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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA

NORMAJEAN FERLAND, individually, and on
behalf of all others similarly situated,

Plaintiff,

v.

COMPREHENSIVE SPINE AND SPORTS
CENTER, an unknown corporation; and DOES 1
through 10, inclusive,

Defendants.

Case No. 21CV375218

CLASS ACTION

[Assigned for all purposes to: Hon. Sunil R.
Kulkarni, Dept. 1]

**DECLARATION OF JUSTIN F.
MARQUEZ IN SUPPORT OF
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

[Filed concurrently with: Plaintiff's Notice of
Motion and Motion for Preliminary Approval
of Class Action Settlement, Memorandum of
Points and Authorities; Declaration of
NormaJean Ferland in Support of Plaintiff's
Motion for Preliminary Approval of Class
Action Settlement; Declaration of LATLC
President Steven Vartazarian; and [Proposed]
Order Granting Plaintiff's Motion for
Preliminary Approval of Class Action
Settlement]

PRELIMINARY APPROVAL HEARING

Date: June 2, 2022

Time: 1:30 p.m.

Dept: 1

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1. I am admitted, in good standing, to practice as an attorney in the State of California, the Ninth Circuit Court of Appeals, and the United States District Courts for the Central, Southern, Eastern, and Northern Districts of California. I am a Senior Partner at Wilshire Law Firm, PLC, counsel of record for Plaintiff NormaJean Ferland (“Plaintiff”). I have personal knowledge of the facts set forth in this declaration and could and would competently testify to them under oath if called as a witness. This Declaration is submitted in support of Plaintiff’s Motion for Preliminary Approval of Class Action Settlement.

2. This is a wage and hour class and Private Attorneys General Act (“PAGA”) (Cal. Lab. Code §§ 2699, *et seq.*) representative action. Plaintiff and putative class members worked in California as hourly-paid, non-exempt employees for Defendant during the class period. Defendant specializes in the treatment and management of spinal cord issues and sports-related injuries with multiple offices throughout the state of California.

4. On January 14, 2021, Plaintiff filed a putative wage-and-hour class action complaint against Defendant for: (1) failure to pay minimum and straight time wages (Cal. Lab. Code §§ 204, 1194, 1194.2, and 1197); (2) failure to pay overtime wages (Cal. Lab. Code §§ 1194 and 1198);

(3) failure to provide meal periods (Cal. Lab. Code §§ 226.7 and 512); (4) failure to authorize and permit rest periods (Cal. Lab. Code §§ 226.7); (5) failure to timely pay final wages at termination (Cal. Lab. Code §§ 201-203); (6) failure to provide accurate itemized wage statements (Cal. Lab. Code § 226); (7) failure to indemnify employees for expenditures (Cal. Lab. Code § 2802); and (8) unfair business practices (Cal. Bus. & Prof. Code §§ 17200, *et seq.*). On December 13, 2021, Plaintiff filed a First Amended Class and Representative Action Complaint adding a claim for civil penalties under PAGA.

DISCOVERY AND INVESTIGATION

5. Following the filing of the Complaint, the Parties exchanged documents and information before mediating this action. Defendant produced a sample of time and pay records for the class members. Defendant also provided documents of their wage and hour policies and practices during the class period, and information regarding the total number of current and former employees in its informal discovery responses.

6. After reviewing documents regarding Defendant's wage and hour policies and practices, analyzing Defendant's timekeeping and payroll records, Class Counsel was able to evaluate the probability of class certification, success on the merits, and Defendant's maximum monetary exposure for all claims. Class Counsel also investigated the applicable law regarding the claims and defenses asserted in the Litigation. Class Counsel reviewed these records and utilized an expert to prepare a damages analysis prior to mediation

SETTLEMENT NEGOTIATIONS

7. On July 26, 2021 the Parties participated in private mediation with experienced class action mediator, Lisa Klerman, Esq. The mediation was conducted via Zoom. The settlement negotiations were at arm's length and, although conducted in a professional manner, were adversarial. The Parties went into the mediation willing to explore the potential for a settlement of the dispute, but each side was also prepared to litigate their position through trial and appeal if a settlement had not been reached.

8. After extensive negotiations and discussions regarding the strengths and weaknesses of Plaintiff's claims and Defendant's defenses, the Parties were able to reach a

1 resolution, the material terms of which are encompassed within the Settlement Agreement.
2 Attached as **Exhibit 1** is a true and correct copy of the Joint Stipulation Re: Class Settlement
3 (“Settlement” or “Settlement Agreement”).

4 9. The Settlement includes \$10,000.00 allocated to Plaintiff’s claims under PAGA,
5 with 75% of which (\$7,500.00) being paid to the Labor and Workforce Development Agency
6 (“LWDA”) and 25% (\$2,500.00) being paid to the Aggrieved Employees (on a pro-rata basis based
7 on the number of pay periods worked). (Settlement, § XVI.) Class Counsel submitted the
8 proposed Settlement to the LWDA before filing the Motion for Preliminary Approval.

9 10. The Settlement provides that Defendant will not oppose a fee application of up to
10 33 1/3% (\$103,333.33) of the Gross Settlement Amount, plus out-of-pocket costs not to exceed
11 \$15,000.00. (Settlement, § XIII.)

12 11. I requested several bids from experienced class action settlement administrators to
13 handle the responsibilities of the Settlement Administrator under this Settlement. The Parties
14 accepted the bid of ILYM Group, Inc. ILYM Group, Inc. has multiple years of experience in the
15 field of Class Action Administration, particularly in the wage-and-hour arena. In its bid, ILYM
16 Group, Inc. agreed to cap its costs at \$9,765.00 if there are 180 class members. The bid also
17 provides that class notice will be provided in English and Spanish. A true and correct copy of the
18 bid is attached hereto as **Exhibit 2**.

19 12. Plaintiff does not have any interest, financial or otherwise, in the proposed *cy pres*
20 recipient, Los Angeles Trial Lawyers’ Charities (“LATLC”), or the third-party administrator,
21 ILYM Group, Inc.

22 13. No one at Wilshire Law Firm, PLC (meaning the law firm itself and anyone
23 employed at the law firm) has any interest, financial or otherwise, in the proposed *cy pres* recipient,
24 LATLC, or the third-party administrator, ILYM Group, Inc.

25 14. Wilshire Law Firm, PLC has no fee-splitting agreement with any other counsel in
26 this case.

27 **THE PROPOSED SETTLEMENT IS FAIR AND REASONABLE**

28 15. Class Counsel has conducted a thorough investigation into the facts of this case.

1 Based on the foregoing discovery and their own independent investigation and evaluation, Class
2 Counsel is of the opinion that the Settlement is fair, reasonable, and adequate and is in the best
3 interests of the Settlement Class Members in light of all known facts and circumstances, the risk
4 of significant delay, the defenses that could be asserted by Defendant both to certification and on
5 the merits, trial risk, and appellate risk.

6 16. Based on an analysis of the facts and legal contentions in this case, documents and
7 information from Defendant, I evaluated Defendant's maximum exposure. I took into account the
8 risk of not having the claims certified and the risk of not prevailing at trial, even if the claims are
9 certified. After using the data Defendant provided, including a 25% random sampling of
10 timekeeping and payroll records, as well as class member demographics (i.e., the number of class
11 members, workweeks, and average total compensation of the class), with the assistance of a
12 statistics expert, I created a damages model to evaluate the realistic range of potential recovery for
13 the class. The damages model is based on the following benchmarks as from the start of the class
14 period through June 10, 2021:

15 Total Class Members: 155

16 Terminated Class Members during 3-year statute: 86

17 Total Workweeks: 6,652

18 PAGA Pay Periods: 2,414

19 Avg. Hourly Rate: \$18.95

20 17. Discovery and investigation revealed that Defendant failed to pay class members
21 for all hours worked, including overtime wages, failed to have a legally compliant written policy
22 providing meal periods and authorizing and permitting rest periods.

23 18. Plaintiff alleges that Defendant failed to pay for all hours worked, including
24 minimum, straight time, and overtime wages. My expert analyzed Defendant's timekeeping and
25 payroll records and found many instances where Defendant failed to pay employees for all hours
26 worked, particularly the time employees spent engaging in work-related duties pre-shift, during
27 meal periods, and post-shift. A more conservative estimate was appropriate given the difficulty of
28 proving an off-the-clock work violation on a class-wide basis. Assuming that Defendant failed to

1 pay employees for 20 minutes of off-the-clock work per shift, with 60% of that work being paid at
2 the overtime rate, potential liability for this claim is \$251,175.00. Because individualized issues
3 can be a significant obstacle to certifying and proving off-the-clock claims, I discounted this figure
4 by 80% to account for the difficulty of prevailing on a motion for class certification and a trial on
5 the merits, yielding a realistic damage estimate of \$50,235.00.¹ Additionally, my expert
6 investigated the issue regarding Defendant's failure to pay for all recorded hours and include non-
7 discretionary remuneration in the employees' overtime rate and found that Defendant's exposure
8 for this theory of liability to be at \$5,513.00. In sum, a realistic damage estimate for Defendant's
9 failure to pay for all hours worked would be **\$55,748.00**.

10 19. With respect to the meal period claim, Plaintiff alleges that Defendant required her
11 and similarly situated class members to work in lieu of taking meal periods, and Defendant lacked
12 legally compliant policies and practices providing meal periods from the start of the class period
13 until January 1, 2021. My expert analyzed Defendant's timekeeping records and found that
14 approximately 23.9% of all meal breaks had violations of short, missed, or no meal periods.
15 Potential liability for the meal period claim, factoring in the premiums issued to off-set the
16 remaining premiums owed, which includes shifts 5-6 hours long, shifts over six hours long, shifts
17 over ten hours long, and shifts over 12 hours long is \$141,838.00, including interest; however, I
18 discounted this figure by 80% to account for the difficulty of certifying and proving meal period
19 claims, yielding a realistic damage estimate of **\$28,367.60**.

20 20. With respect to the rest period claim, Plaintiff alleges that Defendant required her
21 and similarly situated class members to work in lieu of taking rest periods, and Defendant lacked
22 legally compliant policies and practices authorizing and permitting employees to take rest periods
23 from the start of the class period until January 1, 2021. Assuming a 100% violation rate for the
24 entirety of the class period based on Plaintiff's and other class members' experience working for
25 _____

26 ¹ This discount for risk at certification and trial is reasonable because the Judicial Council
27 of California found that only 21.4% of all class actions were certified either as part of a
28 settlement *or* as part of a contested certification motion. See Findings of the Study of California
Class Action Litigation, 2000-2006, available at [http:// www.courts.ca.gov/documents/class-
action-lit-study.pdf](http://www.courts.ca.gov/documents/class-action-lit-study.pdf).

1 Defendant, Defendant's potential liability for the rest period claim is \$615,327.00; however, I
2 discounted this figure by 90% to account for the difficulty of certifying and proving rest period
3 claims, particularly because rest periods do not have to be recorded, and to account for the
4 possibility of class members voluntarily choosing to forego a rest period, yielding a realistic
5 damage estimate of **\$61,532.70**.

6 21. With respect to the claim for unreimbursed business expenses, Plaintiff alleges that
7 Defendant required her and similarly situated class members to purchase specific work-related
8 supplies and protective safety equipment (e.g., gloves, face shields, etc.) and required the use of
9 personal cell phones for employment-related matters during working hours and off-the-clock. My
10 expert estimated the potential liability for this claim to be worth \$32,472.00; however, I discounted
11 this figure by 80% to account for the difficulty of certifying and proving this claim, yielding a
12 realistic damage estimate of **\$6,494.40**.

13 22. In sum, Plaintiff's maximum recovery for the unpaid wages based on the failure to
14 pay for all hours worked (minimum, straight time, and overtime wages) and the meal and rest
15 period violations, as well as Defendant's failure to indemnify its employees for necessary business
16 expenses, is \$1,046,325.00, but, **after factoring in the risk and uncertainty of prevailing at**
17 **certification and trial, Plaintiff's realistic estimated recovery for the non-penalty claims is**
18 **\$152,142.70**.

19 23. With respect to Plaintiff's derivative claims for statutory and civil penalties,
20 Plaintiff estimated that Defendant's realistic potential liability is **\$250,000.00**. While Defendant's
21 maximum potential liability for waiting time penalties is \$385,533.00 based on approximately 86
22 terminated class members during the 3-year statute, \$236,350.00 for inaccurate wage statements
23 based on approximately 101 class members who worked 2,414 pay periods within the 1-year
24 statute, and \$885,500.00 for PAGA violations based on the Court assessing a \$100 penalty for
25 initial violations for all 2,414 pay periods within the 1-year statute, I believe that it would be
26 unrealistic to expect the Court to award the full \$1,507,383.00 in penalties given Defendant's
27 defenses, the contested nature of Plaintiff's claims, and the discretionary nature of penalties.
28 Considering that the underlying claims are realistically estimated to be \$152,142.70, such a

disproportionate award would also raise due process concerns. Weighing these factors, and applying a discount to account for the risk and uncertainty of prevailing at trial, I arrived at \$250,000.00 for statutory and civil penalties.

24. Using these estimated figures, Plaintiff predicted that the realistic maximum recovery for all claims, including penalties, would be \$402,142.70. This means that the \$310,000.00 settlement figure represents 77.1% of the realistic maximum recovery ($\$310,000 / \$402,142.70 = 77.1\%$). Considering the risk and uncertainty of prevailing at class certification and at trial, this is an excellent result for the Class. Indeed, because of the proposed Settlement, class members will receive timely, guaranteed relief and will avoid the risk of an unfavorable judgment.

25. While Plaintiff is confident in the merits of her claims, a legitimate controversy exists as to each cause of action. Plaintiff also recognizes that proving the amount of wages due to each Class Member would be an expensive, time-consuming, and uncertain proposition.

26. This Settlement avoids the risks and the accompanying expense of further f. Although the Parties had engaged in a significant amount of investigation, informal discovery and class-wide data analysis, the Parties had not yet completed formal written discovery. Plaintiff intended to depose corporate officers and managers of Defendant. Moreover, preparation for class certification and a trial remained for the Parties as well as the prospect of appeals in the wake of a disputed class certification ruling for Plaintiff and/or adverse summary judgment ruling. Had the Court certified any claims, Defendant could move to decertify the claims. As a result, the Parties would incur considerably more attorneys' fees and costs through trial.

27. The Net Settlement Amount available for Class Member settlement payments is estimated to be \$164,401.67, for a class of 155 persons.² As a result, each Settlement Class Member is eligible to receive an average net benefit of approximately \$1,060.66.

² The Net Settlement Amount is: \$310,000.00 minus \$103,333.33 for Class Counsel's attorneys' fees, minus \$15,000.00 for Class Counsel's litigation expenses, minus \$9,765.00 in administration costs, minus \$7,500.00 for the PAGA portion sent to the LWDA, minus \$2,500.00 for payments to the Aggrieved Employees on a *pro rata basis*, and minus \$7,500.00 for the class representative service award.

1 28. The proposed Settlement of \$310,000.00 therefore represents a substantial recovery
2 when compared to Plaintiff's reasonably forecasted recovery. When considering the risks of
3 litigation, the uncertainties involved in achieving class certification, the burdens of proof necessary
4 to establish liability, the probability of appeal of a favorable judgment, it is clear that the settlement
5 amount of \$310,000.00 is within the "ballpark" of reasonableness, and preliminary settlement
6 approval is appropriate.

