgment" means the order entered by the Court pursuant to the terms set forth  
12 in this Agreement finally and fully giving effect to the terms contained in this Agreement and  
13 dismissing the Action with prejudice.

14 19. "Maximum Settlement Amount" or "MSA" means the total amount Two Hundred  
15 Forty Thousand Dollars (\$240,000.00) to be paid by Defendant pursuant to the terms of this  
16 Agreement.

17 20. "Notice Returns" means envelopes containing the Class Notice that were mailed by  
18 the Settlement Administrator to Class Members but were undelivered and returned to the Settlement  
19 Administrator by the United States Postal Service.

20 21. "Objection to Class Settlement" means any written objection to this Settlement by  
21 Class Members who do not choose to be excluded from the Class that is served on the Settlement  
22 Administrator within the Opt-Out Period.

23 22. "Opt-Out Period" or "Response Deadline" refers to the deadline of no later than forty-  
24 five (45) calendar days after the original date of the Settlement Administrator's mailing of the Notice  
25 of Settlement that any Class Member, who wishes to be excluded from the Settlement, submits a  
26 Request for Exclusion. If a Class Member's notice is re-mailed, the Class Member shall have fifteen  
27 (15) days from the re-mailing, or forty-five (45) days from the date of the initial mailing, whichever  
28 is later, in which to postmark a Request for Exclusion or written objection.

1           23.     “PAGA Employee” or “PAGA Employees” means all Class Members employed at  
2 any time during the PAGA Period.

3           24.     “PAGA Payment” means the amount of Ten Thousand Dollars (\$10,000.00) of the  
4 MSA to be allocated as civil penalties under the California Labor Code Private Attorneys General  
5 Act of 2004 (“PAGA”), with 75% of this amount, Seven Thousand Five Hundred Dollars (\$7,500.00),  
6 to be paid to the LWDA in satisfaction of any claim for civil penalties that may be owed to that agency  
7 under the PAGA (“LWDA Payment”). The other 25%, or Two Thousand Five Hundred Dollars  
8 (\$2,500.00), will be distributed to the PAGA Employees on a pro-rata basis.

9           25.     “PAGA Period” means the time period from February 3, 2019, through date upon  
10 which the Court grants Preliminary Approval of this Settlement.

11           26.     “Participating Class Members” means those Class Members who do not timely file a  
12 valid Request for Exclusion with the Settlement Administrator provided under this Agreement.

13           27.     “Personal Release” means Plaintiff’s irrevocable and unconditional release, acquittal,  
14 and discharge, to the extent permitted by law, of the Released Persons and all persons and/or corporate  
15 entities acting by, through, under, or in concert with any of them, or any of them, from any and all  
16 complaints, claims, penalties, liabilities, obligations, promises, agreements, controversies, damages,  
17 costs, losses, debts and expenses (including attorneys’ fees and costs actually incurred), of any nature  
18 whatsoever, including but not limited to claims arising from the California Constitution; Title VII of  
19 the Civil Rights Act of 1964 (42 U.S.C. §2000e); the California Fair Employment and Housing Act  
20 (Cal. Govt. Code §12900 et seq.); the Americans with Disabilities Act; the Age Discrimination in  
21 Employment Act (29 U.S.C. §§621-633a); the Private Attorneys General Act of 2004; and claims of  
22 intentional infliction of emotional distress; defamation and/or libel, or any other damage to reputation  
23 claims; breach of implied contract or for claims of a breach of the covenant of good faith and fair  
24 dealing, as well as any other express or implied covenant; or any other statute or common law  
25 principle of similar effect, known or unknown, which the person giving this release now has, owns,  
26 or holds, or claims to have, own or hold, or which said person at any time heretofore had, owned, or  
27 held, or claimed to have, own, or hold or which said person at any time hereinafter may have, own,  
28 or hold, or claim to have, own, or hold, against each or any of the Released Persons, arising from acts,

1 events, or circumstances occurring on or before the effective date of this Agreement.

2 As to the foregoing claims, Plaintiff expressly waives the benefits of California *Civil Code*  
3 *§1542*. *Civil Code §1542* provides:

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

10 The Personal Release is not intended to, nor do they cover, any claims that cannot be released  
11 as a matter of law.

12 28. "Plaintiff" means Plaintiff ANNETTE ARREDONDO (and his representative(s),  
13 heir(s), assign(s), and attorney(s)).

14 29. "Preliminary Approval Order" is the order preliminarily approving the settlement  
15 terms contained in this Agreement.

16 30. "Preliminary Approval Date" is the date the Court grants preliminary approval of this  
17 Settlement.

18 31. "Qualifying Workweeks" or "Workweeks" means the total workweeks each Class  
19 Member worked during the Class Period.

20 32. "Redirected Notice" means a re-mailing of the Class Notice mailed by the Settlement  
21 Administrator to a new or different address to a Class Member that was obtained by the Settlement  
22 Administrator as a result of a Notice Return.

23 33. "Released Class Claims" means any and all claims, debts, liabilities, demands,  
24 obligations, guarantees, costs, expenses, attorneys' fees, damages, or causes of action which relate to  
25 any and all claims alleged or which could have been alleged based on the facts in the operative  
26 Complaint filed by Plaintiff, both on his behalf and on behalf of the Participating Class Members in  
27 this Action during the Class Period, including the date of preliminary approval of the Settlement under  
28 any federal, state or local law, and shall specifically include but is not limited to claims for (1) failure  
to provide required meal periods; (2) failure to provide required rest periods; (3) failure to pay  
overtime wages; (4) failure to pay minimum wages; (5) failure to timely pay wages during

employment; (6) failure to pay all wages due to discharged and quitting employees; (7) failure to maintain required records; (8) failure to furnish accurate itemized wage statements; (9) violations of California's unfair competition law; (10) misclassification of employment (Cal. Lab Code §226.8); (11) failure to indemnify for necessary business expenses; violations of California Labor Code §§ 201-204, 226, 226.7, 226.8, 351, 510, 512, 1174, 1174.5, 1182.12, 1194, 1197, and 2802, Business and Professions Code § 17200, *et seq.*, the Industrial Welfare Commission Wage Orders ("IWC Wage Order"), and any other claims, including claims for statutory and/or civil penalties, pertaining to the Participating Class Members which were alleged or could have been alleged in the operative Complaint based upon the allegations and claims contained in the Operative Complaint. With respect to the PAGA Employees, the "Released Claims" also includes any and all claims for civil penalties under PAGA [Cal. Lab. Code §§ 2699, *et seq.*] that are based upon or arise from the factual allegations in the Operative Complaint and Notice to the LWDA, arising during and/or with respect to the PAGA Period, including violations of California Labor Code §§ 201-204, 226, 226.7, 351, 510, 512, 1174, 1174.5, 1182.12, 1194, 1197, and 2802, the Industrial Welfare Commission Wage Orders ("IWC Wage Order"), and including all attorneys' fees and costs related thereto. In addition, as to any Participating Class Member who cashes the check representing their Settlement Payment, the signing and negotiation of that check shall serve as the Class Member's consent to join the action for purposes of releasing claims arising under the Fair Labor Standards Act ("FLSA") that are related to the claims stated in the Action, implicitly or explicitly, and, for such persons, "Released Class Claims" shall include all related claims arising under the FLSA. This release is limited in time to the Class Period covering the Participating Class Members who worked for the Released Persons in the State of California.