7 ENHANCEMENT AWARD FOR PLAINTIFF IS REASONABLE

8 29. Class Counsel represent that Plaintiff devoted a great deal of time and work assisting
9 counsel in the case, communicated with counsel very frequently for litigation and to prepare for
10 mediation, and was frequently in contact with Class Counsel during the mediation. Plaintiff's
11 requested enhancement award is reasonable particularly in light of the substantial benefits Plaintiff
12 generated for all class members.

13 30. Throughout this Litigation, Plaintiff, who is a former employee of Defendant, has
14 cooperated immensely with my office and has taken many actions to protect the interests of the
15 class. Plaintiff provided valuable information regarding unpaid overtime, meal period, and rest
16 period claims. Plaintiff also informed my office of developments and information relevant to this
17 action, participated in decisions concerning this action, made herself available to answer questions
18 during the mediation, and provided my office with the names and contact information of potential
19 witnesses in this action. Before we filed this case, Plaintiff provided my office with several
20 documents, including policy documents, and communications from Defendant regarding the claims
21 alleged in this action. The information and documentation provided by Plaintiff was instrumental
22 in establishing the wage and hour violations alleged in this action, and the recovery provided for
23 in the Settlement Agreement would have been impossible to obtain without Plaintiff's
24 participation.

25 31. At the same time, Plaintiff faced many risks in adding herself as the class
26 representative in this matter. Plaintiff faced actual risks with her future employment, as putting
27 herself on public record in an employment lawsuit could also very well affect her likelihood for
28 future employment. Furthermore, as part of this Settlement, Plaintiff is executing a general release

1 of all claims against Defendant.

2 32. In turn, class members will now have the opportunity to participate in a settlement,
3 reimbursing them for alleged wage violations they may have never known about on their own or
4 been willing to pursue on their own. If these class members would have each tried to pursue their
5 legal remedies on their own, that would have resulted in each having to expend a significant amount
6 of their own monetary resources and time, which were obviated by Plaintiff putting herself on the
7 line on behalf of these other class members.

8 33. In the final analysis, this class action would not have been possible without the aid
9 of Plaintiff, who put her own time and effort into this Litigation, sacrificed the value of her own
10 individual claims, and placed herself at risk for the sake of the class members. The requested
11 enhancement award for Plaintiff for her service as the class representative and for her general
12 release of all individual claims is a relatively small amount of money when the time and effort put
13 into the Litigation are considered and in comparison to enhancements granted in other class actions.
14 The requested incentive award is therefore reasonable to compensate Plaintiff for her active
15 participation in this lawsuit. Indeed, in *Karl Adams, III, et al. v. MarketStar Corporation, et al.*,
16 No. 2:14-cv-02509-TLN-DB, a wage and hour class action alleging that class members were
17 misclassified as exempt outside salespersons, I was co-lead Class Counsel and helped negotiate a
18 \$2.5 million class action settlement for 339 class members, and the court approved a \$25,000.00
19 class representative incentive award for each named plaintiff.

20 THE REQUEST FOR ATTORNEYS' FEES AND COSTS IS REASONABLE

21 34. The Settlement provides for attorney's fees payable to Class Counsel in an amount
22 up to one-third (33 1/3%) of the Settlement Amount, for a maximum fees award of \$103,333.33,
23 plus actual costs and expenses not to exceed \$15,000.00. The proposed award of attorneys' fees
24 to Class Counsel in this case can be justified under either method – lodestar or percentage recovery.
25 Class Counsel, however, intend to base the proposed award of fees, costs and expenses on the
26 percentage method as many of the entries in the time records will have to be redacted to preserve
27 attorney-client and attorney work product privileges.

28 35. I am informed and believe that the fee and costs provision is reasonable. The fee

1 percentage requested is less than that charged by my office for most employment cases. My office
2 invested significant time and resources into the case, with payment deferred to the end of the case,
3 and then, of course, contingent on the outcome.

4 36. It is further estimated that my office will need to expend at least another 50 to 100
5 hours to monitor the process leading up to the final approval and payments made to the class. My
6 office also bears the risk of taking whatever actions are necessary if Defendant fails to pay.

7 37. The risk to my office has been very significant, particularly if we would not be
8 successful in pursuing this class action. In that case, we would have been left with no compensation
9 for all the time taken in litigating this case. Indeed, I have taken on a number of class action cases
10 that have resulted in thousands of attorney hours being expended and ultimately having
11 certification denied or the defendant company going bankrupt. The contingent risk in these types
12 of cases is very real and they do occur regularly. Furthermore, we were precluded from focusing
13 on, or taking on, other cases which could have resulted in a larger, and less risky, monetary gain.

14 38. Because most individuals cannot afford to pay for representation in litigation on an
15 hourly basis, Wilshire Law Firm, PLC represents virtually all of its employment law clients on a
16 contingency fee basis. Pursuant to this arrangement, we are not compensated for our time unless
17 we prevail at trial or successfully settle our clients' cases. Because Wilshire Law Firm, PLC is
18 taking the risk that we will not be reimbursed for our time unless our client settles or wins his or
19 her case, we cannot afford to represent an individual employee on a contingency basis if, at the
20 end of our representation, all we are to receive is our regular hourly rate for services. It is essential
21 that we recover more than our regular hourly rate when we win if we are to remain in practice so
22 as to be able to continue representing other individuals in civil rights employment disputes.

23 39. As of the drafting of Plaintiff's Motion for Preliminary Approval of Class Action
24 Settlement, my office has incurred around \$12,029.64 in expenses litigating this action, and we
25 anticipate accruing additional costs up to Final Approval of the Settlement. These expenses were
26 reasonably necessary to the Litigation and were actually incurred by my office. They should be
27 reimbursed in full, up to the maximum amount allowed in the Settlement Agreement.

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41. Wilshire Law Firm, PLC is qualified to handle this Litigation because its attorneys are experienced in litigating Labor Code violations in both individual, class action, and representative action cases. Wilshire Law Firm, PLC has handled, and is currently handling, numerous wage and hour class action lawsuits, as well as class actions involving consumer rights and data privacy litigation.

43. My practice is focused on advocating for the rights of consumers and employees in class action litigation and appellate litigation. I am currently the primary attorney in charge of litigating several class action cases in state and federal courts across the United States.

44. I have received numerous awards for my legal work. From 2017 to 2020, Super Lawyers selected me as a “Southern California Rising Star,” and in 2022, I was selected as a “Southern California Super Lawyer.” In 2016 and 2017, the National Trial Lawyers selected me as a “Top 40 Under 40” attorney. I am also rated 10.0 (“Superb”) by Avvo.com.

45. I am on the California Employment Lawyers Association (“CELA”)’s Wage and Hour Committee and Mentor Committee, and I was selected to speak at CELA’s 2019 Advanced Wage & Hour Seminar on the topic of manageability of class actions. Since 2013, I have actively mentored young attorneys through CELA’s mentorship program.

46. I am also an active member of the Consumer Attorneys of California (“CAOC”). In

2020, I was selected for a position on CAOC's Board of Directors. I am also a member of CAOC's Diversity Committee, and I help assist the CAOC in defeating bills that harm employees. Indeed, I recently helped assist Jacqueline Serna, Esq., Legislative Counsel for CAOC, in defeating AB 443, which proposed legislation that sought to limit the enforceability of California Labor Code § 226.

47. As the attorney responsible for day-to-day management of this matter at the Wilshire Law Firm, PLC, I have over eleven years of experience with litigating wage and hour class actions. Over the last eleven years, I have managed and assisted with the litigation and settlement of several wage and hour class actions. In those class actions, I performed similar tasks as those performed in the course of prosecuting this action. My litigation experience includes:

- a. I served as lead or co-lead in negotiating class action settlements worth over \$10 million in gross recovery to class members for each year during 2020 and 2021.
- b. To my knowledge, I am the only attorney to appear on each of the following *Top Verdict* lists for 2018 in California: Top 20 Civil Rights Violation Verdicts, Top 20 Labor & Employment Settlements, and Top 50 Class Action Settlements.
- c. As lead counsel, on April 29, 2021, I prevailed against CVS Pharmacy, Inc. by winning class certification on behalf of hundreds of thousands of consumers for misleading advertising claims in *Joseph Mier v. CVS Pharmacy, Inc.*, U.S. Dist. Ct. C.D. Cal. no. SA CV 20-1979-DOC-(ADSx).
- d. As lead counsel, I prevailed against Bank of America by: winning class certification on behalf of thousands of employees for California Labor Code violations; defeating appellate review of the court's order certifying the class; defeating summary judgment; and defeating a motion to dismiss. (*Frausto v. Bank of America, N.A.* (N.D. Cal. 2019) 334 F.R.D. 192, 2020 WL 1290302 (9th Cir. Feb. 27, 2020), 2019 WL 5626640 (N.D. Cal. Oct. 31, 2019), 2018 W.L. 3659251 (N.D. Cal. Aug. 2, 2018).). The decision certifying the class in *Frausto* is also discussed in *Class Certification Under Fed. R. Civ. P. 23 in Action by Information Technology or Call Center Employees for Violation of State Law Wage and Hour Rules*, 35 A.L.R. Fed.

3d Art. 8.

- e. I was the primary author of the class certification and expert briefs in *ABM Industries Overtime Cases* (2017) 19 Cal.App.5th 277, a wage and hour class action for over 40,000 class members for off-the-clock, meal period, split shift, and reimbursement claims. *ABM Industries Overtime Cases* is the first published California appellate authority to hold that an employer’s “auto-deduct policy for meal breaks in light of the recordkeeping requirements for California employers is also an issue amenable to classwide resolution.” (*Id.* at p. 310.)³ Notably, the Court of Appeal also held that expert analysis of timekeeping records can also support the predominance requirement for class certification. (*Id.* at p. 310-11.) In 2021, the case settled for \$140 million, making it one of the largest ever wage and hour class action settlements for hourly-paid employees in California.
- f. I briefed, argued, and won *Yocupicio v. PAE Group, LLC* (9th Cir. 2015) 795 F.3d 1057. The Ninth Circuit ruled in my client’s favor and held that non-class claims under California’s Private Attorney Generals Act (“PAGA”) cannot be used to calculate the amount in controversy under the Class Action Fairness Act (“CAFA”). This case is cited in several leading treatises such as *Wright & Miller’s Federal Practice & Procedure*, and *Newberg on Class Actions*. In October 2016, the U.S. Supreme Court denied review of a case that primarily concerned *Yocupicio*. That effort was led by Theodore J. Boutrous, who brought the cert petition, with amicus support from a brief authored by Andrew J. Pincus.⁴ Considering that leading Supreme Court practitioners from the class action defense bar were very motivated in undermining *Yocupicio* case, but failed, this demonstrates the national importance of the *Yocupicio* decision.
- g. On December 13, 2018, the United States District Court granted final approval of

³ As a California district court observed before the *ABM Industries Overtime* decision, “[t]he case law regarding certification of auto-deduct classes is mixed.” (*Wilson v. TE Connectivity Networks, Inc.* (N.D. Cal. Feb. 9, 2017) No. 14-CV-04872-EDL, 2017 WL 1758048, *7.)

⁴ <http://www.chamberlitigation.com/cases/abm-industries-inc-v-castro>.

the \$2,500,000 class action settlement in *Mark Brulee, et al. v. DAL Global Services, LLC* (C.D. Cal. Dec. 13, 2018) No. CV 17-6433 JVS(JCGx), 2018 WL 6616659 in which I served as lead counsel. In doing so, the Court found: “Class Counsel’s declarations show that the attorneys are experienced and successful litigators.” (*Id.* at p. *10.)

- h. *Gasio v. Target Corp.* (C.D. Cal. Sep. 12, 2014) 2014 U.S. Dist. LEXIS 129852, a reported decision permitting class-wide discovery even though the employer has a lawful policy because “[t]he fact that a company has a policy of not violating the law does not mean that the employees follow it, which is the issue here.” The court also ordered defendant to pay for the cost of *Belaire-West* notice.
- i. In 2013, I represented a whistleblower that reported that his former employer was defrauding the State of California with the help of bribes to public employees. The case, a false claims (*qui tam*) action, resulted in the arrest and criminal prosecution of State of California employees by the California Attorney General’s Office.
- j. In 2013, I was part of a team of attorneys that obtained conditional certification for over 2,000,000 class members in a federal labor law case for misclassification of independent contractors that did crowdsourced work on the Internet, *Otey v. CrowdFlower, Inc.*, N.D. Cal. Case No. 12-cv-05524-JST (MEJ), resulting in the following pro-plaintiff reported decisions:
 - 1) 2013 U.S. Dist. LEXIS 151846 (N.D. Cal. Oct. 22, 2013) (holding that an unaccepted Rule 68 offer doesn’t moot plaintiff’s claims, and granting plaintiff’s motion to strike defendant’s affirmative defenses based on *Twombly/Iqbal*).
 - 2) 2013 U.S. Dist. LEXIS 122007 (N.D. Cal. Aug. 27, 2013) (order granting conditional collective certification).
 - 3) 2013 U.S. Dist. LEXIS 95687 (N.D. Cal. July 8, 2013) (affirming the magistrate judge’s discovery ruling which held that “evidence of other sources of income is irrelevant to the question of whether a

plaintiff is an employee within the meaning of the FLSA”).

4) 2013 U.S. Dist. LEXIS 91771 (N.D. Cal. June 20, 2013) (granting broad discovery because “an FLSA plaintiff is entitled to discovery from locations where he never worked if he can provide some evidence to indicate company-wide violations”).

j. From 2012 to 2013, I was part of a team of attorneys that obtained class certification for over 60,000 class members for off-the-clock claims, *Linares v. Securitas Security Services USA, Inc.*, Los Angeles Superior Court No. BC416555. We also successfully opposed subsequent appeals to the California Court of Appeal and California Supreme Court.

48. Benjamin H. Haber is a fifth-year Associate Attorney at Wilshire Law Firm, PLC. He was admitted to practice law in the State of California and the Central, Southern, Eastern, and Northern Districts of California. He graduated from the University of California, Los Angeles, with a Bachelor of Arts in Political Science, and received his Juris Doctor from the University of California, Hastings College of the Law in 2016. During law school, he was a member of the executive board for the Hastings Law Journal and a student mediator at the San Francisco Superior Court, Small Claims Division. Since graduating law school, he has focused his legal work primarily on wage and hour class action litigation. His current contingent billing rate for this case is \$600 per hour, which is consistent with his level of experience in the wage and hour arena.

49. Arrash T. Fattahi is a second-year Associate Attorney at Wilshire Law Firm, PLC. He was admitted to practice law in the State of California and the Central and Southern Districts of California in January 2021. Arrash graduated from the University of California, Los Angeles, with a Bachelor of Arts in Political Science, *summa cum laude*. He received his Juris Doctor from The George Washington University Law School. During law school, he was a Notes Editor for the Federal Circuit Bar Journal. Since January 2021, his practice has mainly been focused on wage and hour class action litigation. His current contingent billing rate for this case is \$400 per hour.