34. "Released Persons" means Defendant Biomechanics Physical Therapy, PC. and its respective agents, attorneys, insurers, past, present and future divisions, affiliates, DBAs (if any), predecessors, successors, shareholders, officers, directors, managers, managing agents, employees, trustees, representatives, administrators, fiduciaries, assigns, subrogees, executors, partners, parents, owners, subsidiaries, privies, and/or any and all persons and/or corporate entities acting by, through, under or in concert with any of them, including Douglas Turner, and any past, present, or future

spouses and heirs of Douglas Turner.

35. “Request for Exclusion” or “Opt-Out” means a written request by a Class Member to be excluded from the Class and the Settlement containing all the information necessary as detailed herein.

36. “Settlement Administrator” refers to Phoenix Settlement Administrators, the entity that Class Counsel and Counsel for Defendant selected to administer this Settlement and to act as the Settlement Administrator to process the Settlement under the terms of this Agreement.

37. “Settlement Administration Costs” means the fees and costs incurred or charged by the Settlement Administrator in connection with the execution of its duties under this Agreement including: (a) using the data provided by Defendant to prepare the Allocation Form with the number of Qualifying Workweeks for each Class Member as described above; (b) mailing the Notices defined herein to Class Members; (c) tracking Requests for Exclusion and objections; (d) sending cure letters to Class Members, and making follow-up telephone calls to Class Members; notifying the Parties of timely and untimely Requests for Exclusion, and objections received; (f) calculating the amounts due to each Participating Class Member and PAGA Employee pursuant to the Settlement as described herein; (g) notifying the Parties of, and helping to resolve, any disputes regarding claims by the Class Members; (h) providing settlement payments, along with issuing requisite tax forms (e.g., IRS Form 1099, W-2, etc.), to the Participating Class Members and PAGA Employees and to the taxing authorities; (i) utilizing the National Change of Address Database maintained by the United States Postal Service, mail-forwarding information and/or skip tracing methods, as reasonable, to update the mailing list, and taking steps to send Notice Packets to current mailing addresses; (j) submitting payment of Defendant’s portion of payroll taxes; (k) mailing of Final Approval Notice and (l) performing such other duties as are described herein or as the Parties may request from time to time.

38. “Settlement Payment” or “Individual Settlement Payment” refers to the payment to any Participating Class Member and/or PAGA Employee pursuant to the terms of this Agreement.

### **III. BACKGROUND**

The original complaint in this Action was filed on July 26, 2019, in the Superior Court of the State of California, County of Los Angeles. In her operative Complaint, Plaintiff asserts the following

1 claims: (1) failure to provide required meal periods; (2) failure to provide required rest periods; (3)  
2 failure to pay overtime wages; (4) failure to pay minimum wages; (5) failure to pay timely wages  
3 during employment; (6) failure to pay all wages due to discharged and quitting employees; (7) failure  
4 to maintain required records; (8) failure to furnish accurate itemized wage statements; (9) violations  
5 of California's unfair competition law ("UCL"); (10) misclassification of employment (Cal. Lab Code  
6 §226.8).

7 On February 3, 2020, Plaintiff Annette Arredondo sent a letter to the LWDA and Defendant  
8 giving notice of his intent to pursue a representative action against Defendant pursuant to the PAGA,  
9 on behalf of himself, the State of California, and on behalf of a proposed groups of aggrieved  
10 employees ("Notice to the LWDA"). No response was received by Plaintiff or her counsel from the  
11 LWDA within the statutory 65-day period.

12 A first amended complaint was filed on June 28, 2021 alleging the prior causes of action and  
13 Violation of the Private Attorney General Act under Labor Code §2698 and Failure to Indemnify for  
14 Expenditures or Losses in Discharge of Duties.

15 Defendant denies each and every one of the allegations asserted in the operative Complaint  
16 and asserts that it has no liability for the claims of Plaintiff or the Class.

17 The Parties have conducted a significant investigation of the facts and law during the  
18 prosecution of this Action, which included informal discovery. The informal discovery included the  
19 exchange of class information such as class size and composition, the production of Class Members'  
20 time and payroll records, as well as Defendant's written wage and hour policies and practices. The  
21 Parties conducted the aforementioned investigation and discovery in anticipation of, and prior to, the  
22 private mediation of the Action. Counsel for the Parties investigated the law as applied to the  
23 discovered facts regarding the alleged claims of Plaintiff and the potential defenses thereto, and the  
24 potential damages claimed by Plaintiff.

25 Thereafter, the Parties participated in a full day mediation on January 28, 2020 before  
26 experienced and well-regarded mediator, Gig Kyriacou, Esq. and reached a resolution of all claims  
27 after a full day of mediation. The Parties were eventually able to reach a mutual understanding of the  
28 material terms of settlement, which are memorialized in this Agreement.

1 Representative Plaintiff and Class Counsel concluded, after taking into account the sharply  
2 disputed factual and legal issues involved in the Action, the risks and substantial expenses involved  
3 in the further prosecution of this case, and the substantial benefits to be received pursuant to the  
4 compromise and settlement of the Action at this early stage, as set forth in this Agreement, that  
5 settlement on the terms set forth herein is in the best interest of Plaintiff and the Class, and is fair and  
6 reasonable. In particular, Class Counsel and Plaintiff understand the risk of the class certification  
7 process, as well as the potential merits of affirmative defenses expected to be raised by the Defendant.  
8 In light of the risks related to certifying a class, prevailing on an anticipated motion for summary  
9 judgment and a potential trial, the recovery of Two Hundred Forty Thousand Dollars (\$240,000.00)  
10 obtained in the Action is both reasonable and fair.

11 Similarly, Defendant concluded that there are benefits associated with settling the Action at  
12 this early stage. After taking into account the sharply disputed factual and legal issues involved in  
13 the Action, the expense and burden of protracted litigation, and its desire to put the controversy to  
14 rest, Defendant believes that settlement on the terms set forth in this Agreement is in its best interest  
15 and is fair and reasonable. Defendant in particular has concluded that the future costs and expenses  
16 involved in continuing the Action are substantial and chose to eliminate any further expenses,  
17 attorneys' fees, and risks via the Settlement. In particular, given the severely disputed nature of the  
18 case, it is expected that substantial expenses will be incurred determining many issues dealing with  
19 discovery, a class certification motion, a Summary Judgment motion, eventual trial, and possible  
20 appeals.

21 This Agreement contemplates (i) entry of an Order preliminarily approving the Settlement  
22 and approving certification of a provisional settlement class, contingent upon final approval of the  
23 Settlement; (ii) the mailing of a Notice of Settlement to all Class Members; (iii) the processing of any  
24 objections, and opt-outs by the Settlement Administrator, as well as payment to the Class Members  
25 after final approval of this Agreement by the Court; and (iv) entry of Final Judgment granting final  
26 approval of the Settlement and terms contained therein, and dismissal of the Action with prejudice.