50. My current contingent billing rate of \$850 per hour is consistent with my practice area, lead appellate experience in the Ninth Circuit Court of Appeals, numerous awards received,

1 legal market and accepted hourly rates:

- 2 a. In the December 8, 2008 article “Billable Hours Aren’t the Only Game in Town
3 Anymore,” *NATIONAL LAW JOURNAL*, the following hourly billing rates were
4 reported by Sheppard, Mullin, Richter & Hampton, a leading firm in the defense of
5 wage-and-hour class actions that I opposed when litigating wage-and-hour class
6 actions: Partners: \$475-\$795; Associates: 1st Year - \$275, 2nd Year - \$310, 3rd
7 Year - \$335, 4th Year - \$365, 5th Year - \$390, 6th Year - \$415, 7th Year - \$435,
8 8th Year - \$455. I am a 12th year attorney and Senior Partner, with most of my
9 experience in class action litigation as a primary practice area. Having successfully
10 briefed and argued a published appeal in the Ninth Circuit Court of Appeals
11 involving CAFA and PAGA, having experience certifying large class actions
12 (including *ABM Industries Overtime Cases*, which was decided on appeal), and
13 having received numerous awards for my legal work, my hourly rate should be
14 adjusted upward.
- 15 b. On September 9, 2021, the Hon. Peter Wilson of the Orange County Superior Court
16 approved my \$800 hourly rate when he granted final approval of the class action
17 settlement in *Ricardo Campos Hernandez v. Adams Iron Co., Inc.*, No. 30-2019-
18 01066522-CU-OE-CXC.
- 19 c. On August 6, 2021, the Hon. Stanley Blumenfeld, Jr. of the United States District
20 Court granted final approval of the \$1,600,000 class action settlement in *Carlos*
21 *Moreno v. Pretium Packaging, Inc.* (C.D. Cal. Aug. 6, 2021) No. 8:19-cv-02500-
22 SB-DFM, 2021 WL 3673845 in which I served as lead counsel. In doing so, the
23 Court approved my then \$750 hourly rate after finding it was “reasonable, given the
24 qualifications of the attorneys who worked on this matter.” (*Id.* at p. *3.)
- 25 d. On January 19, 2021, the Hon. Elihu M. Berle of the Los Angeles County Superior
26 Court approved my \$750 hourly rate when he granted final approval of the class
27 action settlement in *Faye Zhang v. Richemont North America, Inc.*, Case No.
28 19STCV32396.

1 I declare under penalty of perjury under the laws of the State of California and the United
2 States that the foregoing is true and correct.

3 Executed on May 10, 2022, at Los Angeles, California.

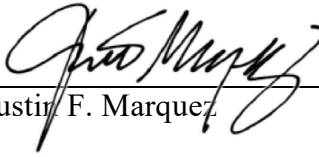
4
5 
6 Justin F. Marquez

Exhibit 1

Justin F. Marquez (SBN 262417)
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Arrash T. Fattahi (SBN 333676)
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Telephone: (714) 513-5100
Facsimile: (714) 513-5130

Attorneys for Defendant

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

NORMAJEAN FERLAND, individually, and on
behalf of all others similarly situated,

Plaintiff,

v.

COMPREHENSIVE SPINE AND SPORTS
CENTER, an unknown corporation; and DOES 1
through 10, inclusive,

Defendant.

Case No.: 21CV375218

CLASS ACTION

[Hon. Sunil R. Kulkarni, Dept. 1]

**JOINT STIPULATION RE: CLASS
SETTLEMENT**

Complaint filed: January 14, 2021
Trial date: Not set

1 This Joint Stipulation Re: Class Settlement is made by and between the Named Plaintiff,
2 NORMAJEAN FERLAND (“Plaintiff”), on her own behalf and on behalf of all members of the
3 Settlement Class, as defined below, and Defendant NAVANI PAIN MANAGEMENT INC dba
4 COMPREHENSIVE SPINE AND SPORTS CENTER (collectively, the “Parties”), in the
5 lawsuit entitled *NormaJean Ferland v. Comprehensive Spine and Sports Center*, filed in Santa
6 Clara County Superior Court, Case No. 21CV375218. This Joint Stipulation Re: Class
7 Settlement resolves all claims that were asserted or could have been asserted against Defendant
8 pertaining to the claims in the Litigation.

9 **I. DEFINITIONS**

10 **A. Administrative Costs.** All administrative costs of settlement, including cost of
11 notice to the Settlement Class, claims administration, and any fees and costs incurred or charged by
12 the Settlement Administrator in connection with the execution of its duties under this Stipulation of
13 Settlement.

14 **B. Settlement Agreement.** The terms “Agreement” or “Settlement Agreement” are
15 used synonymously herein to mean this Joint Stipulation Re: Class Settlement.

16 **C. Class Counsel.** The term “Class Counsel” as used herein means: WILSHIRE LAW
17 FIRM, PLC and all the lawyers of the firm acting on behalf of Named Plaintiff and the Settlement
18 Class. The term “Class Counsel” shall be used synonymously with the term “Plaintiff’s Counsel.”

19 **D. Court.** The term “Court” as used herein means the Superior Court of the State of
20 California for the County of Santa Clara.

21 **E. Final.** The term “Final” means: (1) the date of final affirmation of the Final Approval
22 Order from any appeal, the expiration of the time for, or the denial of, a petition to review the Final
23 Approval Order, or if review is granted, the date of final affirmation of the Final Approval Order
24 following review pursuant to that grant; or (2) the date of final dismissal of any appeal from the Final
25 Approval Order or the final dismissal of any proceeding to review the Final Approval Order,
26 provided that the Final Approval Order is affirmed and/or not reversed in any part; or (3) if no appeal
27 is filed, the expiration date of the time for the filing or noticing of any appeal from the Court’s Final
28 Approval Order, as determined under Rule 8.104(a)(3) of the California Rules of Court.

1 **F. Date of Final Approval.** The terms “Date of Final Approval” or “Final Approval
2 Order” as used herein mean the final formal judgment entered by the Court at the Final Fairness and
3 Approval Hearing in accordance with the terms herein, approving this Agreement.

4 **G. Defendant.** The term “Defendant” as used herein means NAVANI PAIN
5 MANAGEMENT INC dba COMPREHENSIVE SPINE AND SPORTS CENTER.

6 **H. Employer Taxes.** Employer-funded taxes and contributions imposed on the wage
7 portions of the Settlement Payment under the Federal Insurance Contributions Act, the Federal
8 Unemployment Tax Act, and any similar state taxes and contributions required of employers, such
9 as for unemployment insurance. Defendant shall be responsible for paying employer-side taxes
10 separately from the Settlement Amount.

11 **I. Litigation.** The term “Litigation” as used herein means the action entitled
12 *NormaJean Ferland v. Comprehensive Spine and Sports Center*, filed in Santa Clara County Superior
13 Court, Case No. 21CV375218.

14 **J. Named Plaintiff.** The term “Named Plaintiff” as used herein means NormaJean
15 Ferland.

16 **K. Net Settlement Fund.** The term “Net Settlement Amount” or “Net Settlement Fund”
17 as used herein means the Settlement Amount, as defined below, minus any award of attorneys’ fees
18 and Litigation costs, Administrative Costs, Plaintiff’s Enhancement Award, and penalties
19 recoverable pursuant to California’s Private Attorneys General Act (“PAGA”) (the “PAGA
20 Settlement”), and as provided in Sections VIII, XIII, XIV, XV, and XVI, respectively.

21 **L. Net Settlement Payments.** The term “Net Settlement Payment(s)” shall include
22 payments made to the Settlement Class as part of the Settlement, including wages, penalties and
23 interest.

24 **M. Settlement.** The term “Settlement” as used herein means this Agreement to resolve
25 the Litigation.

26 **N. Settlement Administrator.** The term “Settlement Administrator” as used herein
27 means ILYM Group, Inc., which will be responsible for the administration of the Settlement Amount,
28 as defined below, and all related matters.

1 **O. Settlement Amount.** The term “Settlement Amount” as used herein means the sum
2 of Three Hundred and Ten Thousand Dollars and Zero Cents (\$310,000.00), which shall be paid by
3 Defendant, and is inclusive of all Net Settlement Payments, Court-approved attorneys’ fees and
4 Litigation costs pursuant to Section XIII, Administrative Costs pursuant to Section VIII, Plaintiff’s
5 Enhancement Award pursuant to Section XIV, and payment to the California Labor & Workforce
6 Development Agency (“LWDA”) and to the Aggrieved Employees pursuant to the PAGA pursuant
7 to Section XVI.

8 **P. Settlement Class.** For settlement purposes only, the Parties agree to the certification
9 of a class pursuant to California *Code of Civil Procedure* § 382 defined as:

10 All persons who worked for Defendant in California as an hourly-paid or
11 non-exempt employee during the Settlement Period (together, collectively
12 referred to as the "Class Members").

13 **Q. Settlement Class Member.** The term “Settlement Class Member” as used herein
14 shall mean Class Members, except those that make a valid and timely request to be excluded
15 from the Settlement Class.

16 **R. Settlement Period.** The term “Settlement Period” as used herein means the
17 period from January 14, 2017 through September 26, 2021.

18 **S. PAGA Period.** The term “PAGA Period” as used herein means the period from
19 January 19, 2020 through September 26, 2021.

20 **T. Aggrieved Employees.** The term “Aggrieved Employees” as used herein means
21 all persons who worked for Defendant in California as an hourly-paid or non-exempt employee
22 during the PAGA Period.

23 **II. BACKGROUND**

24 **A.** In the Litigation, the Named Plaintiff alleges, *inter alia*, on behalf of herself and all
25 others similarly situated, that Defendant violated California state wage and hour laws, the California
26 *Business and Professions Code* Section 17200, *et seq.*, and PAGA, as a result of Defendant’s
27 California wage and hour policies and practices. Specifically, Named Plaintiff alleges that Defendant
28 failed to pay its employees minimum and straight time wages; failed to pay overtime and double time

1 pay; failed to provide legally compliant meal periods; failed to authorize and permit legally compliant
2 rest periods; failed to timely pay final wages at termination; failed to provide accurate itemized wage
3 statements; and failed to provide reimbursements for all necessary business-related expenses
4 incurred by the class members.

5 Class Counsel and Defendant's counsel exchanged informal discovery concerning the claims
6 set forth in the Litigation, such as a sample of putative class members' timekeeping and payroll
7 records, Defendant's policies and procedures concerning the payment of wages, the provision of
8 meal and rest breaks, issuance of wage statements, and providing all wages at separation, as well as
9 the total number of putative class members, the number of current putative class members, the
10 number of former putative class members, the wage rates in effect, and the provision of meal and
11 rest period premium wages to putative class members.

12 **B.** Named Plaintiff and Class Counsel have engaged in good faith, arms-length
13 negotiations with Defendant concerning possible settlement of the claims asserted in the Litigation.
14 On July 26, 2021, the Parties participated in a full day of mediation before Lisa Klerman, Esq., an
15 experienced and well-respected wage and hour class action mediator, that resulted in a settlement of
16 the Litigation, subject to the approval of the Court, and finalization of a formal Joint Stipulation Re:
17 Class Settlement. The Parties have engaged in extensive negotiations about the terms and conditions
18 of the Settlement at the mediation and subsequent thereto. The Parties have now formalized the
19 Settlement Agreement for submission to the Court for Preliminary and Final Approval.

20 **C.** Class Counsel has conducted an investigation of the law and facts relating to the
21 claims asserted in the Litigation and has concluded, taking into account the sharply contested issues
22 involved, the defenses asserted by Defendant, the expense and time necessary to pursue the Litigation
23 through trial and any appeals, the risks and costs of further prosecution of the Litigation, the risk of
24 an adverse outcome, the uncertainties of complex litigation, and the substantial benefits to be
25 received by the Named Plaintiff and the members of the Settlement Class pursuant to this Agreement,
26 that a settlement with Defendant on the terms and conditions set forth herein is fair, reasonable,
27 adequate, and in the best interests of the Settlement Class. Named Plaintiff, on her own behalf and
28 on behalf of the Settlement Class, has agreed to settle the Litigation with Defendant on the terms set

1 forth herein.

2 **D.** Defendant has concluded that, because of the substantial expense of defending against
3 the Litigation, the length of time necessary to resolve the issues presented herein, the inconvenience
4 involved, and the concomitant disruption to its business operations, it is in Defendant's best interests
5 to accept the terms of this Agreement. Defendant denies each of the allegations and claims asserted
6 against them in the Litigation. However, Defendant nevertheless desires to settle the Litigation for
7 the purpose of avoiding the burden, expense and uncertainty of continuing litigation and for the
8 purpose of putting to rest the controversies engendered by the Litigation.

9 **E.** This Agreement is intended to and does effectuate the full, final and complete
10 settlement of all allegations and claims that were asserted, or could have been asserted, in the
11 Litigation by Named Plaintiff and members of the Settlement Class as set forth in Section II.A.

12 **III. JURISDICTION**

13 The Court has jurisdiction over the Parties and the subject matter of this Litigation. The
14 Litigation includes claims that, while Defendant denies them in their entirety, would, if proven,
15 authorize the Court to grant relief pursuant to the applicable statutes. After the Court has granted
16 Final Approval of the Settlement and after the Court has ordered the entry of Judgment, pursuant to
17 California *Code of Civil Procedure* Section 664.6, the Court shall retain jurisdiction of this action
18 solely for the purpose of interpreting, implementing, and enforcing this Settlement consistent with
19 the terms set forth herein.

20 **IV. STIPULATION OF CLASS CERTIFICATION**

21 The Parties stipulate to the certification of this Settlement Class for purposes of Settlement
22 only. If the Settlement does not become effective, the fact that the Parties were willing to stipulate
23 to certification as part of the Settlement shall not be admissible or used in any way whatsoever and
24 specifically not in connection with the question of whether the Court should certify any claims in a
25 non-settlement context in the Litigation or in any other lawsuit. If the Settlement does not become
26 effective, Defendant reserves the right to contest any and all issues relating to class certification and
27 liability.
28

1 **V. MOTION FOR PRELIMINARY APPROVAL**

2 Named Plaintiff will bring a motion before the Court for an order preliminarily approving the
3 Settlement including the Notice of Class Action and Proposed Settlement, and Workweek Dispute
4 Form, which are attached hereto as **Exhibits “A” and “B,”** respectively, and including certification
5 of the Settlement Class for settlement purposes only.

6 The date that the Court grants Preliminary Approval of this Agreement will be the
7 “Preliminary Approval Date.” Class Counsel will prepare the Motion for Preliminary Approval and
8 will provide Defendant’s counsel the opportunity to review it and provide input before it is filed. On
9 the same date on which it is filed with the Court, Class Counsel shall concurrently submit the Motion
10 for Preliminary Approval and the Settlement Agreement to the LWDA in compliance with Labor
11 Code § 2698 *et seq.*, the Private Attorneys General Act.

12 **VI. STATEMENT OF NO ADMISSION**

13 **A.** Defendant denies any liability or wrongdoing of any kind and further denies that, for
14 any purpose other than settling the Litigation, this Litigation is appropriate for representative
15 treatment. Defendant maintains, among other things, that it has complied with California law in all
16 aspects. Nothing in the Settlement negotiations, approval of Settlement, orders related to Settlement
17 or any other aspect of the Settlement will be construed or deemed as an admission of liability,
18 culpability, negligence, or wrongdoing on the part of Defendant.

19 **B.** Nothing in this Agreement, nor any action taken in implementation thereof, nor any
20 statements, discussions or communications, nor any materials prepared, exchanged, issued or used
21 during the course of the negotiations leading to this Agreement or the Settlement, is intended by the
22 Parties to constitute, nor will any of the foregoing constitute, be introduced, be used or be admissible
23 in any way in this case or any other judicial, arbitral, administrative, investigative or other forum or
24 proceeding as evidence of any violation of any federal, state, or local law, statute, ordinance,
25 regulation, rule or executive order, or any obligation or duty at law or in equity. The Parties
26 themselves agree not to introduce, use, or admit this Agreement, directly or indirectly, in this case or
27 any other judicial, arbitral, administrative, investigative, or other forum or proceeding, as purported
28 evidence of any violation of any federal, state, or local law, statute, ordinance, regulation, rule or

executive order, or any obligation or duty at law or in equity, or for any other purpose. Notwithstanding the foregoing, this Agreement may be used and filed in any proceeding before the Court that has as its purpose the interpretation, implementation, or enforcement of this Agreement or any orders or judgments of the Court entered in connection with implementation of the Settlement.

C. None of the documents produced or created by Named Plaintiff or the Settlement Class in connection with the claims procedures or claims settlement procedures constitute, and they are not intended to constitute, an admission by Defendant of any violation of any federal, state, or local law, statute, ordinance, regulation, rule, or executive order, or any obligation or duty at law or in equity.

D. The Parties agree that class certification pursuant to California *Code of Civil Procedure* Section 382 under the terms of this Agreement is for settlement purposes only. Nothing in this Agreement will be construed as an admission or acknowledgement of any kind that any class should be certified or given collective treatment in the Litigation or in any other action or proceeding. Further, neither this Agreement nor the Court's actions with regard to this Agreement will be admissible in any court or other tribunal regarding the propriety of class certification or collective treatment. In the event that this Agreement is not approved by the Court or any appellate court, is terminated, or otherwise fails to be enforceable, Named Plaintiff will not be deemed to have waived, limited, or affected in any way any claims, rights, or remedies in the Litigation, and Defendant will not be deemed to have waived, limited, or affected in any way any of their objections or defenses in the Litigation.

VII. WAIVER & RELEASE

The intent of this Release is that all claims pleaded in the complaints filed in the Litigation, all amendments thereto, or any claims or theories that could have been pled in the complaints based on the alleged facts and/or primary rights are fully and forever released by this Joint Stipulation Re: Class Settlement, including all and any PAGA claims and penalties arising from such factual predicates, theories, primary rights, or claims.

A. **General Release by Named Plaintiff Only.**

Upon the date the Court's Final Approval Order becomes "Final" (as that term is defined in

1 Section I(E) above), Named Plaintiff fully and finally releases Defendant, and each of its past, present
2 and future agents, employees, servants, officers, directors, partners, trustees, representatives,
3 shareholders, stockholders, attorneys, parents, subsidiaries, equity sponsors, related
4 companies/corporations and/or partnerships (defined as a company/corporation and/or partnership
5 that is directly or indirectly, under common control with Defendant or any of its parents and/or
6 affiliates), divisions, assigns, predecessors, successors, insurers, consultants, joint ventures, any
7 actual or alleged joint employers, affiliates, and alter-egos, and all of their respective past, present
8 and future employees, directors, officers, agents, attorneys, insurers, stockholders, fiduciaries,
9 parents, subsidiaries, and assigns (collectively, the “Released Parties”), from any and all claims,
10 known and unknown, under federal, state and/or local law, statute, ordinance, regulation, common
11 law, or other source of law, including but not limited to claims arising from or related to Named
12 Plaintiff’s employment with Defendant and/or the termination of Named Plaintiff’s employment
13 (“Named Plaintiff’s Released Claims”). Named Plaintiff’s Released Claims include, but are not
14 limited to, all claims asserted in, arising from or related in any way to the Litigation, including
15 without limitation any and all claims alleged in the Litigation, and all claims arising from or related
16 to the facts, theories, or claims alleged in the Litigation, that could have been asserted as part of the
17 Litigation based on the facts or theories alleged. Named Plaintiff’s Released Claims include all
18 claims, including, but not limited to, failure to pay wages; failure to pay minimum wages; failure to
19 pay straight time compensation, overtime compensation, and/or double-time compensation,
20 reporting time compensation, and/or interest; the calculation of the regular rate of pay; missed, late,
21 short or interrupted meal and/or rest periods, including any claim for any alleged failure to pay
22 premiums for missed, late, short or interrupted meal or rest periods, or to pay such premiums at the
23 regular rate of compensation; wages related to time rounding and timekeeping; reimbursement for
24 business expenses or any other claim that the Released Parties allowed or required employees to bear
25 any of the costs associated with the operation of the Released Parties’ business, including without
26 limitation costs for equipment; payment for all hours worked, including off-the-clock work;
27 inaccurate or otherwise improper wage statements and/or failure to keep or maintain accurate
28 records; unlawful deductions; unlawful payment instruments; failure to timely pay wages upon

1 discharge or quitting; paid sick leave, including that sick leave was calculated at an incorrect rate of
2 pay; any claim for unfair business practices arising out of or related to any or all of the
3 aforementioned claims; any claim for penalties arising out of or related to any or all of the
4 aforementioned claims, including, but not limited to, recordkeeping penalties, wage statement
5 penalties, minimum-wage penalties, and waiting-time penalties; and attorneys' fees and costs.
6 Named Plaintiff's Released Claims include all claims arising under the California Labor Code
7 (including, but not limited to, Sections 200, 201, 201.1, 201.3, 201.5, 202, 203, 204, 205.5, 206, 210,
8 212, 216, 218, 218.5, 218.6, 221, 222, 222.5, 223, 224, 225, 225.5, 226, 226.2, 226.3, 226.7, 226.8,
9 227.3, 245, 246, 246.5, 247, 247.5, 248, 248.5, 249, 256, 450, 510, 511, 512, 516, 550, 551, 552,
10 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.1, 1194.2, 1197, 1197.1, 1197.2, 1197.5, 1198,
11 1198.5, 1199, 2698 *et seq.*, 2699 *et seq.*, 2699.5, 2800, 2802, 2926, and 2927); all claims arising
12 under the Wage Orders of the California Industrial Welfare Commission; California *Business and*
13 *Professions Code* Section 17200, *et seq.*; the California Labor Code; California Government Code;
14 the California Civil Code, including but not limited to, Sections 3287, 3289, 3336 and 3294;
15 California Code of Civil Procedure § 1021.5; the California common law of contract; the Fair Labor
16 Standards Act, 29 U.S.C. § 201 *et seq.*; federal common law; and the Employee Retirement Income
17 Security Act, 29 U.S.C. § 1001, *et seq.* Named Plaintiff's Released Claims include any and all claims
18 under the Private Attorneys General Act, Cal. Lab. Code § 2698 *et seq.*, of any kind, including but
19 not limited to the PAGA claims asserted in the Litigation. Named Plaintiff's Released Claims also
20 include all claims for lost wages and benefits, emotional distress, retaliation, punitive damages, and
21 attorneys' fees and costs arising under federal, state, or local laws for discrimination, harassment,
22 retaliation, and wrongful termination, such as, by way of example only, (as amended) 42 U.S.C.
23 Section 1981, Title VII of the Civil Rights Act of 1964, the Americans With Disabilities Act, the
24 Age Discrimination in Employment Act, and the California Fair Employment and Housing Act; and
25 the law of contract and tort. This Release excludes the release of claims not permitted by law. (The
26 Release set forth in this Section A shall be referred to hereinafter as the "General Release.")

27 Named Plaintiff's Released Claims include all claims, whether known or unknown. Even if
28 Named Plaintiff discovers facts in addition to or different from those that Named Plaintiff now knows

1 or believes to be true with respect to the subject matter of Named Plaintiff's Released Claims, those
2 claims will remain released and forever barred. Thus, Named Plaintiff expressly waives and
3 relinquishes the provisions, rights and benefits of Section 1542 of the California Civil Code, which
4 reads:

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

12 **B. Release as to All Settlement Class Members.**

13 Upon the date the Court's Final Approval Order becomes "Final" (as that term is defined in
14 Section I(E) above), Named Plaintiff and all Class Members, except those that make a valid and
15 timely request to be excluded from the Settlement Class ("Settlement Class Members" as that term
16 is defined in Section I(Q) above), fully and finally release the Released Parties from any and all
17 claims alleged in the Litigation arising during the Settlement Period, and all claims arising in
18 connection with or related to the facts, theories, primary rights, or claims alleged in the Litigation
19 arising during the Settlement Period, including, but not limited to, failure to pay wages; failure to
20 pay minimum wages; failure to pay straight time compensation, overtime compensation, and/or
21 double-time compensation, reporting time compensation, and/or interest; the calculation of the
22 regular rate of pay; missed, late, short or interrupted meal and/or rest periods, including any claim
23 for any alleged failure to pay premiums for missed, late, short or interrupted meal or rest periods, or
24 to pay such premiums at the regular rate of compensation; wages related to time rounding and
25 timekeeping; reimbursement for business expenses or any other claim that Defendant allowed or
26 required employees to bear any of the costs associated with the operation of Defendant's business,
27 including without limitation costs for equipment; payment for all hours worked, including off-the-
28 clock work; inaccurate or otherwise improper wage statements and/or failure to keep or maintain
accurate records; unlawful deductions; unlawful payment instruments; failure to timely pay wages
upon discharge or quitting; paid sick leave, including that sick leave was calculated at an incorrect

rate of pay; any claim for unfair business practices arising out of or related to any or all of the aforementioned claims; any claim for penalties arising out of or related to any or all of the aforementioned claims, including, but not limited to, recordkeeping penalties, wage statement penalties, minimum-wage penalties, and waiting-time penalties; and attorneys' fees and costs. For purposes of clarification, the claims released by the Settlement Class Members include any and all claims that arise out of or in connection with the claims and or facts alleged in the Litigation, and any claims which could have been asserted in the Litigation arising from the alleged facts, claims, theories, and/or primary rights alleged to have been invaded to the fullest extent permitted by law. Without limitation by any other language in this Joint Stipulation Re: Class Settlement, this Release includes claims against the Released Parties arising during the Settlement Period alleging a violation of the Wage Orders of the California Industrial Welfare Commission; California Code of Civil Procedure § 1021.5; California *Business and Professions Code* Section 17200, *et seq.*; the California Private Attorneys General Act of 2004; and/or alleging a violation of the California Labor Code (including claims under §§ 200, 201, 201.3, 202, 203, 204, 206, 210, 212, 216, 218.5, 218.6, 221, 223, 224, 225, 225.5, 226, 226.3, 226.7, 227.3, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2698 *et seq.*, 2800 and 2802).

Settlement Class Members who endorse their settlement checks waive and release any claims under the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.* ("FLSA") arising during the Settlement Period and reasonably related to any or all of the aforementioned claims.

This Release excludes the release of claims not permitted to be released by law.

C. Release as to the PAGA Claims.

Upon the date the Court's Final Approval Order becomes "Final" (as that term is defined in Section I(E) above), Named Plaintiff, the Aggrieved Employees and the LWDA fully and finally release the Released Parties from all PAGA Released Claims, as defined herein. "PAGA Released Claims" means any and all claims alleged in the PAGA letter to the LWDA and any amendments thereto, any and all claims alleged in the Litigation arising under PAGA during the PAGA Period, and all claims arising from or related to the facts, theories, claims or primary rights as those alleged in the Litigation arising under PAGA during the PAGA Period, and includes all claims under PAGA

arising during the PAGA Period associated with all claims against the Released Parties for or arising in connection with (a) unpaid wages, including failure to pay minimum wages; failure to pay straight time compensation, overtime compensation, double-time compensation, reporting time compensation; and/or interest; the calculation of the regular rate of pay; payment for all hours worked, including off-the-clock work; wages related to time rounding and timekeeping; (b) missed, late, short or interrupted meal and/or rest periods, including any claim for any alleged failure to pay premiums for missed, late, short or interrupted meal or rest periods, or to pay such premiums at the regular rate of compensation; (c) reimbursement for business expenses or any other claim that the Released Parties allowed or required employees to bear any of the costs associated with the operation of the Released Parties' business; (d) inaccurate or otherwise improper wage statements and/or failure to keep or maintain accurate records; (e) failure to timely pay wages upon discharge or quitting; (f) any claim for unfair business practices arising out of or related to any or all of the aforementioned claims; (g) any claim for penalties arising out of or related to any or all of the aforementioned claims, including, but not limited to, recordkeeping penalties, wage statement penalties, minimum-wage penalties, and waiting-time penalties; and (h) attorneys' fees and costs. For purposes of clarification, the claims released by the Aggrieved Employees and the LWDA include any and all claims under the PAGA that arise out of or in connection with the claims and or facts alleged in the Litigation, and any claims which could have been asserted in the Litigation arising from the alleged facts, claims, theories, and/or primary rights alleged to have been invaded to the fullest extent permitted by law. Without limitation by any other language in this Joint Stipulation Re: Class Settlement, the Release includes claims against the Released Parties arising under PAGA during the PAGA Period alleging violation of the Wage Orders of the California Industrial Welfare Commission; and/or alleging violation of the California Labor Code (including claims under §§ 200, 201, 201.3, 202, 203, 204, 206, 210, 212, 216, 218.5, 218.6, 221, 223, 224, 225, 225.5, 226, 226.3, 226.7, 227.3, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2698 *et seq.*, 2800 and 2802). This Release excludes the release of claims not permitted to be released by law.

VIII. SETTLEMENT ADMINISTRATOR

1 Named Plaintiff and Defendant, through their respective counsel, have selected IL YM Group,
2 Inc. as the Settlement Administrator to administer the Settlement, which includes, but is not limited
3 to, distributing and responding to inquiries about the Notice of Class Action and Proposed Settlement
4 and Workweek Dispute Form, determining the validity of any disputes and opt-outs, calculating all
5 amounts to be paid from the Net Settlement Amount, withholding all appropriate disbursements of
6 taxes, and complying with reporting obligations. Charges and expenses of the Settlement
7 Administrator, not to exceed \$15,000.00, will be paid from the Settlement Amount. If the actual
8 Settlement Administrator fees are less than the Parties' estimation, the difference between the actual
9 and estimated Settlement Administrator fees will revert to the Settlement Class Members on a pro-
10 rata basis. The Parties agree that this Agreement may be provided to the Settlement Administrator
11 to effectuate its implementation of the settlement procedures herein.

12 **IX. NOTICE, OBJECTIONS AND EXCLUSION RIGHTS**

13 **A. Notice.**

14 Named Plaintiff and Defendant, through their respective attorneys, have jointly prepared a
15 Notice of Class Action and Proposed Settlement (the "Notice") and a Workweek Dispute Form,
16 which in substance will be provided to the members of the Settlement Class as follows:

17 As soon as practicable following Preliminary Approval of the Settlement, but no later than
18 twenty (20) business days after the Court's Preliminary Approval Order, Defendant will provide to
19 the Settlement Administrator the following information about each Settlement Class member ("Class
20 List"): (1) name; (2) last known home address and phone number; (3) number of workweeks as a
21 class member during the Settlement Period or the dates of employment for each Class Member; and
22 (4) Social Security number. Defendant further agrees to consult with the Settlement Administrator
23 prior to the production date to ensure that the format will be acceptable to the Settlement
24 Administrator. Plaintiff's Counsel shall also receive a redacted Class List that shall only disclose an
25 identification number attributed to each class member and the number of workweeks each class
26 member worked during the Settlement Period.