27 ///

28 ///

1 **IV. SETTLEMENT APPROVAL & IMPLEMENTATION PROCEDURE**

2 **A. Preliminary Approval of the Settlement**

3 As soon as practicable, Class Counsel will also submit this Agreement to the Court for its  
4 preliminary approval. Such submission will include such motions, pleadings, and evidence as may  
5 be required for the Court to determine that this Agreement is fair, adequate, and reasonable, as  
6 required by section 382 of the California *Code of Civil Procedure*, Rule 3.769 of the California *Rules*  
7 *of Court*, and California Labor Code section 2699. Such submission will also include a Notice of  
8 Class Settlement and Allocation Form in substantially the form attached hereto as Exhibits 1 and 2,  
9 respectively.

10 **B. Conditional Certification of the Class**

11 Defendant hereby consents, solely for purposes of the Settlement set forth in this Agreement,  
12 to the conditional certification of the Class, to the conditional appointment of Class Counsel, and to  
13 the conditional approval of Plaintiff, provided however, that if the Settlement fails to be approved or  
14 otherwise fails to be consummated for any reason whatsoever, including but not limited to the Final  
15 Judgment not becoming final, then Defendant retains all rights previously available to it, and any  
16 provisional certification of any class, or the adoption of any procedure herein, shall be undone and  
17 the Parties restored to their pre-settlement status as if no settlement had been reached and no decisions  
18 were made pursuant to it. In that event, nothing in this Agreement or other papers or proceedings  
19 related to the Settlement shall be used as evidence or argument by any party, including any Class  
20 Members who opt out, concerning whether or not the claims advanced in the Complaint may properly  
21 be maintained as a class action, whether the purported class is ascertainable, or whether Class Counsel  
22 or Plaintiff can adequately represent the members of the class under applicable law.

23 **C. Cooperation**

24 The Parties agree to cooperate fully with each other to accomplish the terms and requirements  
25 of this Agreement, including but not limited to, the execution of such documents and to take such  
26 other action as may reasonably be necessary to implement the terms of this stipulated Settlement.

27 Except as otherwise provided herein, neither party nor any of their attorneys or agents shall  
28 initiate any communication with any Class Members for the purpose of encouraging or discouraging

1 them to Opt-Out of the Class, or to object to the Settlement contained herein, unless agreed upon by  
2 the other party in writing or if authorized by the Court. This provision in no way limits Class Counsel  
3 from communicating with Plaintiff, nor does the provision limit Class Counsel from responding to  
4 any inquiry initiated by any Class Members.

5 The Parties shall promptly submit this Agreement for preliminary approval and determination  
6 by the Court as to its fairness, adequacy, and reasonableness. Promptly upon execution of this  
7 Agreement, the Parties shall apply to the Court for the entry of a Preliminary Approval Order  
8 scheduling a hearing to determine whether the proposed Class Settlement should be approved as fair,  
9 reasonable, and adequate as to the Class Members, and approving as to form and content of the  
10 proposed Notice of Settlement.

11 **D. Notice Of Settlement By Mail**

12 Defendant will provide as soon as practicable, but no later than ten (10) business days after  
13 the Court grants preliminary approval of the Settlement, to the Settlement Administrator a list  
14 containing the Class Members' names, last known addresses, total workweeks worked during the  
15 Class Period, total workweeks worked during the PAGA Period, and social security number, which  
16 will be used to send the Notice of Settlement, and Allocation Form to Class Members ("Class List").  
17 Within ten calendar (10) days of receipt from Defendant of the Class List, the Settlement  
18 Administrator shall mail the Notice of Settlement via First-Class mail using the United States Postal  
19 Service to the most recent address known for each Class Member. Before mailing the Notice of  
20 Settlement, the Settlement Administrator shall review the national change of address registry for all  
21 Class Members and/or skip trace to determine the most up-to-date addresses of all Class Members.  
22 If any Notices of Settlement are returned with a forwarding address, the Settlement Administrator  
23 will re-mail the Notice of Settlement and Allocation Form to the Class Member whose notice was  
24 returned.

25 In the event that prior to the final date for any Class Member to Opt-Out, any Notice mailed  
26 to the Class Member is returned as having been undelivered by the U.S. Postal Service ("Notice  
27 Return"), the Settlement Administrator shall, via skip-tracing, seek an address correction from such  
28 Class Member(s), and send a Redirected Notice to the new or different address within seven (7)

1 calendar days if such address is found. Efforts to located updated addresses for returned notices should  
2 continue throughout the entire forty-five (45) day notice period.

3 If a Class Member's notice is re-mailed, the Class Member shall have fifteen (15) days from  
4 the re-mailing, or forty-five (45) days from the date of the initial mailing, whichever is later, in which  
5 to postmark a Request for Exclusion or written objection.

6 **E. Allocation Form**

7 The Settlement Administrator shall mail along with the Notice of Settlement the Allocation  
8 Form as described above, to the Class Members in English.

9 **F. Requests for Exclusion ("Opt-Outs")**

10 Any Class Member who wishes to be excluded from the Settlement must submit a Request  
11 for Exclusion from the Settlement to the Settlement Administrator, no later than forty-five (45)  
12 calendar days after the original date of the Settlement Administrator's mailing of the Class Notice of  
13 Settlement (or fifteen (15) days after the Settlement Administrator re-mails the Class Notice to the  
14 Class Member, whichever is later) (the "Opt-Out Period" or "Response Deadline"). Any Class  
15 Member who submits a valid and timely request to be excluded from the Settlement shall no longer  
16 be a member of the Class, shall be barred from participating in this Settlement, shall be barred from  
17 objecting to this Settlement, and shall receive no benefit from this Settlement (except for PAGA  
18 Employees who retain a right to receive a pro-rata share of the portion of the PAGA Payment allocated  
19 to the PAGA Employees).

20 The written request for exclusion must: (1) explicitly and unambiguously state the following  
21 statement or similar statement: "I wish to exclude myself from the settlement reached in the matter  
22 of *Arredondo v. Biomechanics Physical Therapy, PC*. I understand by excluding myself, I will not  
23 receive any money from the settlement reached in this matter."; (2) contain the name (including any  
24 former names used during employment with *Biomechanics Physical Therapy, PC.*), address, and the  
25 last four digits of the Social Security number of the person requesting exclusion; (3) be signed by the  
26 Class Member; and (4) be postmarked by the Response Deadline and returned to the Settlement  
27 Administrator at the specified address. The request for exclusion will not be valid if it is not timely  
28 submitted, if it is not signed by the Class Member, or if it does not contain the name, and address of

1 the Class Member. The date of the postmark on the return mailing envelope on the request for  
2 exclusion shall be the exclusive means used to determine whether the request for exclusion was timely  
3 submitted. Any Class Member who requests to be excluded from the Settlement Class will not be  
4 entitled to any recovery under the Settlement and will not be bound by the terms of the Settlement  
5 (other than as it applies to the PAGA claim with respect to the PAGA Employees) or have any right  
6 to object, appeal, or comment thereon. Class Members who fail to submit a valid and timely written  
7 request for exclusion by the Response Deadline shall be bound by all terms of the Settlement and any  
8 final judgment entered in this Action if the Settlement is approved by the Court, regardless of whether  
9 that Class Member receives and/or cashes his or her Settlement Payment check.