27 The Settlement Administrator shall run all the addresses provided through the United States
28 Postal Service NCOA database (which provides updated addresses for any individual who has moved

1 in the previous four years who has notified the U.S. Postal Service of a forwarding address) to obtain
2 current address information, and shall mail the Notice and Workweek Dispute Form to the members
3 of the Settlement Class via first-class regular U.S. Mail using the most current mailing address
4 information available, within ten (10) calendar days of the receipt of the Class List from Defendant.
5 The Notice shall provide Class Members forty-five (45) days' notice of all applicable dates and
6 deadlines.

7 The Notice will also include information regarding the nature of the Litigation; a summary
8 of the terms of the Settlement; the definition of the Settlement Class; a statement that the Court has
9 preliminarily approved the Settlement; the nature and scope of the claims being released; the
10 procedure and time period for objecting to the Settlement, the date and location of the Final Approval
11 hearing; information regarding the opt-out procedure; dates of employment, and the estimated
12 individual settlement payment for the Class Member. The Notice shall enclose the Workweek
13 Dispute Form for Settlement Class members.

14 For each Class Member, the Workweek Dispute Form will identify the number of Eligible
15 Workweeks that he or she was employed and inform the employee of his or her right to dispute this
16 number by completing and returning the form within forty-five (45) days of the postmark date of the
17 Workweek Dispute Form. A Settlement Class member's receipt of his or her share of the Net
18 Settlement Payments ("Individual Settlement Payment") is not conditional on the submission of the
19 Workweek Dispute Form. Absent the receipt of a Workweek Dispute Form, the number of
20 workweeks identified in the Workweek Dispute Form shall be deemed accurate. The settlement of
21 any disputes concerning the number of Eligible Workweeks is discussed in Section X, below.

22 If a Notice is returned from the initial notice mailing, the Settlement Administrator will
23 perform a skip trace in an attempt to locate a more current address. If the Settlement Administrator
24 is successful in locating a new address, it will re-mail the Notice to the Settlement Class member.
25 Further, any Notices returned with a forwarding address to the Settlement Administrator, as non-
26 deliverable before the deadline date, shall be sent to the forwarding address affixed thereto.

27 Should any member of the Settlement Class timely submit a Workweek Dispute Form with
28 a deficiency, the Settlement Administrator shall, within five (5) calendar days of receipt by the

1 Settlement Administrator of each timely submitted Workweek Dispute Form, send a deficiency
2 notice. The deficiency notice will provide the member of the Settlement Class no more than fourteen
3 (14) days from the mailing of the deficiency notice to postmark a written response to cure all
4 deficiencies. The failure of a member of Settlement Class to timely submit a Workweek Dispute or
5 timely respond to a notice of deficiency shall invalidate the dispute unless all Parties' counsel agree
6 to allow the dispute.

7 No later than twenty-five (25) days before the Final Approval Hearing, the Settlement
8 Administrator shall provide counsel for Defendant and Class Counsel with a declaration attesting to
9 the completion of the Notice process, including the number of attempts to obtain valid mailing
10 addresses for and re-sending of any returned Notices, as well as the number of valid Workweek
11 Dispute Forms, opt-outs and deficiencies that the Settlement Administrator received.

12 **B. Objections.**

13 In order for any Settlement Class member to object to this Settlement, or any term of it, the
14 person making the objection must not submit a request for exclusion (i.e., must not opt out). To
15 object to the Settlement in writing, a Class Member may send the objection to the Settlement
16 Administrator no later than forty-five (45) days after the Notice was initially mailed to the Settlement
17 Class members. A Settlement Class member making an objection may appear at the Final Approval
18 Hearing with or without submitting any written objection. The Settlement Class member may appear
19 personally or through an attorney, at his or her own expense, at the Final Approval hearing to present
20 his or her objection directly to the Court. If a Settlement Class member objects to the Settlement,
21 the Settlement Class member will remain a member of the Settlement Class and if the Court approves
22 this Agreement, the Settlement Class member will be bound by the terms of the Settlement and Final
23 Approval Order in the same way and to the same extent as a Settlement Class member who does not
24 object. The date of mailing of the Notice to the objecting Settlement Class member shall be
25 conclusively determined according to the records of the Settlement Administrator. The Court retains
26 final authority with respect to the consideration and admissibility of any Settlement Class member
27 objections. Any Settlement Class member who submits an objection may also participate in the
28 settlement.

1 Named Plaintiff hereby endorses the Settlement as fair, reasonable and adequate and in the
2 best interests of the Settlement Class.

3 **C. Opportunity to be Excluded and Defendant's Opt-Out Threshold.**

4 In order for any Settlement Class member to validly exclude himself or herself from the
5 Settlement Class and the Settlement (i.e., to validly opt out), a written request for exclusion ("Request
6 to be Excluded") must be signed by the Settlement Class member or his or her authorized
7 representative and must be sent to the Settlement Administrator, postmarked by no later than forty
8 five (45) days after the date the Settlement Administrator initially mails the Notice to the Settlement
9 Class members. The Notice shall contain instructions on how to opt out.

10 The date of the initial mailing of the Notice, and the date the signed Request to be Excluded
11 was postmarked, shall be conclusively determined according to the records of the Settlement
12 Administrator. Any Settlement Class member who timely and validly submits a Request to be
13 Excluded from the Settlement Class and the Settlement will not be entitled to any portion of the Net
14 Settlement Payments, will not be bound by the terms and conditions of the Settlement, and will not
15 have any right to object, appeal, or comment thereon.

16 Any member of the Settlement Class who does not timely file and mail a Request to be
17 Excluded from the Settlement Class will be deemed included in the Settlement Class in accordance
18 with this Settlement.

19 If more than ten percent (10%) of the Class Members opt out of the Settlement and Settlement
20 Agreement, Defendant can terminate the Settlement and this Settlement Agreement shall be void ab
21 initio. In the event that Defendant exercises such rights under this paragraph, the Named Plaintiff
22 and Defendant shall resume the Litigation through and until there is a final settlement of the
23 Litigation. Defendant must notify Class Counsel and the Court of such a decision to withdraw and
24 terminate the Settlement no later than five (5) days prior to the date of the Final Approval Hearing.
25 In the event of Defendant's withdrawal, no party may use the fact that the Parties agreed to the
26 Settlement for any reason, and Defendant shall pay all administration expenses incurred through the
27 date of its termination of the Settlement.
28

D. Cooperation

The Parties and their respective counsel agree not to solicit or encourage members of the Settlement Class to refrain from participating in the Settlement, to opt out of the Settlement, or to object to the Settlement, directly or indirectly, through any means. However, if a Settlement Class member contacts Class Counsel, Class Counsel may discuss the terms of the Settlement and the Settlement Class member's options.

X. DISPUTES PROCEDURE

Named Plaintiff and Defendant have agreed upon the following payment formula to resolve all disputes submitted by Settlement Class members during the Settlement Period.

The Settlement Administrator will calculate the total number of workweeks for all Class Members who were employed by any Defendant during the Settlement Period ("Total Workweeks"). The value of each Workweek shall be determined by the Settlement Administrator by dividing the Net Settlement Fund by the total number of Workweeks available to the Class Members who do not opt out in accordance with Section IX(C) above during the Settlement Period ("Workweek Point Value").

An Individual Settlement Payment for each Class Member will then be determined by multiplying a Class Member's workweeks worked during the Class Period ("Eligible Workweeks") by the Workweek Point Value. The Individual Settlement Payment will be reduced by any required legal deductions, for each Settlement Class Member.

If a member of the Settlement Class does not dispute the number of Eligible Workweeks set forth in the Workweek Dispute Form, such person need not take further action to participate in the Settlement. If the member of the Settlement Class disputes the number of Eligible Workweeks set forth in the Workweek Dispute Form, such person must follow the directions in the Workweek Dispute Form and in the Notice, including preparing a statement setting forth the number of Eligible Workweeks that such person believes in good faith is correct, and stating that the member of the Settlement Class authorizes the Settlement Administrator to review the Settlement Class member's personnel file and leave management records to determine such information, and attaching any relevant documentation in support thereof. Documentary evidence and paystubs are helpful to

1 substantiate such person's dispute claim, but it is not required. The member of the Settlement Class
2 must mail the signed and completed statement no later than forty-five (45) days after the date of the
3 mailing of the Workweek Dispute Form, or the number of Eligible Workweeks set forth in the Notice
4 and Workweek Dispute Form will govern the Individual Settlement Payment to the member of the
5 Settlement Class.

6 Upon timely receipt of any such challenge, the Settlement Administrator, in consultation with
7 Class Counsel and counsel for Defendant, will review the pertinent payroll records showing the dates
8 the Settlement Class member was employed and the pertinent leave(s) taken, which records
9 Defendant agrees to make available to the Settlement Administrator and Class Counsel.

10 After consulting with Class Counsel and counsel for Defendant, the Settlement Administrator
11 shall compute the number of Eligible Workweeks to be used in computing the Settlement Class
12 member's pro rata share of the Net Settlement Amount. In the event there is a disparity between the
13 dates a Settlement Class member claims he or she worked during the Settlement Period and the dates
14 indicated by Defendant's records, Defendant's records will control unless inconsistent with paycheck
15 stub(s) (or bona fide copies thereof) provided by the Settlement Class member, in which case the
16 paycheck stub(s) will control. The Parties shall file with the Court all disputes submitted, and the
17 resolution of those disputes. The Court shall have the right to review any decision made by the
18 Settlement Administrator regarding a claim dispute.

19 **XI. COMPUTATION AND DISTRIBUTION OF PAYMENTS**

20 **A. Distribution Formula.**

21 Members of the Settlement Class not opting out will receive a lump sum payment as good
22 and valuable consideration for the waiver and release of claims set forth in Sections VII(B) and (C),
23 above, in an amount determined by the Settlement Administrator in accordance with the provisions
24 of this Agreement. The lump sum payment to each member of the Settlement Class not excluding
25 him/herself will be determined in accordance with the procedure set forth in Section X.

26 **B. Funding of Settlement.**

27 Within thirty (30) calendar days following the date on which the Court's Final Approval
28 Order becomes "Final" and a determination has been made of the pro-rata share of the settlement

1 amount to which each member of the Settlement Class is entitled, Defendant will deposit the
2 Settlement Amount into an interest-bearing trust account for the benefit of the Settlement Class
3 Members and Class Counsel, through the Settlement Administrator (“Funding of the Settlement”).
4 At no time prior to the Court’s Final Approval Order becoming “Final” shall Defendant be required
5 to escrow any portion of the Settlement Amount.

6 **C. Time for Distribution & *Cy Pres*.**

7 The Settlement Administrator shall cause the Settlement Amount (inclusive of the Net
8 Settlement Amount, the Court approved attorneys’ fees and Litigation costs, Court-approved
9 Plaintiff’s Enhancement Award, and PAGA Settlement) to be mailed within twenty-one (21)
10 calendar days following the Funding of the Settlement . At no time will Defendant be required to
11 escrow any portion of the Settlement Amount. The settlement checks will contain all necessary
12 language to also release the Fair Labor Standards Act (“FLSA”) claims for the Settlement Class
13 members in this action.

14 Settlement checks will be valid for 180 days, and all funds remaining from uncashed checks
15 after 180 days shall be void. No portion of the uncashed funds shall revert back to Defendant. The
16 Parties agree that this disposition results in no “unpaid residue” under California Civil Code Section
17 384. Therefore, Defendant will not be required to pay any interest on said amount.

18 The uncashed amount shall go into a pool of funds to be divided, pro rata, among all
19 Settlement Class members who previously cashed their payment. Those settlement checks will be
20 valid for 180 days, and all funds remaining from those uncashed checks after 180 days shall be void.
21 The uncashed amount will be distributed by the Settlement Administrator to the State Controller’s
22 Unclaimed Property Fund. The Settlement Administrator shall provide a declaration of deposit with
23 the State Controller’s Unclaimed Property Fund, which will be served on Class Counsel and
24 Defendant’s Counsel within ten (10) calendar days of payment of the residual to such beneficiary

25 However, in the event that the Parties agree that the amount of uncashed checks is less than
26 five thousand dollars (\$5,000.00), the funds shall be paid as a *cy pres* award. The Parties select Los
27 Angeles Trial Lawyers’ Charities, 2708 Wilshire Boulevard, Suite 391, Santa Monica, CA 90403, as
28 the *cy pres* recipient. If the Court does not approve the *cy pres* designee, the Parties shall select a

new *cy pres* designee, with approval by the Court. If the Court determines that Defendant will be required to pay any interest on the *cy pres* award, there will be no *cy pres* award, and the uncashed amount will instead be distributed by the Settlement Administrator to the State Controller's Unclaimed Property Fund. The Settlement Administrator shall provide a declaration of deposit with the State Controller's Unclaimed Property Fund, which will be served on Class Counsel and Defendant's Counsel within ten (10) calendar days of payment of the residual to such beneficiary.

Any Settlement Class member who does not opt-out will be nevertheless bound by the terms of the agreement regardless of whether he or she cashes the check.

XII. NO CONTRIBUTIONS TO EMPLOYEE BENEFIT PLAN

The amounts paid under this Agreement do not represent a modification of any previously credited hours of service under any employee benefit plan, policy, or bonus program sponsored by Defendant. Such amounts will not form the basis for additional contributions to, benefits under, or any other monetary entitlement under, benefit plans (self-insured or not) sponsored by Defendant, policies or bonus programs. Any payments made under the terms of this Settlement shall not be applied retroactively, currently or on a going forward basis as salary, earnings, wages, or any other form of compensation for the purposes of Defendant's benefit plan, policy or bonus program. Defendant retain the right to modify the language of their benefit plans, policies and bonus programs to effect this intent and to make clear that any amounts paid pursuant to this Settlement are not for "hours worked," "hours paid," "hours of service," or any similar measuring term as defined by applicable plans, policies and bonus programs for purpose of eligibility, vesting, benefit accrual, or any other purpose, and that additional contributions or benefits are not required by this Settlement.

XIII. CLASS COUNSEL ATTORNEYS' FEES AND LITIGATION COSTS

Defendant shall not oppose an application by Class Counsel for, and Class Counsel shall not seek or receive an amount in excess of \$103,333.33, which represents one-third of the Settlement Amount for all past and future attorneys' fees necessary to prosecute, settle and administer the Litigation and this Settlement. Additionally, Defendant shall not oppose an application by Class Counsel for, and Class Counsel shall not seek or receive an amount in excess of \$15,000.00, which represents all past and future Litigation costs and expenses necessary to prosecute, settle and

administer the Litigation and this Settlement. Any attorneys' fees or Litigation costs awarded to Class Counsel by the Court as part of the Settlement Amount shall be deducted from the Settlement Amount for the purpose of determining the Net Settlement Amount. Class Counsel shall submit a declaration to the Court detailing the costs incurred and/or expected to be incurred in this Litigation. The "future" aspect of these amounts include, without limitation, all time and expenses expended by Class Counsel in defending the Settlement and securing Preliminary and Final Approval (including any appeals therein). There will be no additional charge of any kind to either the members of the Settlement Class or request for additional consideration from Defendant for such work. This amount shall include all attorneys' fees, Litigation costs, and expenses for which Named Plaintiff and Class Counsel could claim under any legal theory whatsoever. Within twenty-one (21) calendar days following the Funding of the Settlement, the Settlement Administrator shall disburse payment from the Settlement Amount for the amount of attorneys' fees and Litigation costs approved by the Court to Class Counsel. Should the Court approve a lesser percentage or amount of fees and/or Litigation costs than the amount that Class Counsel ultimately seeks, then any such unapproved portion or portions shall revert into the Net Settlement Amount to be distributed between the Settlement Class Members on a pro-rata basis.

XIV. PLAINTIFF'S ENHANCEMENT AWARD

Defendant shall not oppose an application by Named Plaintiff, and Named Plaintiff shall not seek or receive an amount in excess of \$7,500.00 for her participation in and assistance with the Litigation (*i.e.*, Named Plaintiff's class representative enhancement / service award). Any enhancement awarded to Named Plaintiff by the Court as part of the Settlement Amount shall be deducted from the Settlement Amount for the purpose of determining the Net Settlement Amount, and shall be reported on IRS Form 1099. If the Court approves an enhancement of less than \$7,500.00 to Named Plaintiff, then the unapproved portion or portions shall revert into the Net Settlement Amount to be distributed between the Settlement Class Members on a pro-rata basis. Payment of Plaintiff's Enhancement Award shall be contingent on the Settlement being approved by the Court and becoming effective.

XV. TAXATION AND ALLOCATION

1 The Parties agree that Plaintiff, Class Counsel, and Class Members shall assume full
2 responsibility and liability for the payment of taxes due on such awards. Plaintiff and Participating
3 Class Members represent and warrant that they understand that it is their sole obligation to pay
4 appropriate federal, state, and local income taxes on any amounts they receive under this Agreement
5 that lawfully qualify as taxable income. Defendant shall be responsible for paying employer-side
6 taxes separately from the Settlement Amount.

7 All Individual Settlement Payments will be allocated as follows (“Net Settlement
8 Allocation”):

9 (1) 33% as wages; and

10 (2) 67% as penalties, interest, and any other non-taxable items.

11 The wage portion of each Individual Settlement Payment will be subject to W-2 reporting
12 and, therefore, normal employee’s share of payroll taxes and withholdings will be deducted pursuant
13 to applicable state and federal law. Settlement Class Members will be issued an IRS Form 1099 for
14 the portion of their Individual Settlement Payments that is treated as penalties and interest and any
15 other non-taxable items, and will assume full responsibility and liability for the payment of taxes due
16 on such awards, if any. The Parties make no representations about the tax consequences to the
17 portion of the Individual Settlement Payments representing interest and penalties.

18 Finally, any and all Employer Taxes which Defendant normally would be responsible for
19 paying based on the Individual Settlement Payments made to the Settlement Class Members will be
20 paid by Defendant in addition to and not as a deduction from the Settlement Amount based on the
21 stipulated Net Settlement Allocation. The claims administrator shall calculate the employer-side
22 taxes and administer such tax payments for Defendant.

23 CIRCULAR 230 DISCLAIMER: EACH PARTY TO THIS AGREEMENT (FOR
24 PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY” AND EACH PARTY TO
25 THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN “OTHER PARTY”)
26 ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND
27 NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES
28 OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR

1 SHALL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE
2 CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED
3 STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2)
4 THE ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER, OR ITS
5 OWN, INDEPENDENT LEGAL AND TAX ADVISERS FOR ADVICE (INCLUDING TAX
6 ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS
7 AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR ANY
8 ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY
9 UPON ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO
10 ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE
11 ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER
12 PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY OF
13 ANY SUCH ATTORNEY'S OR ADVISER'S TAX STRATEGIES (REGARDLESS OF
14 WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE
15 ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY
16 TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS
17 AGREEMENT.

18 **XVI. PRIVATE ATTORNEY GENERAL ACT ALLOCATION**

19 In order to implement the terms of this Settlement and to settle claims alleged under the
20 Private Attorneys General Act, California *Labor Code* Section 2698 *et seq.*, the Parties agree to
21 allocate \$10,000.00 from the Settlement Amount as penalties authorized by the California Labor
22 Code Private Attorneys General Act of 2004. Seventy-five percent (75%) of this amount will be
23 paid to the LWDA and twenty-five percent (25%) of this amount will be distributed to the Aggrieved
24 Employees (on a pro-rata basis based on the number of pay periods worked), through the Settlement
25 Administrator and at no additional cost to Defendant. Aggrieved Employees will receive their
26 portion of the PAGA Settlement Amount and will release the PAGA Released Claims regardless of
27 whether or not they opt out as a Settlement Class Member. Within twenty-one (21) calendar days
28 following the Funding of the Settlement, the Settlement Administrator shall disburse the PAGA

Settlement to the LWDA and Aggrieved Employees. Within ten (10) calendar days following the entry of the Court's Final Approval Order, Plaintiff will provide notice to the LWDA of the fact that the Settlement has been approved by the Court along with a copy of the Settlement Agreement and the Court order confirming the approval of the Settlement through the appropriate LWDA/California Department of Industrial Relations ("DIR") website.

XVII. COURT APPROVAL

This Agreement and the Settlement is contingent upon Final Approval by the Court and the entry of judgment. Named Plaintiff and Defendant agree to take all steps as may be reasonably necessary to secure both Preliminary Approval and Final Approval of the Settlement, to the extent not inconsistent with the terms of this Agreement, and will not take any action adverse to each other in obtaining court approval, and, if necessary, appellate approval, of the Settlement in all respects. Named Plaintiff and Defendant expressly agree that they will not file any objection to the terms of the Settlement or assist or encourage any person or entity to file any such objection.

In the event it becomes impossible to secure approval of the Settlement, the Parties shall be restored to their respective positions in the Litigation, as of the date of the hearing on the Motion for Preliminary Approval, except as otherwise provided in Section XVIII, below.

XVIII. MISCELLANEOUS PROVISIONS

A. Stay of Litigation.

Named Plaintiff and Defendant agree to the stay of all discovery in the Litigation, pending Final Approval of the Settlement by the Court.

B. Interpretation of the Agreement.

This Agreement constitutes the entire agreement between Named Plaintiff and Defendant. Except as expressly provided herein, this Agreement has not been executed in reliance upon any other written or oral representations or terms, and no such extrinsic oral or written representations or terms shall modify, vary or contradict its terms. In entering into this Agreement, the Parties agree that this Agreement is to be construed according to its terms and may not be varied or contradicted by extrinsic evidence. The Agreement will be interpreted and enforced under the laws of the State of California, both in its procedural and substantive aspects, without regard to its conflict of laws

provisions. Any claim arising out of or relating to the Agreement, or the subject matter hereof, will be resolved solely and exclusively in the Superior Court of the State of California for the County of Santa Clara, and Named Plaintiff and Defendant hereby consent to the personal jurisdiction of the Court over them solely in connection therewith. Named Plaintiff, on her own behalf and on behalf of the Settlement Class, and Defendant participated in the negotiation and drafting of this Agreement and had available to them the advice and assistance of independent counsel. As such, neither Named Plaintiff nor Defendant may claim that any ambiguity in this Agreement should be construed against the other.

The terms and conditions of this Agreement constitute the exclusive and final understanding and expression of all agreements between Named Plaintiff and Defendant with respect to the Settlement of the Litigation. The Agreement may be modified only by a writing signed by the original signatories and approved by the Court.

C. Further Cooperation.

Named Plaintiff and Defendant and their respective attorneys shall proceed diligently to prepare and execute all documents, to seek the necessary approvals from the Court, and to do all things reasonably necessary or convenient to consummate the Agreement as expeditiously as possible.

D. Plaintiff's Waiver of Right to Be Excluded.

By signing this Agreement, Plaintiff is bound by the terms herein stated and further agrees not to submit a Request for Exclusion from the Settlement. Any such Request for Exclusion shall therefore be void and of no force or effect. Plaintiff also agrees to not disparage the Settlement to Class Members or encourage, in any way, Class Members to submit or not to submit a request for exclusion. In addition, neither Plaintiff nor Class Counsel will initiate any contact with Class Members about the amount or terms of the Settlement.

E. No Effect on Regular Rate or Overtime Compensation

Settlement Class Members will receive payment under the Settlement, as determined by the Settlement Administrator in accordance with this Agreement. The Parties agree that this payment is not viewed as additional compensation for purposes of calculating a "regular rate" of pay under

California or federal law for the period during which it is received, and no additional overtime compensation is required as a result of such payment; further, any claim to entitlement to any additional overtime compensation is expressly waived under the terms of this Agreement. No person or entity shall have any claim against Defendant, Defendant's Counsel, Plaintiff, any Class Members, Class Counsel, or the Settlement Administrator based upon distributions and payments made in accordance with this Agreement.

F. Confidentiality of Documents.

After the expiration of any appeals period, Named Plaintiff, the Settlement Administrator, and Class Counsel shall maintain the confidentiality of all documents, deposition transcripts, declarations and other information obtained in the lawsuit, unless necessary for appeal or such documents are ordered to be disclosed by the Court or by a subpoena.

G. Publicity.

The Parties and their counsel agree that they will not issue any press releases or announcements related to this Settlement, initiate any contact with the press, respond to any press inquiry or have any communications with the press about the facts, amount or terms of the Settlement prior to approval. Named Plaintiff and Class Counsel agree not to share the fact or terms of this Settlement with any counsel not representing Named Plaintiff, including without limitation, counsel for any other plaintiff with a case against Defendant until the Court finally approves the Settlement. From and after approval of the Settlement, Named Plaintiff and Class Counsel may: (1) as required by law; (2) as required under the terms of the Settlement; or (3) as required under counsel's duties and responsibilities as Class Counsel, comment regarding the specific terms of the Settlement. In all other cases, Named Plaintiff and Class Counsel agree to limit their statements regarding the terms of the Settlement, whether oral, written or electronic (including the world wide web), to say the Litigation has been resolved and that Named Plaintiff and Class Counsel are satisfied with the settlement terms. Nothing in this Section is intended to interfere with Class Counsel's duties and obligations to faithfully discharge their duties as Class Counsel, including but not limited to, communicating with Settlement Class members regarding the Settlement.

H. Counterparts.

1 The Agreement may be executed in one or more actual or non-original counterparts, all of
2 which will be considered one and the same instrument and all of which will be considered duplicate
3 originals.

4 **I. Authority.**

5 Each individual signing below warrants that he or she has the authority to execute this
6 Agreement on behalf of the party for whom or which that individual signs.

7 **J. No Third-Party Beneficiaries.**

8 Named Plaintiff, members of the Settlement Class, and Defendant are direct beneficiaries of
9 this Agreement, but there are no third-party beneficiaries.

10 **K. Submission to the LWDA.**

11 This Joint Stipulation Re: Class Settlement shall be submitted by Named Plaintiff to the
12 LWDA within the time limits prescribed by law.

13 **L. Fair, Adequate, and Reasonable Settlement.**

14 The Parties agree that this Joint Stipulation Re: Class Settlement is fair and reasonable and
15 will so represent to the Court.

16 **M. Modification.**

17 This Agreement may be modified based on the final size of the Settlement Class. It was
18 estimated for purposes of mediation that there were approximately 6,652 workweeks between the
19 start of the Settlement Class Period and June 10, 2021. This number would be expected to increase
20 proportionately for the passage of time between that date and the end of the Settlement Class Period.
21 If the proportionate increase exceeds by more than 20% by the end of the Settlement Class Period,
22 or greater than 1,330 workweeks, Defendant, at its discretion, agrees to elect one of two possible
23 options. The first option is to increase the Gross Settlement Amount by a pro rata basis according to
24 the number of additional compensable workweeks, with workweek value being calculated by the
25 Gross Settlement Amount divided by 6,652 (i.e., \$46.60). Thus, if the total compensable workweeks
26 in the Settlement Class Period amounts to 8,000 workweeks, for example, Defendant would have to
27 increase the Gross Settlement Amount by \$62,817. (1,348 x \$46.60.) The second option is that
28 Defendant may elect to close the Settlement Class Period before the date the workweeks hit 7,983.

So, for instance, should Defendant choose the second option, and it is determined that, beginning counting on January 14, 2017, the date on which 7,983 workweeks was worked by Settlement Class Members is met on July 1, 2021, the Settlement Class Period (and, thus, the releases provided by Settlement Class Members) shall span only from January 14, 2017 through July 1, 2021, just as an example. It is Defendant's sole discretion whether to choose option one or two here.

Other than potential modification outlined above, this Agreement may not be changed, altered, or modified, except in a writing signed by the Parties, and approved by the Court. Notwithstanding the forgoing, the Parties agree that any dates contained in this Agreement may be modified by agreement of the Parties in writing without Court approval if the Parties agree and cause exists for such modification. This Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by the Parties.

N. Deadlines Falling on Weekends or Holidays.

To the extent that any deadline set forth in this Agreement falls on a Saturday, Sunday, or legal holiday, that deadline shall be continued until the following business day.

O. Severability.

In the event that any one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall in no way effect any other provision if Defendant's Counsel and Class Counsel, on behalf of the Parties and the Settlement Class, mutually elect in writing to proceed as if such invalid, illegal, or unenforceable provision had never been included in this Agreement.

P. Final Judgment.

The Parties agree that, upon final approval of the Settlement, a Final Judgment will be made and entered, resolving the Action in its entirety.

APPROVED AS TO FORM AND CONTENT:

Date: 1/13/2022, 2022

NORMAJEAN FERLAND, on behalf of herself
and all others similarly situated

DocuSigned by:



F63747E0AC654B5...

By:

NORMAJEAN FERLAND, *Plaintiff*

1 Date: December ¹⁰__, 2021

NAVANI PAIN MANAGEMENT INC dba
COMPREHENSIVE SPINE AND SPORTS
CENTER

2
3 DocuSigned by:
4 By: Raj Navani
5 Raj Navani
6 A67E6C7F16554AB...

7 For NAVANI PAIN MANAGEMENT INC
8 dba COMPREHENSIVE SPINE AND
9 SPORTS CENTER, *Defendant*

10 Date: December ²²__, 2021

NAVANI PAIN MANAGEMENT INC dba
COMPREHENSIVE SPINE AND SPORTS
CENTER

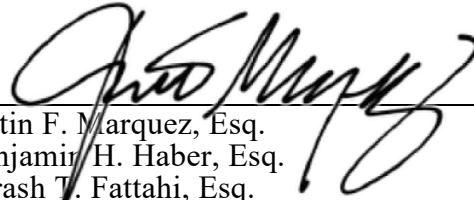
11 DocuSigned by:
12 By: Annu Navani, M.D.
13 Annu Navani, M.D.
14 0052A9A9EF2247C...

15 For NAVANI PAIN MANAGEMENT INC
16 dba COMPREHENSIVE SPINE AND
17 SPORTS CENTER, *Defendant*

18 APPROVED AS TO FORM:

19 Date: January 13__, 2022

WILSHIRE LAW FIRM

20 By: 
21 Justin F. Marquez, Esq.
22 Benjamin H. Haber, Esq.
23 Arrash T. Fattahi, Esq.
24 *Attorneys for Plaintiff*

25 Date: December 23, 2022

SHEPPARD, MULLIN, RICHTER, &
HAMPTON LLP

26 By: /s/ Jason A. Weiss
27 Jason A. Weiss, Esq.
28 Molly M. Brooks, Esq.
Attorneys for Defendant

Exhibit A

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF SANTA CLARA
NormaJean Ferland v. Comprehensive Spine and Sports Center
Case No. 21CV375218

Indicate Name/Address Changes, if any:

<<Name>>

<<Address>>

<<City>>, <<State>> <<Zip Code>>

XX - XX -

THIS NOTICE AFFECTS YOUR RIGHTS. PLEASE READ IT CAREFULLY.