10 Class Members who are also PAGA Employees submitting a Request for Exclusion will  
11 nevertheless receive their pro-rata share of the 25% of the PAGA Payment allocated to the PAGA  
12 Employees. If the Court approves the compromise of the PAGA claim, all PAGA Employees are  
13 bound by the Court's resolution of that claim. Plaintiff shall serve a notice of settlement on the  
14 California Labor and Workforce Development Agency at the same time Plaintiff files the motion for  
15 preliminary approval (Cal. Labor Code § 2699(1)(2)).

16 **G. Declaration Of Compliance**

17 As soon as practicable, but no later than ten (10) calendar days following the Opt-Out-Period,  
18 the Settlement Administrator shall provide Class Counsel and Counsel for Defendant with a  
19 declaration attesting to completion of the notice process set forth in this Section (Section IV) of the  
20 Agreement, including an explanation of efforts to resend undeliverable notices returned with  
21 forwarding addresses, the average estimated Settlement Payment, the highest estimated Settlement  
22 Payment, the lowest estimated Settlement Payment, the estimated Settlement Payment for Plaintiff,  
23 and a summary of disputed claims, and opt outs including the name of the class members opting out,  
24 which declaration shall be filed with the Court by Class Counsel along with their papers requesting  
25 Final Approval of the Settlement.

26 **H. Sufficient Notice**

27 Compliance with the procedures described in this Section shall constitute due and sufficient  
28 notice to Class Members of this Settlement and the final approval hearing, shall satisfy the

requirements of due process, and nothing else shall be required of Plaintiff, Class Counsel, Defendant, Counsel for Defendant, or the Settlement Administrator to provide additional notice of the settlement and the Final Approval Hearing, unless expressly ordered by the Court.

**I. Objections To Settlement**

Any Class Member wishing to object to the approval of this Settlement shall inform the Court and Settlement Administrator in writing of his or her intent to object by following the procedure set forth in the Notice of Settlement within forty-five (45) calendar days of mailing of the Notice of Settlement and Allocation Form (or fifteen (15) days after the Settlement Administrator re-mails the Class Notice to the Class Member, whichever is later).

To be valid, the notice of Objection must be signed by the Class Member and state: (1) the full name of the Class Member (including any former names used during employment with Biomechanics Physical Therapy, PC); (2) the dates of employment of the Class Member; (3) the last four digits of the Class Member's Social Security number and/or the Employee ID number; (4) the basis for the objection; and (5) if the Class Member intends to appear at the Final Approval/Settlement Fairness Hearing. In order to object to the Settlement, the Class Member must not have submitted a Request for Exclusion. A Participating Class Member may still attend the Final Approval/Settlement Fairness Hearing and ask to speak regarding his or her objection and may orally object at the hearing regardless of whether they submitted a written objection. At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage Class Members to file or serve written objections to the Settlement or appeal from the Order and Final Judgment. Class Counsel shall not represent any Class Members with respect to any such objections.

As soon as practicable, the Settlement Administrator shall forward any and all Objections to Class Settlement to Class Counsel and Defendant's Counsel. Class Counsel shall ensure that any written objections are transmitted to the Court for the Court's review (either as an attachment to a declaration from Class Counsel or as an attachment to a declaration from the Settlement Administrator). The Court may, in its sole discretion, permit any Settlement Class Member to state comments about the Settlement or objections to the Settlement at the Final Approval hearing, regardless of whether the Settlement Class Member has submitted an Objection to Class Settlement.

Regardless of the form, an objection alone will not satisfy the requirement that a Settlement Class Member must formally intervene and become a party of record in the action to appeal a Judgment entered following an Order or Judgment finally approving this Settlement, as is required under the California Supreme Court decision of *Hernandez v. Restoration Hardware*, 4 Cal. 5th 260 (2018). A Class Member who does not object prior to or at the Final Approval Hearing, will be deemed to have waived any objections and will be foreclosed from making any objections (whether at the Final Approval Hearing, by appeal, or otherwise) to the Settlement. If the objecting Class Member does not formally intervene in the action and/or the Court rejects the Class Member's objection, the Class Member will still be bound by the terms of this Agreement. Class Counsel and Defendant's Counsel may, at least five days (or some other number of days as the Court shall specify) before the final approval hearing, file responses to any Objections to Class Settlement received by the Settlement Administrator.

In order to object to the Class Settlement, the Class Member must not have submitted a Request for Exclusion.

If an Objection or dispute of the amount due to a Class Member and a Request for Exclusion are received from the same Class Member, the Settlement Administrator shall attempt to resolve the matter by contacting the Class Member by any reasonable means to determine the Class Member's choice. If the Settlement Administrator fails to determine what the Class Member intends, the Opt-Out shall be null and void, and the Class Member will be counted as part of the Class and bound by the terms and conditions of the Settlement.

**J. Final Approval Hearing**

At the final approval hearing, Plaintiff, Defendant, Class Counsel, and Counsel for Defendant shall ask the Court to give final approval to this Agreement and the Settlement contained herein. At this hearing, the Court will consider and rule upon any Objections to Settlement submitted by any Class Member, whether timely or not. Upon granting final approval of the Settlement contained herein, the Court shall also enter a Final Judgment dismissing with prejudice all claims and implementing the Releases contained in this Agreement as to Plaintiff and all Participating Class Members and PAGA Employees. The Releases contained in this Agreement shall enter into effect

concurrently with the issuance of the Final Approval order and/or Judgement. Plaintiff shall serve any judgment within 10 days after entry of same on the California Labor and Workforce Development Agency (Cal. Labor Code § 2699(l)(3)). Within 10 court days of entry of the Final Judgment, the Settlement Administrator shall post copy of the Final Judgment on their website.

**K. Formulas to Determine Payment, Distribution of Funds and Payment of Funds**

**1. *General Terms of Settlement***

Defendants shall pay the MSA of Two Hundred Forty Thousand Dollars (\$240,000.00), to settle this Action, under the terms described in this Agreement. Defendants shall pay the MSA in one installment within 30 calendar days from the Effective Date but no sooner than January 2, 2022.

From the MSA, Class Counsel will request, and Defendant will not oppose, Eighty Thousand Dollars (\$80,000.00) as Class Counsel Fees, and up to Ten Thousand Dollars (\$10,000.00) for Class Counsel Costs. In addition, Class Counsel will request Three Thousand Dollars (\$3,000.00) as an Enhancement Payment for Plaintiff. Plaintiff will have to execute the Agreement to receive the Enhancement Payment. Under no circumstances will Defendant be required to pay more in Class Counsel Fees, Class Counsel Costs, and/or Enhancement Payment than specified in this Section. Class Counsel Fees, Class Counsel Costs, and the Enhancement Payment are subject to Court approval. The Court's ruling on the request for Class Counsel Fees, Class Counsel Costs, and Enhancement Payment shall not affect the enforceability of this Agreement or the terms contained herein. In the event the Court reduces the amount requested in Class Counsel Fees, Class Counsel Costs and/or Enhancement Payment(s), the difference shall be added to the Distributable Amount to the Class Members.

In addition, the Parties have agreed that Ten Thousand Dollars (\$10,000) of the MSA will be allocated for PAGA penalties (as the PAGA Payment), with 75% of this amount Seven Thousand Five Hundred Dollars (\$7,500.00) to be paid to the LWDA in satisfaction of any claim for penalties that may be owed to that agency under PAGA (Cal. Labor Code 2699, *et seq.*) (the LWDA Payment), and the remaining 25%, or Two Thousand Five Hundred (\$2,500.00), to be distributed to the PAGA Employees on a pro-rata basis to the extent they were employed by Defendants during the PAGA Period. Under no circumstances will Defendant be required to pay more in PAGA Payment than

specified in this Section.

Further, the Settlement Administration Costs, currently estimated at Ten Thousand Dollars (\$10,000.00) shall be made from the MSA. Any and all Settlement Administration Costs shall be made from the MSA. Any amounts not used by the Settlement Administrator for Settlement Administration shall be added to the Distributable Amount to the Class Members. Under no circumstances will Defendant be required to pay more in Settlement Administration Costs than specified in this Section.

Consequently, the amount from which the Class may be paid, also called the “Distributable Amount,” is estimated to be:

|                                |                     |
|--------------------------------|---------------------|
| Maximum Settlement Amount      | \$240,000.00        |
| Class Counsel Fees             | -\$80,000.00        |
| Class Counsel Costs            | -\$10,000.00        |
| Enhancement Payment(s)         | -\$3,000.00         |
| Settlement Administrator Costs | -\$15,000.00        |
| LWDA Payment (LWDA Portion)    | -\$7,500.00         |
| <b>Distributable Amount</b>    | <b>\$124,500.00</b> |

No funds will revert to the Defendant from the MSA.

**2. *Formula for Determining the Value of the Claims for the Class, including for Each Participating Class Member and PAGA Employee***

The Net Settlement Amount will be allocated to the Participating Class Members and PAGA Employees. Each Participating Class Member’s Settlement Payment shall include a pro-rata share of the remainder of the Distributable Amount after deducting \$2,500.00 (the amount allocated for PAGA penalties to PAGA Employees). Each Participating Class Member’s pro-rata share shall be determined by comparing the individual Participating Class Member’s Qualifying Workweeks during the Class Period to the total Qualifying Workweeks for all Participating Class Members during the Class Period. The resulting percentage is the value of the individual Participating Class Member’s Class Claim.

1 The formula to calculate the “Individual Class Claim” payment amount for  
2 a Participating Class Member is: (Individual Participating Class Member’s  
3 Qualifying Workweeks during the Class Period / Total Qualifying  
4 Workweeks for all Participating Class Members during the Class Period) x  
5 (Distributable Amount less the \$2,500.00 amount allocated for PAGA  
6 penalties to PAGA Employees) = Value of Participating Class Member’s  
7 Individual Class Claim.

8 Individual Class Claim payments from the Distributable Amount shall be made only to  
9 Participating Class Members, pursuant to the manner provided in this Agreement.

10 In addition, each Class Member who is a PAGA Employee will be paid a pro-rata share of  
11 the \$2,500.00 amount allocated for PAGA penalties to PAGA Employees, as calculated by the  
12 Settlement Administrator, with a formula similar to payments to Participating Class Members for  
13 Individual Class Claims.

14 The formula to calculate the “Individual PAGA Claim” payment amount for  
15 a PAGA Employee is: (Individual PAGA Employee’s Qualifying  
16 Workweeks during the PAGA Period / Total Qualifying Workweeks for all  
17 PAGA Employees during the PAGA Period) x (\$2,500.00, the amount  
18 allocated for PAGA penalties to PAGA Employees) = Value of PAGA  
19 Employee’s Individual PAGA Claim.

20 The Settlement Payment for a Participating Class Member who is also a PAGA Employee  
21 will therefore include the Participating Class Member’s Individual Class Claim payment amount and  
22 his or her Individual PAGA Claim payment amount.

23 Class Members who are PAGA Employees will not be permitted to exclude themselves from  
24 the PAGA claim portion of the Settlement. PAGA penalty settlement payments in the appropriate  
25 amounts will be distributed by the Settlement Administrator by mail to the PAGA Employees  
26 including to those Class Members who are PAGA Employees who submitted a Request for Exclusion.

27 Thirty percent (30%) of each Participating Class Member’s Individual Class Claim settlement  
28 payment shall be considered wages and shall be subject to all applicable local, state and federal taxes

1 and withholdings. Each Participating Class Member will receive from the Administrator (as defined  
2 in below) a W-2 for this portion of the payment and taxes that will be withheld at the rate required by  
3 law. Seventy percent (70%) of each Participating Class Member's Individual Class Claim settlement  
4 payment shall be considered interest and penalties. One hundred percent (100%) of each PAGA  
5 Employee's Individual PAGA Claim settlement payment shall be considered penalties. Each Class  
6 Member receiving a Settlement Payment will also receive from the Settlement Administrator an IRS  
7 Form 1099 for those portions of their Settlement Payment attributable to penalties and interest, and  
8 Class Members will be responsible for correctly characterizing this compensation for tax purposes  
9 and to pay any taxes owing.

10 Each Class Member receiving a Settlement Payment shall be responsible for correctly  
11 characterizing any compensation received under the Settlement on his/her personal income tax returns  
12 and paying any and all taxes due for any and all amounts paid to them under the Settlement. The  
13 Settlement Administrator will withhold the employee's share of taxes and withholdings with respect  
14 to the wages portion of the Individual Settlement Payments. Any employer's share of taxes and  
15 contributions on the wages portion from the payment of any settlement funds to any Class Member  
16 pursuant to the terms of this Agreement shall not be made from the Distributable Amount. However,  
17 Defendant will only be responsible for employer side payroll taxes, separate and apart from the MSA.

18 **3. Class Counsel Fees, Costs, Enhancement Payment, LWDA Payment,**  
19 **Settlement Administration Cost, and Payment of Maximum Settlement Amount**  
20 **Funds**

21 Plaintiff and Class Counsel will request, and Defendant agree not to oppose, payment from  
22 the Maximum Settlement Amount of Three Thousand Dollars (\$3,000.00) to Plaintiff as an  
23 Enhancement Payment. Class Counsel believes, and Defendant do not challenge, that such award to  
24 Plaintiff as an Enhancement Payment is reasonable. The Settlement Administrator will issue an IRS  
25 Form 1099 to Plaintiff for the Enhancement Payment, and Plaintiff shall be solely and legally  
26 responsible for correctly characterizing this compensation for tax purposes and for paying any taxes  
27 on the amounts received.