A California court authorized this notice. This is not a solicitation from a lawyer.

YOU ARE HEREBY NOTIFIED that a proposed settlement (“the Settlement”) of the above-captioned class action (“the Action”) filed in the Santa Clara County Superior Court has been reached by Navani Pain Management, Inc dba Comprehensive Spine and Sports Center (“CSSCtr”) and NormaJean Ferland (“Plaintiff”), an individual, on behalf of herself and all others similarly situated and has been granted Preliminary Approval by the Court supervising the Action. The Santa Clara County Superior Court has ordered that this Class Notice be sent to you because you may be a Settlement Class member. The purpose of this Class Notice is to inform you of the Settlement of this class action and your legal rights under the Settlement as follows:

- CSSCtr has agreed to settle a lawsuit brought on behalf of all persons who worked for CSSCtr in California as an hourly-paid or non-exempt employee during the period from January 14, 2017 through September 26, 2021 (the “Settlement Period”) (hereafter, “Settlement Class”).
- The proposed Settlement resolves all alleged claims regarding the following wage and hour policies and/or practices of CSSCtr: failure to pay wages; failure to pay minimum wages; failure to pay straight time compensation, overtime compensation, and/or double-time compensation, reporting time compensation, and/or interest; the calculation of the regular rate of pay; missed, late, short or interrupted meal and/or rest periods, including any claim for any alleged failure to pay premiums for missed, late, short or interrupted meal or rest periods, or to pay such premiums at the regular rate of compensation; wages related to time rounding and timekeeping; reimbursement for business expenses or any other claim that CSSCtr allowed or required employees to bear any of the costs associated with the operation of CSSCtr’s business, including without limitation costs for equipment; payment for all hours worked, including off-the-clock work; inaccurate or otherwise improper wage statements and/or failure to keep or maintain accurate records; unlawful deductions; unlawful payment instruments; failure to timely pay wages upon discharge or quitting; paid sick leave, including that sick leave was calculated at an incorrect rate of pay; any claim for unfair business practices arising out of or related to any or all of the aforementioned claims; any claim for penalties arising out of or related to any or all of the aforementioned claims, including, but not limited to, recordkeeping penalties, wage statement penalties, minimum-wage penalties, and waiting-time penalties; and attorneys’ fees and costs. Finally, the settlement resolves claims for unfair competition and penalties under California’s Private Attorneys General Act (“PAGA”) arising out of the alleged wage and hour policies and practices of CSSCtr. The settlement avoids costs and risks to you from continuing the lawsuit, pays money to employees, and releases CSSCtr from liability for these claims.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
Participate As A Class Member	If you are a member of the Settlement Class, you will automatically receive a payment if you do not exclude yourself. If you accept a payment and do not exclude yourself you will give up certain rights as set forth in Section D below. After final approval by the Court, the payment will be mailed to you at the same address as this notice. If your address has changed, please notify the Settlement Administrator as explained below.
Exclude Yourself From The Settlement	Opt out of the Settlement. Receive no payment from the settlement for the Class claims, but receive an individual settlement share for civil penalties under the PAGA. Keep rights to individually pursue only the Class claims. If you opt out of the Settlement, you won't receive any share of the Class payment, but you retain the right to sue Defendant separately about the Class claims in this Lawsuit. However, even if you opt out, you may still receive an individual settlement share for claims for civil penalties pursuant to the PAGA and will be deemed to have released the PAGA claims.
Object	Write to the Court about why you object to the settlement. However, if the Court rejects your objection, you will still be bound by the terms of the settlement, including the release, unless you have submitted a valid and timely Request for Exclusion. Directions are provided below.

WHY DID YOU RECEIVE THIS NOTICE?

This notice explains a proposed settlement of a lawsuit and informs you of your legal rights under that proposed settlement. You are receiving this notice because you may be a member of a class on whose behalf this lawsuit has been brought.

WHAT IS THIS LAWSUIT ABOUT?

Plaintiff filed this lawsuit in Santa Clara County Superior Court on behalf of the Settlement Class. The lawsuit alleges that members of the Settlement Class were not paid all minimum, straight time, and overtime wages, were not paid for or properly provided meal and rest breaks, were not paid all wages due at termination and/or resignation, were not issued accurate wage statements, were not provided reimbursements for all necessary business-related expenses, and were subjected to unfair competition. The lawsuit seeks recovery of wages, restitution, statutory and civil penalties, interest, and attorneys' fees and costs.

CSSCtr denies any liability or wrongdoing of any kind associated with the claims alleged in the lawsuit. CSSCtr contends, among other things, that they complied at all times with the California Labor Code, the California Business and Professions Code, and all other applicable law. CSSCtr further denies that the lawsuit is appropriate for class treatment for any purpose other than settling this lawsuit.

The Court has made no ruling and will make no ruling on the merits of the Litigation and its allegations and claims.

SUMMARY OF THE SETTLEMENT

A. Why is there a Settlement?

The Court did **not** decide in favor of the Plaintiff or CSSCtr. Plaintiff thinks she would have prevailed on her claims at a trial. CSSCtr does not think that Plaintiff would have won anything from a trial. But there was no trial. Instead, both sides agreed to a settlement. That way, they avoid the costs, risks, and uncertainty of a trial, and the class members will get compensation. Plaintiff and Plaintiff's attorneys believe the settlement is fair, reasonable, adequate, and in the best interests of all class members.

B. Who is in the Class?

The Settlement Class consists of all persons who worked for CSSCtr in California as an hourly-paid or non-exempt employee during the Settlement Period.

C. What does the Settlement provide?

1. Settlement Amount.

The parties reached a proposed settlement of the Lawsuit in the sum of Three Hundred and Ten Thousand Dollars and Zero Cents (\$310,000.00) (the "Settlement Amount").

The following sums will be paid from the Settlement Amount: all Net Settlement Payments (inclusive of all employment taxes and all other legally required withholdings that would otherwise be due from the individual class members) to the Settlement Class, Attorneys' Fees (not to exceed 33 ⅓ % of the Settlement Amount, or \$103,333.33), Litigation Expenses not to exceed \$15,000.00, Settlement Administrative Costs estimated in an amount not to exceed \$15,000.00, the PAGA Settlement Payment in the amount of \$10,000.00, and an enhancement payment to the Named Plaintiff not to exceed \$7,500.00. Any and all Employer Taxes which CSSCtr normally would be responsible for paying on the Net Settlement Payments made to individual Class Members will be paid by CSSCtr separate and apart from the Settlement Amount.

The funds used for the Settlement Amount shall be paid to the Settlement Administrator. The Settlement Administrator shall disburse the Court-approved enhancement to the Named Plaintiff, Court-approved Attorneys' Fees and Litigation Expenses, Settlement Administration Costs, and the PAGA Settlement Payment at the same time and manner as the Net Settlement Payments to the Settlement Class members.

2. Net Settlement Amount.

"Net Settlement Amount" means the Settlement Amount minus the Attorneys' Fees, Litigation Expenses, Settlement Administrative Costs, the portion of the PAGA Settlement payment payable to the Labor and Workforce Development Agency, and the enhancement payment to the Named Plaintiff.

3. Your Individual Payment Amount.

The Claims Administrator will calculate the total number of workweeks for all Class Members who were employed by Defendant Navani Pain Management, Inc dba Comprehensive Spine and Sports Center during the Settlement Period ("Total Workweeks"). The value of each Workweek shall be determined by the Claims Administrator by dividing the Net Settlement Amount by the total number of Workweeks available to the Class Members who do not "opt out" (as defined on page 5 below) during the Settlement Period ("Workweek Point Value").

An "Individual Settlement Payment" for each Class Member will then be determined by multiplying a Class Member's workweeks ("Eligible Workweeks") by the Workweek Point Value. The Individual

Settlement Payment will be reduced by any required legal deductions, for each participating Class Member.

4. Tax Matters.

The Settlement Administrator will distribute IRS Forms W-2 and 1099 (and the equivalent California forms) to Settlement Class members reflecting the payments each Settlement Class member receives under the Settlement. For tax purposes, Net Settlement Payments will be allocated as follows: 33 % as wages and 67 % as penalties and interest. Forms W-2 and/or Forms 1099 will be distributed at times and in the manner required by the Internal Revenue Code and the California Franchise Tax Board.

Interest and penalties paid under this Settlement shall not be subject to federal, state and local payroll withholding taxes. The Settlement Administrator shall issue an IRS form 1099 for payments of interest and penalties. The usual and customary deductions will be taken out of the amounts attributable to unpaid wages. Settlement Class members should consult with their tax advisors concerning the tax consequences of the payment they receive under the Settlement.

D. What are you giving up to get a payment and stay in the Class?

Upon the date the Court's Final Approval Order becomes "Final" (as that term is defined in Section I(E) in the Settlement Agreement), Named Plaintiff and all members of the Settlement Class, except those that make a valid and timely request to be excluded from the Settlement Class and Settlement, waive, release, discharge, and promise never to assert in any forum any and all wage-related claims that were alleged in the Litigation or which could have been alleged in the Litigation based on the facts asserted in the Litigation arising during the Settlement Period against Defendant, and each of its past, present and future agents, employees, servants, officers, directors, partners, trustees, representatives, shareholders, stockholders, attorneys, parents, subsidiaries, equity sponsors, related companies/corporations and/or partnerships (defined as a company/corporation and/or partnership that is directly or indirectly, under common control with Defendant or any of its parents and/or affiliates), divisions, assigns, predecessors, successors, insurers, consultants, joint ventures, any actual or alleged joint employers, affiliates, and alter-egos, and all of their respective past, present and future employees, directors, officers, agents, attorneys, insurers, stockholders, fiduciaries, parents, subsidiaries, and assigns (collectively, the "Released Parties"), both individually and collectively, including but not limited to: 1) failure to pay wages; 2) failure to pay minimum wages; 3) failure to pay straight time compensation, overtime compensation, and/or double-time compensation, reporting time compensation, and/or interest; 4) the calculation of the regular rate of pay; 5) missed, late, short or interrupted meal and/or rest periods, including any claim for any alleged failure to pay premiums for missed, late, short or interrupted meal or rest periods, or to pay such premiums at the regular rate of compensation; 6) wages related to time rounding and timekeeping; 7) reimbursement for business expenses or any other claim that Defendant allowed or required employees to bear any of the costs associated with the operation of Defendant's business, including without limitation costs for equipment; 8) payment for all hours worked, including off-the-clock work; 9) inaccurate or otherwise improper wage statements and/or failure to keep or maintain accurate records; 10) unlawful deductions; 11) unlawful payment instruments; 12) failure to timely pay wages upon discharge or quitting; 13) paid sick leave, including that sick leave was calculated at an incorrect rate of pay; 14) any claim for unfair business practices arising out of or related to any or all of the aforementioned claims; 15) any claim for penalties arising out of or related to any or all of the aforementioned claims, including, but not limited to, recordkeeping penalties, wage statement penalties, minimum-wage penalties, and waiting-time penalties; 16) and attorneys' fees and costs. For purposes of clarification, the claims released by the Settlement Class Members include any and all claims that arise out of or in connection with the claims and or facts alleged in the Litigation, and any claims which could have been asserted in the Litigation arising from the

alleged facts, claims, theories, and/or primary rights alleged to have been invaded to the fullest extent permitted by law. Without limitation by any other language in Settlement Agreement, this Release includes claims against the Released Parties arising during the Settlement Period alleging a violation of the Wage Orders of the California Industrial Welfare Commission; California Code of Civil Procedure § 1021.5; California *Business and Professions Code* Section 17200, *et seq.*; the California Private Attorneys General Act of 2004; and/or alleging a violation of the California Labor Code (including claims under §§ 200, 201, 201.3, 202, 203, 204, 206, 210, 212, 216, 218.5, 218.6, 221, 223, 224, 225, 225.5, 226, 226.3, 226.7, 227.3, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2698 *et seq.*, 2800 and 2802). Settlement Class Members who endorse their settlement checks waive and release any claims under the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.* (“FLSA”) arising during the Settlement Period and reasonably related to any or all of the aforementioned claims. This Release excludes the release of claims not permitted to be released by law.

The proposed Settlement includes the settlement of claims for civil penalties under PAGA. An employee may not request exclusion from the settlement of a PAGA claim. Thus, if the court approves this Settlement, then even if you request exclusion from the Settlement, you may still receive an individual settlement share for the PAGA claims and will be deemed to have released the PAGA claims. A request for exclusion will preserve your right to individually pursue only the remaining Class claims.

THE FINAL APPROVAL HEARING

The Court will conduct a Final Approval Hearing regarding the proposed settlement (the “Final Approval Hearing”) on [REDACTED], 2022, at 191 N. 1st Street, San Jose, CA 95113, in Department 1 of the Santa Clara County Superior Court. The Court will determine: (i) whether the settlement should be given the Court’s final approval as fair, reasonable, adequate and in the best interests of the Settlement Class members; (ii) whether the Settlement Class members should be bound by the terms of the settlement; (iii) the amount of the attorneys’ fees and costs to Plaintiff’s counsel; and (iv) the amount that should be awarded to the Plaintiff as an enhancement payment. At the Final Approval Hearing, the Court will hear all objections, as well as arguments for and against the proposed Settlement. You are permitted to provide an objection at the Final Approval Hearing, in the first instance, even if you did not provide a written objection beforehand. You have a right to attend this hearing, but you are not required to do so. You also have the right to hire an attorney to represent you, or to enter an appearance and represent yourself.

The Final Approval Hearing may be continued without further notice to the Class. It is your responsibility to monitor the Court’s docket.

Condition of Settlement. This Settlement is conditioned upon the Court entering an order at or following the Final Approval Hearing approving the Settlement as fair, reasonable, adequate and in the best interests of the Settlement Class.

WHAT ARE YOUR OPTIONS?

- **OPTION 1 – GET A PAYMENT**

IF YOU ARE A MEMBER OF THE SETTLEMENT CLASS AND WISH TO RECEIVE YOUR SHARE OF THE SETTLEMENT, THEN YOU DO NOT HAVE TO DO ANYTHING AND YOU WILL AUTOMATICALLY RECEIVE A SETTLEMENT PAYMENT. YOU ARE NEVER REQUIRED TO GO TO COURT OR PAY ANYTHING TO THE LAWYERS IN THIS CASE.

The estimated amount of your Settlement Payment is set forth on the Workweek Dispute Form which accompanies this Notice.

The amount of the Settlement Payment paid to each Settlement Class member is based upon the number of workweeks you worked between January 14, 2017 through September 26, 2021. The number of workweeks applicable to your claim is also set forth on the accompanying Workweek Dispute Form. If you believe that the number of workweeks stated is incorrect, you may dispute the number of workweeks by following the instructions on the Workweek Dispute Form. If you believe that the number of workweeks stated is correct, you do not have to do anything.

The Settlement Payment you will receive will be a full and final settlement of your released claims described in Section D above.