28 Plaintiff and Class Counsel will request, and Defendant agrees not to oppose, the payment

1 from the MSA of Eighty Thousand Dollars (\$80,000.00), representing 33.33% of the MSA, to Class  
2 Counsel for Class Counsel Fees. Class Counsel believes, and Defendant does not challenge, that such  
3 an award to Class Counsel is reasonable. Plaintiff and Class Counsel will request, and Defendants  
4 agrees not to oppose, a payment from the MSA not to exceed Ten Thousand Dollars (\$10,000.00) to  
5 Class Counsel for Class Counsel Costs. Class Counsel believes, and Defendant does not challenge,  
6 that such an award to Class Counsel is reasonable.

7 Class Counsel Fees, Class Counsel Costs and the Enhancement Payment, whether they are  
8 awarded as requested or reduced by the Court at its discretion, shall be paid from the MSA.

9 The Parties have agreed that Ten Thousand Dollars (\$10,000) of the MSA will be allocated  
10 as PAGA penalties, with 75% of this amount, Seven Thousand Five Hundred Dollars (\$7,500.00) to  
11 be paid to the LWDA in satisfaction of any claim for penalties that may be owed to that agency under  
12 PAGA. The other 25%, or Two Thousand Five Hundred Dollars (\$2,500.00), will be distributed to  
13 the PAGA Employees on a pro-rata basis.

14 Moreover, all the Settlement Administration Costs shall be paid from the MSA, which the  
15 Parties currently estimate will be about Fifteen Thousand Dollars (\$15,000.00).

16 Class Counsel shall timely provide a completed IRS Form W-9 no later than five (5) calendar  
17 days after the Effective Date and any other information needed for the Settlement Administrator to  
18 make payments. Any payment obligation by any party shall be tolled until the correct information is  
19 provided as required by any party. Settlement Administration Costs may be paid earlier, if necessary,  
20 to effectuate the terms of this Agreement, except that the party paying shall be entitled to offset the  
21 costs from the Maximum Settlement Amount. Under no circumstances shall Defendant be required  
22 to pay more than the Maximum Settlement Amount.

23 4. **Cure Provision**

24 If Defendant fails to timely make a payment set forth in this Agreement, Defendant shall have  
25 fifteen (15) calendar days from the last day the payment is due to cure the untimely payment.  
26 Defendant shall make any payment under this provision pursuant to the Settlement Administrator's  
27 electronic transfer instructions. The Parties expressly agree that the Defendant's payment obligations  
28 with respect to any cure shall be met upon initiating the electronic transfer of funds to the Settlement

1 Administrator, pursuant to its instructions.

2 **L. The Settlement Administrator**

3 Class Counsel and Defendants designate Phoenix Settlement Administrators, an experienced  
4 Settlement Administrator, to process this Settlement. The Settlement Administrator will administer  
5 the Settlement including, but not limited to, distributing the Class Notice of Settlement and Allocation  
6 Form, calculating and directing the disbursements for payments from the Distributable Amount, and  
7 handling inquiries about the calculation of individual settlement payments to the Class pursuant to  
8 the terms contained in this Agreement. The Settlement Administrator shall establish a settlement  
9 payment center address, telephone number, and timely process Class Members' inquiries about the  
10 Class Notice of Settlement, Requests for Exclusion and Objections, and process the payments to the  
11 Class under the terms of this Agreement.

12 Moreover, the Settlement Administrator shall provide as soon as possible to Defendant's  
13 Counsel instructions for Defendant to tender the MSA payment by electronic transfer to the  
14 Settlement Administrator. Defendant's payment of the MSA is contingent upon receipt of the  
15 payment instructions. Defendant expressly agrees to follow the Settlement Administrator's payment  
16 instructions. The Parties agree that Defendant's payment obligations under the Settlement shall be  
17 met upon initiating the electronic transfer of funds to the Settlement Administrator, pursuant to its  
18 instructions.

19 The Settlement Administrator shall provide the parties with weekly reports commencing with  
20 the date the Class Notice is first mailed and continuing to the Effective Date notifying the Parties of  
21 Notices mailed, Notices returned to sender, Notices re-mailed and the number of valid Opt-Outs  
22 submitted by Class Members, if any, the number of Objections and identity of Objectors, if any and  
23 the amounts of all Settlement Payments due and payable.

24 The Settlement Administrator shall not disburse the settlement funds except as provided  
25 herein, as ordered by the Court, or as agreed upon, in writing, by Defendant's Counsel and Class  
26 Counsel. Subject to further orders and/or directions as may be made by the Court, the Settlement  
27 Administrator is authorized to execute such transactions on behalf of the Class Members as are  
28 consistent with the terms of this Agreement.

Moreover, the Parties expressly agree that, in the event Phoenix Settlement Administrator cannot perform the functions herein within the allocated \$15,000.00 Settlement Administration Costs, they will cooperate with each other to select a new, mutually agreed upon Settlement Administrator. Under no circumstances shall Defendant be required to pay more than the Settlement Administration Costs.

**M. Time For Disbursement**

Within ten calendar (10) days of receipt of Defendant's payment of the MSA, the Settlement Administrator shall cause to be paid: (1) Settlement Payments from the Distributable Amount due to Class Members who did not timely file valid Opt-Outs and PAGA Employees as provided under this Agreement; (2) Class Counsel Fees; (3) Class Counsel Costs; (4) Enhancement Payment; (5) Settlement Administration Costs; and (6) LWDA Payment.

Payment to any Participating Class Member and/or PAGA Employee will be in the form a check issued for an amount calculated using the formulas contained in this Agreement. Any funds for Individual Class Claims not paid to those Class Members who submitted timely valid Opt-Outs shall be proportionally redistributed to Participating Class Members based on the number of their Qualifying Workweeks (based on the formula provided under this Agreement).

Class Members who are PAGA Employees will not be permitted to exclude themselves from the PAGA claim portion of the Settlement and will bound by the Court's resolution of that claim regardless of whether they submit a Request for Exclusion. Class Members who do not timely Opt-Out will be bound by all the terms of this Agreement, regardless of whether that Class Member receives and cashes his or her check for Settlement Payment. Any checks issued by the Settlement Administrator to Participating Class Members and PAGA Employees will be negotiable for one-hundred twenty (180) calendar days.

Any settlement checks remaining un-cashed after one hundred and eighty (180) calendar days after being issued shall become null and void, and any monies remaining in the distribution account shall be distributed to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Civil Code § 1500 et seq., for the benefit of those Settlement Class members who did not cash their checks until such time that they claim their property. The Parties agree that

1 this disposition results in no “unpaid residue” within the meaning of California Code of Civil  
2 Procedure Section 384, as the entire Net Settlement Amount will be paid out to Participating Class  
3 Members and PAGA Employees, whether or not they all cash their Settlement Payment checks.

4 **N. Taxes**

5 **1. *Withholding and Reporting Requirements***

6 The Settlement Administrator shall be responsible for ensuring that all taxes associated with  
7 the Agreement are timely paid to the appropriate tax authorities. The Settlement Administrator's  
8 responsibilities include the following: (i) filing all federal, state, and local tax deduction, (ii) to timely  
9 and proper filing of all required federal, state, and local forms (e.g., 1099s, W-2s, etc.) with the  
10 appropriate taxing authorities, and (iii) completion of any other steps necessary for compliance with  
11 any tax obligations of the Settlement under federal, state, and/or local law, as applicable. To verify  
12 the Settlement Administrator's compliance with the foregoing withholding and reporting  
13 requirements, as soon as administratively practicable, the Settlement Administrator shall furnish  
14 Class Counsel and Counsel for Defendant with copies of all forms detailing the payment of taxes  
15 (including all 1099 forms and returns) sufficient to prove that such payments were properly remitted.  
16 The Settlement Administrator shall provide a final accounting declaration adequate to demonstrate  
17 full compliance with all duties set forth in this Agreement, including but not limited to tax  
18 withholding, payment, and reporting obligations.

19 **2. *Determination and Payment of Taxes***

20 The Settlement Administrator shall determine the amount of any withholding or taxes to be  
21 withheld from each Participating Class Member's settlement payment and issue form W-2's to the  
22 Participating Class Members. All such withholdings shall be remitted by the Settlement  
23 Administrator to the proper governmental taxing authorities. Participating Class Members and PAGA  
24 Employees shall be responsible for any tax consequences of any funds paid out to each of them  
25 pursuant to this Agreement.

26 **O. Circular 230 Disclaimer**

27 Each party to this Agreement (for purposes of this section, the “Acknowledging Party”; and  
28 each party to this Agreement other than the Acknowledging Party, an “Other Party”) acknowledges

1 and agrees that (1) no provision of this Agreement, and no written communication or disclosure  
2 between or among the parties or their attorneys and other advisers, is or was intended to be, nor shall  
3 any such communication or disclosure constitute or be construed or be relied upon as, tax advice  
4 within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended);  
5 (2) the Acknowledging Party (a) has relied exclusively upon his, her, or its own, independent legal  
6 and tax advisers for advice (including tax advice) in connection with this Agreement, (b) has not  
7 entered into this Agreement based upon the recommendation of any other party or any attorney or  
8 advisor to any other party, and (c) is not entitled to rely upon any communication or disclosure by  
9 any attorney or adviser to any other party to avoid any tax penalty that may be imposed on the  
10 Acknowledging Party; and (3) no attorney or adviser to any other party has imposed any limitation  
11 that protects the confidentiality of any such attorney's or adviser's tax strategies (regardless of  
12 whether such limitation is legally binding) upon disclosure by the Acknowledging Party of the tax  
13 treatment or tax structure of any transaction, including any transaction contemplated by this  
14 Agreement.

15 **V. LIMITATIONS ON USE OF THIS SETTLEMENT**

16 **A. No Admission**

17 Neither the acceptance nor the performance by Defendant of the terms contained in this  
18 Agreement nor any of the related negotiations or proceedings is or shall be claimed to be, construed  
19 as, or deemed a precedent or an admission by Defendant of the truth of any allegations in any version  
20 of the Complaint. Defendant enters into this Settlement Agreement solely for the purposes of  
21 compromising and settling the Action.

22 **B. Non-Evidentiary Use**

23 Neither this Agreement nor any of its terms, nor any statements or conduct in the negotiation  
24 or drafting of it, shall be offered or used as evidence by Plaintiff, any Class Member (including any  
25 individual who filed an Opt-Out), Defendant, or its or their respective counsel, in the Action or any  
26 other proceeding, except as is reasonably necessary to effectuate its purpose and terms. This  
27 Agreement may be used by Defendant and/or the Released Persons to prove or defend against any  
28 claim released herein by any Class Member in any judicial, quasi-judicial, administrative, or

1 governmental proceeding.

2 **C. No Publicity**

3 Plaintiff and Class Counsel agree not to disclose or publicize the Settlement, including the  
4 fact of the Settlement, its terms or contents, and the negotiations underlying the Settlement, in any  
5 manner or form, directly or indirectly, to any person or entity, except as may be strictly required to  
6 effectuate the terms of the Settlement. For the avoidance of doubt, this section means Plaintiff and  
7 Class Counsel agree not to issue press releases, communicate with, or respond to any media or  
8 publication entities, publish information in manner or form, whether printed or electronic, on any  
9 medium or otherwise communicate, whether by print, video, recording or any other medium, with  
10 any person or entity, including the general public and social media (Instagram, Facebook, Twitter,  
11 LinkedIn, YouTube, Google+, Tumblr, etc.), concerning the Settlement, its terms or contents and the  
12 negotiations underlying the Settlement, or identify Defendant or its principals owners as associated  
13 with the underlying lawsuit, except as shall be contractually required to effectuate the terms of the  
14 Settlement. However, for the limited purpose of allowing Class Counsel to prove adequacy as class  
15 counsel in other actions for purposes of seeking approval of an unrelated settlement, Class Counsel  
16 may refer to any information in the public record for such purposes.

17 **D. Nullification**

18 If the Court for any reason does not approve this Settlement, this Agreement shall be  
19 considered null and void and all parties to this Settlement shall stand in the same position, without  
20 prejudice, as if the Settlement had been neither entered into nor filed with the Court. Moreover, in the  
21 event the Court does not approve this Settlement, Defendant will not be deemed to have waived,  
22 limited, or affected in any way any of its objections, or defenses in this Action. Invalidation of any  
23 material portion of this Settlement shall invalidate this Settlement in its entirety unless the Parties  
24 agree in writing that the remaining provisions shall remain in full force and effect.

25 **E. Right to Withdraw**

26 Notwithstanding any other provision contained in this Agreement, if Five Percent (5%) or  
27 more of the Class Members submit timely and valid Requests for Exclusion from the Settlement  
28 during the Opt-Out Period outlined herein, Defendant shall have the option but not the obligation, in

its sole discretion, to withdraw from this Agreement (“Right to Withdraw”), whereupon the Agreement shall be null and void for any and all purposes and may not be used or introduced in the Action or any other proceeding. The Parties will be restored to their respective positions in the litigation as if this Agreement was never negotiated, drafted or agreed upon. However, if Defendant exercises its Right to Withdraw, Defendant will be responsible for all Settlement Administration Costs incurred up to the date when the Defendant exercises its Right to Withdraw. The Settlement Administrator shall notify Class Counsel and Counsel for Defendant of the number of timely opt-outs within five (5) calendar days after the period to file an Opt-Out has expired. If Defendant elects to exercise its Right to Withdraw under this provision, Defendant will so notify Class Counsel and the Court no later than five (5) calendar days after receiving notice of the number of opt-outs and/or value of the valid claims made by the Participating Class Members.

**F. No Effect on Employee Benefits**

Amounts paid to Plaintiff or other Class Members pursuant to this Settlement Agreement shall not be deemed pensionable earnings or have any effect on the eligibility for, or calculation of, any employee benefits (e.g., vacations, holiday pay, retirement plans, etc.) of Plaintiff or Class Members.