- **OPTION 2 – EXCLUDE YOURSELF FROM THE SETTLEMENT**

You have a right to exclude yourself (“opt-out”) from the Settlement Class, but if you choose to do so, you will receive no payment from the settlement for the Class claims. You may still receive an individual settlement share for civil penalties under the PAGA. You will keep rights to individually pursue only the Class claims. You will have the right to file your own lawsuit against CSSCtr, subject to time limits called Statute of Limitations and other potential defenses that CSSCtr may assert, and to pursue your own claims in a separate suit. However, even if you opt out, you may still receive an individual settlement share for claims for civil penalties pursuant to the PAGA and will be deemed to have released the PAGA claims.

You can opt out of the Settlement Class by completing the form on **Page 8** of this Notice and mailing it by First Class U.S. Mail or equivalent to the Settlement Administrator at the following address: ILYM Group, Inc., 14771 Plaza Drive, Unit L, Tustin, CA 92780. To be valid, your request for exclusion must be postmarked no later than [45 days after mailing].

- **OPTION 3 – OBJECT TO THE SETTLEMENT**

If you wish to remain a Settlement Class member, but you object to the proposed settlement (or any of its terms) and wish the Court to consider your objection at the Final Approval Hearing, you may object to the proposed settlement in writing. You may also appear at the Final Approval Hearing to object, regardless of whether you provided a written objection beforehand, either in person or through an attorney at your own expense, provided you notify the Court of your intention to do so. All written objections, supporting papers and/or notices of intent to appear at the Final Approval Hearing must (a) clearly identify the case name and number (*NormaJean Ferland v. Comprehensive Spine and Sports Center*, Santa Clara County Superior Court, Case Number 21CV375218); (b) be submitted to the Court either by mailing the objection to: Clerk of the Court, Superior Court of California, County of Santa Clara, 191 N. 1st Street, San Jose, California 95113, or by filing in person at the same location; (c) also be mailed to the law firms identified below; and (d) be filed or postmarked on or before [45 days after mailing].

Any written objection may also be mailed to the Settlement Administrator at [Address] by [45 days after mailing].

The contact information for Plaintiff’s counsel and Defendant’s counsel is provided below solely for your informational purposes. Written objections should only be sent to the Settlement Administrator at the address provided above, not to Plaintiff’s counsel or Defendant’s counsel.

PLAINTIFF'S/CLASS COUNSEL

Justin F. Marquez, Esq.
justin@wilshirelawfirm.com
Benjamin H. Haber, Esq.
benjamin@wilshirelawfirm.com
Arrash T. Fattahi, Esq.
afattahi@wilshirelawfirm.com
WILSHIRE LAW FIRM, PLC
3055 Wilshire Blvd., 12th Floor
Los Angeles, California 90010
Telephone: (213) 381-9988
Facsimile: (213) 381-9989

**NAVANI PAIN MANAGEMENT, INC DBA
COMPREHENSIVE SPINE AND SPORTS
CENTER COUNSEL**

Jason A. Weiss, Esq.
jweiss@sheppardmullin.com
Molly M. Brooks, Esq.
mbrooks@sheppardmullin.com
**SHEPPARD, MULLIN, RICHTER &
HAMPTON LLP**
650 Town Center Drive, 10th Floor
Costa Mesa, California 92626-1993
Telephone: (714) 513-5100
Facsimile: (714) 513-5130

CHANGE OF ADDRESS

If you move after receiving this Notice, if it was misaddressed, or if for any reason you want your Settlement Award or future correspondence concerning this Action to be sent to a different address, you must supply your preferred address to the Settlement Administrator at:

ILYM Group, Inc.
14771 Plaza Drive, Unit L
Tustin, CA 92780

ARE THERE MORE DETAILS ABOUT THE SETTLEMENT?

The above is a summary of the basic terms of the settlement. For the precise terms and conditions of the settlement, you may review the detailed "Joint Stipulation Re: Class Settlement" which is available for viewing online, along with other court records regarding this case, on the following website: **[Insert website provided by Settlement Administrator]**

The pleadings and other records in the lawsuit are also available on the website. In addition to having access to the case-related documents via the Settlement Administrator's website, you may also contact Class Counsel to obtain such documents.

Alternatively, there are two additional ways in which you may examine/obtain the pleadings and other records in this lawsuit, including the Settlement Agreement: (a) online through the Santa Clara County Superior Court's website, by going to the following webpage: <https://portal.scscourt.org/search> and entering "21CV375218" for the case number; or (b) in person at Records, Superior Court of California, County of Santa Clara, 191 N. 1st Street, San Jose, California 95113, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays and closures.

ANY INQUIRIES REGARDING THIS LITIGATION SHOULD BE MADE TO COUNSEL LISTED ABOVE OR TO THE SETTLEMENT ADMINISTRATOR, ILYM Group, Inc., 14771 Plaza Drive, Unit L, Tustin, CA 92780, (888) 250-6810. Please refer to the *NormaJean Ferland v. Comprehensive Spine and Sports Center* Class Action Settlement.

**PLEASE DO NOT TELEPHONE THE COURT OR THE OFFICE OF THE CLERK FOR
INFORMATION REGARDING THIS SETTLEMENT OR THE CLAIM PROCESS**

**[COMPLETE THIS FORM *ONLY IF YOU CHOOSE TO*
NOT PARTICIPATE IN THIS SETTLEMENT AND
CHOOSE *NOT* TO RECEIVE A SETTLEMENT SHARE]**

OPT-OUT FORM

NormaJean Ferland v. Comprehensive Spine and Sports Center
SANTA CLARA COUNTY SUPERIOR COURT CASE NUMBER 21CV375218

INSTRUCTIONS: TO OPT-OUT OF THE SETTLEMENT, YOU MUST COMPLETE, SIGN AND MAIL THIS FORM BY FIRST CLASS U.S. MAIL OR EQUIVALENT, POSTAGE PAID, POSTMARKED ON OR BEFORE **[+45 DAYS FROM MAILING]**, ADDRESSED TO:

INSERT ADMINISTRATOR INFO

Please fill in all of the following information (type or print):

NAME (First, Middle, Last): _____
STREET ADDRESS: _____
CITY, STATE, ZIP CODE: _____
TELEPHONE NUMBERS: Home: _____ Work: _____

**IT IS STRONGLY RECOMMENDED THAT YOU RETAIN PROOF OF MAILING
THIS FORM POSTMARKED ON OR BEFORE **[DATE]**.**

I [insert your name] _____ wish to be excluded from the Settlement Class in the case of *NormaJean Ferland v. Comprehensive Spine and Sports Center*, Santa Clara County Superior Court Case Number 21CV375218.

I understand I will not receive money from the proposed class action settlement, but may still receive money for civil penalties pursuant to the PAGA and will be deemed to have released the PAGA claims.

I further verify that the following is true: My name, address and other contact information are accurately set forth above. I received and had the opportunity to read the Notice of Proposed Class Action Settlement that were sent to me along with this Opt-Out Form. I understand that by signing this side of the form, I voluntarily choose to exclude myself from the proposed settlement of this class action. **I understand that by excluding myself, I may not accept any money allocated for me in the proposed settlement of the class action and may not object to the settlement.** On the other hand, I also understand that if I wish to assert any claims related to those set forth in this lawsuit in my individual capacity, I shall have to do so separately. I understand that any such claims are subject to strict time limits, known as statutes of limitations, which restrict the time within which I may file any such action. I understand that I should consult with an attorney at my own expense if I wish to obtain advice regarding my rights with respect to this settlement or my choice to opt out of the settlement. Navani Pain Management, Inc dba Comprehensive Spine and Sports Center has not encouraged me to opt out, and I choose to opt out of my own free will.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Signed: _____

Date: _____

Print Name: _____

Last four digits of Social Security Number _____

Exhibit B

CLASS WORKWEEK DISPUTE FORM

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA

NormaJean Ferland v. Comprehensive Spine and Sports Center
Case No. 21CV375218

Indicate Name/Address Changes, if any:

<<Name>>

<<Address>>

<<City>>, <<State>> <<Zip Code>>

XX - XX -

PLEASE COMPLETE THIS FORM ONLY IF YOU WISH TO DISPUTE THE WORKWEEKS CREDITED TO YOU.

The amount of your estimated Individual Settlement Payment is based upon the Eligible Workweeks you worked for Navani Pain Management Inc dba Comprehensive Spine and Sports Center ("CSSCtr") in California from January 14, 2017 to September 26, 2021.

"Eligible Workweeks" are defined as any week in which you worked at least one (1) day during the calendar week. The number of Eligible Workweeks applicable to your claim is set forth in Section I below.

If you believe that the number of workweeks stated is incorrect, you may dispute the number of workweeks by submitting this completed Workweek Dispute Form with any supporting documents on or before [45 days after initial mailing]. Documentary evidence may be helpful to substantiate your dispute claim, but it is not required. **If you believe that the number of workweeks stated below is correct, you do not have to do anything.**

I. YOUR COMPENSABLE WORKWEEKS

According to Defendant's records, the number of Eligible Workweeks you worked as an hourly-paid or non-exempt employee for CSSCtr in California from January 14, 2017 to September 26, 2021 are: **<<NUMBER OF WORKWEEKS>>**.

II. YOUR ESTIMATED SETTLEMENT PAYMENT

Based upon the number of workweeks stated above, your estimated pre-tax Individual Settlement Payment is **<<INSERT>>**, plus your Individual PAGA Payment is **<<INSERT>>**.

III. CHALLENGE TO WORKWEEKS

If you wish to dispute the Eligible Workweeks data listed, you must postmark your dispute and provide all supporting information and/or documentation, if any, to the Settlement Administrator by **<<NOTICE PERIOD DEADLINE>>**.

Check the box below **ONLY** if you wish to dispute the data listed in Section I:

☐ I wish to dispute the number of Eligible Workweeks listed in Section I. I believe the correct amount of my workweeks is _____, because _____.

I understand that, by submitting this dispute, I hereby authorize the Settlement Administrator to review CSSCtr's records and make a determination as to the validity of my dispute based upon CSSCtr's records as well as the records and information that I submit to the Settlement Administrator.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the information I provided in this Workweek Dispute Form is true and correct.

Dated: _____

Signature: _____

Print or Type Name: _____

MAIL TO:

**NORMAJEAN FERLAND v. COMPREHENSIVE SPINE AND SPORTS CENTER
CLASS ACTION SETTLEMENT**

c/o

**[Insert]
address**

**IF YOU ARE CONTESTING THE AMOUNT OF YOUR ELIGIBLE WORKWEEKS, YOU MUST
SIGN, POSTMARK, AND RETURN THIS FORM TO THE SETTLEMENT ADMINISTRATOR ON
OR BEFORE «OPT-OUT DEADLINE».**

Exhibit 2

ILYM | GROUP, Inc.

SETTLEMENT ADMINISTRATION EXPERTS

Case Name: Ferland v. Comprehensive Spine and Sports Center

Monday, August 9, 2021

Requesting Attorneys Name:

Justin Marquez Esq.

E-Mail Address:

Justin@wilshirelawfirm.com

ILYM Group Contact

Sean Hartranft

E-Mail

Sean@ilymgrouppclassaction.com

Contact Number

949.690.2564

ESTIMATE FOR ADMINISTRATION SOLUTIONS

ASSUMPTIONS	
Estimated Class Size	180
Estimated Percentage of Undeliverable Mail	10%
Certified Spanish Translation	Yes
Case Website	Yes
NCOA	Yes

Activity	Rate Type	Unit Cost	Volume	Amount
CASE STARTUP				
Initial Setup - Import and Formatting of Data*	Hourly	\$150.00	2	\$300.00
Programming of Class Database	Hourly	\$175.00	2	\$350.00

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

Subtotal \$650.00

PROJECT MANAGEMENT				
Project Manager (Case notification and maintenance)	Hourly	\$120.00	5	\$600.00
Staff Hours for Processing Returned Mail	Hourly	\$70.00	1	\$70.00
Staff Hours for Processing Opt-Outs, Disputes & Objections	Hourly	\$70.00	2	\$140.00
Report Processing	Hourly	\$70.00	4	\$280.00
NCOA	Flat Fee	\$75.00	1	\$75.00
Toll-Free Call Center Support	Flat Fee	\$100.00	1	\$100.00
Certified Spanish Translation	Flat Fee	\$1,250.00	1	\$1,250.00
ILYM Group Static Website, Includes Hosting	Flat Fee	\$750.00	1	\$750.00
Weekly Reports	Flat Fee	\$500.00	1	Waived

Subtotal \$3,265.00

ILYM | GROUP, Inc.

SETTLEMENT ADMINISTRATION EXPERTS

Activity	Rate Type	Unit Cost	Volume	Amount
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NOTIFICATION/MAILING				
Fulfillment of Notice, English & Spanish	Per Piece	\$2.00	180	\$360.00
USPS First Class Postage	Per Piece	\$0.55	180	\$99.00
Re-Mails (Skip Trace/Undeliverable/Requests)	Per Piece	\$2.50	18	\$45.00
Storage, Photocopies, Deliveries	Flat Fee	\$300.00	1	\$300.00

Subtotal \$804.00

DISTRIBUTION (Includes EIN, Bank Acct * /QSF Setup)				
Distribution Setup & Management	Hourly	\$150.00	3	\$450.00
Account Reconciliation & Distribution Reporting	Hourly	\$125.00	3	\$375.00
Check Stub & Release - (including W-2 & 1099)	Per Check	\$2.00	180	\$360.00
Check Mailing Postage	Per Piece	\$0.55	180	\$99.00
Re-Mails (Skip Trace/Undeliverable/Requests)	Per Piece	\$2.50	11	\$27.00
Preparation of Taxes	Hourly	\$125.00	12	\$1,500.00
Annual Filing of Tax Return	Per Year	\$1,200.00	1	\$1,200.00

**Additional Bank fees may apply*

Subtotal \$4,011.00

CASE CONCLUSION				
Data Manager Final Reporting	Hourly	\$100.00	3	\$300.00
Project Manager Final Reporting	Hourly	\$120.00	3	\$360.00
Declarations	Hourly	\$125.00	3	\$375.00

Subtotal \$1,035.00

Will Not Exceed: \$9,765.00

Terms and Conditions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PROOF OF SERVICE

Ferland v. Comprehensive Spine and Sports Center, et al.
21CV375218

STATE OF CALIFORNIA)
) ss
COUNTY OF LOS ANGELES)

I, Ashley Narinyans, state that I am employed in the aforesaid County, State of California; I am over the age of eighteen years and not a party to the within action; my business address is 3055 Wilshire Blvd., 12th Floor, Los Angeles, California 90010. My electronic service address is anarinyans@wilshirelawfirm.com.

On **May 10, 2022**, I served the foregoing **DECLARATION OF JUSTIN F. MARQUEZ IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**, on the interested parties by placing a true copy thereof, enclosed in a sealed envelope by following one of the methods of service as follows:

Jason A. Weiss (SBN 185268)
jweiss@sheppardmullin.com
Molly M. Brooks (SBN 329247)
mbrooks@sheppardmullin.com
SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
650 Town Center Drive, 10th Floor
Costa Mesa, California 92626
Telephone: (714) 513-5100
Facsimile: (714) 513-5130

Attorneys for Defendant

- (X) **BY UPLOAD:** I hereby certify that the documents were uploaded by my office to the State of California Labor and Workforce Development Agency Online Filing Site.
- (X) **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known email address or e-mail of record in this action.

I declare under the penalty of perjury under the laws of the State of California, that the foregoing is true and correct.

Executed on **May 10, 2022**, at Los Angeles, California.

Ashley Narinyans
Type or Print Name


Signature