**VI. RELEASE OF THE CLASS**

It is the desire of Plaintiff, Class Members, and Defendant to fully, finally, and forever settle, compromise, and discharge disputes and claims arising from or related to this Action. Upon full funding of the MSA and Final Approval by the Court of this Agreement, and by operation of the Agreement’s terms, and except as to such rights or claims as may be created by this Agreement, all Participating Class Members fully release and discharge the Released Persons from all Released Class Claims, whether known or unknown during the Class Period. As to any Participating Class Member who cashes the check representing their Settlement Payment, the signing and negotiation of that check shall serve as the Class Member’s consent to join the action for purposes of releasing claims arising under the FLSA that are related to the claims stated in the Action, implicitly or explicitly, and, for such persons, “Released Claims” shall include all related claims arising under the FLSA. All PAGA Employees, whether requesting exclusion from the Settlement or not, fully release and discharge the Released Persons from any and all claims for civil Penalties under PAGA [Cal. Lab. Code §§ 2699,

et seq.] that are based upon or arise from the factual allegations in the Operative Complaint and Notice to the LWDA, arising during and/or with respect to the PAGA Period, including all attorneys' fees and costs related thereto. Plaintiff and Defendant stipulate and agree that the consideration paid to the Class Members pursuant to this Agreement compensates the Class Members for all wages and penalties due to them arising from the claims alleged in the operative Complaint.

## **VII. MISCELLANEOUS PROVISIONS**

### **A. Amendments**

The terms and provisions of this Agreement may be amended only by a written agreement, which is signed by Plaintiff, Class Counsel, Defendant, and Counsel for Defendant.

### **B. Jurisdiction of the Court to Enforce Terms of Agreement**

The Parties stipulate and agree that the Court will retain jurisdiction to enforce the terms of this Agreement following the entry of the Judgment pursuant to *California Code of Civil Procedure* section 664.6. The Parties agree to the exclusive jurisdiction of the Court to enforce the terms and conditions contained herein.

### **C. Enforcement Actions**

In the event one or more of the Parties to this Stipulation institutes and legal action or other proceeding against any other party or parties to enforce the provisions of this Stipulation, or to declare rights and/or obligations under this Stipulation, the prevailing party or parties shall be entitled to recover from the unsuccessful party or parties' reasonable attorneys' fees and costs in connection with any enforcement actions.

### **D. No Inducements**

Plaintiff and Defendant acknowledge that they are entering into this Agreement as a free and voluntary act without duress or undue pressure or influence of any kind or nature whatsoever and that neither Plaintiff nor Defendant have relied on any promises, representations, or warranties regarding the subject matter hereof other than as set forth in this Agreement.

### **E. No Prior Assignment**

The Parties hereto represent, covenant, and warrant that they have not directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or

entity any portion of any liability, claim, demand, action, cause of action or rights herein released and discharged except as set forth herein. If any claims are made by any Class Member between the start of the Class Period and the date in which the Court approves the Settlement outlined in this Agreement as final, such a claim will be deemed covered and released by the individual Class Member making the claim unless such Class Member has timely exercised the right to be excluded from this Agreement under the terms set forth herein. Any Class Member covered by this Agreement will be barred from proceeding with any such claim.

**F. Representative Plaintiff's Personal Release**

As part of the Agreement, Plaintiff grants the Released Persons the Personal Release, as that term is defined in Section II herein.

**G. Destruction of Informal Discovery**

The Parties agree that in the event the Court does not approve the Settlement for any reason, or if the Settlement cannot be consummated for any reason, Class Counsel expressly agrees to either: (1) return all informally produced discovery by Defendant to Defendant's Counsel; or (2) immediately destroy all informal discovery, and provide sufficient proof (such as a declaration under oath by Class Counsel) that the information was destroyed within 10 calendar days after becoming aware that the Settlement has failed to become final. Retaining any copy of direct or derivative information shall be a violation of this provision. Such informal discovery shall include, but is not limited to: (1) Class Members' time and payroll records; (2) written policies and procedures; and (3) information disclosed pursuant to the mediation and/or settlement privilege. If Class Counsel fails to either destroy or return such information within a reasonable time, the Parties expressly agree that Defendant's Counsel may apply to the Court to seek enforcement of this specific provision (including any and all reasonable attorney's fees and costs in seeking such enforcement).

If the Court approves the settlement, Plaintiff and Class Counsel agree to maintain the information provided by Defendant only for as long as it is necessary to consummate and finalize the approval process of the Settlement by the Court, up to and including the Effective Date. After such time, the Parties agree that Class Counsel will return the information to Defendant or Defendant's Counsel, or destroy the information (including any derivative information) as provided herein, except

as provided in Plaintiff's personnel file.

Plaintiff and Class Counsel agree to treat and maintain the information disclosed confidentially, protect it, and take any and all reasonable steps to maintain it confidentially and treat it as a trade secret. However, the Parties expressly agree that Class Counsel may disclose such information to the Court as is necessary to consummate and finalize the approval process of the Settlement by the Court.

**H. Counterparts**

This Agreement, and any amendments hereto, may be executed in any number of counterparts, or signed electronically, each of which when executed and delivered shall be deemed to be an original and all of which taken together shall constitute but one and the same instrument. This Agreement will become effective on the date when the last person signs and dates it.

**I. Integration Clause**

This document, along with any exhibits attached hereto, constitutes the complete and entire Agreement between the parties pertaining to the subject matter hereof, and the final, complete and exclusive expression of the terms and conditions of their Agreement. Any and all prior agreements, representations, negotiations, and understandings between the parties, oral or written, express or implied, are hereby superseded and merged herein.

**J. Binding on Successors and Assigns**

This Settlement Agreement will be binding upon, and inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

**IN WITNESS WHEREOF**, the parties hereto execute this Agreement and have caused this Agreement to be executed by their duly authorized representatives.

***[SIGNATURES ON FOLLOWING PAGE]***

**PLAINTIFF &  
CLASS REPRESENTATIVE**

9/11/2021  
Date: \_\_\_\_\_

DocuSigned by:

*Annette Arredondo*

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ANNETTE ARREDONDO

Personally and as Representative Plaintiff

**BIOMECHANICS PHYSICAL THERAPY, PC.**

Date: \_\_\_\_\_

Douglas Turner

Its Authorized Representative.

**APPROVED AS TO FORM AND CONTENT**

**WORK LAWYERS PC**

September 10, 2021  
Date: \_\_\_\_\_

*Justin Lo*

Justin Lo, Esq.

Attorneys for Plaintiff and the Proposed Class

**LANDEGGER VERANO & DAVIS, ALC**

Date: \_\_\_\_\_

Evelyn Zarraga, Esq.

Counsel for Defendants

**PLAINTIFF &  
CLASS REPRESENTATIVE**

Date: \_\_\_\_\_

\_\_\_\_\_  
ANNETTE ARREDONDO  
Personally and as Representative Plaintiff

**BIOMECHANICS PHYSICAL THERAPY, PC.**

Date: 9/10/2021 \_\_\_\_\_

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Douglas Turner  
Its Authorized Representative.

**APPROVED AS TO FORM AND CONTENT**

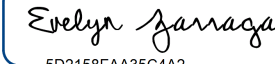
**WORK LAWYERS PC**

Date: \_\_\_\_\_

\_\_\_\_\_  
Justin Lo, Esq.  
Attorneys for Plaintiff and the Proposed Class

**LANDEGGER VERANO & DAVIS, ALC**

Date: 9/10/2021 \_\_\_\_\_

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Evelyn Zarraga, Esq.  
Counsel for Defendants