

SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

A dispute exists between Benjamin Levine (hereafter referred to as “Levine”) and Evolution Surgical, Inc. (“Evolution Surgical” or “the Company”), Kelly Coan, and Rob Law (collectively, “the Defendants”) concerning certain alleged violations of wage-and-hour laws asserted by Levine in his individual capacity and as a representative of Aggrieved Employees (defined below) pursuant to California’s Private Attorneys General Act, as described in more detail in Levine’s complaint in Alameda County Superior Court case number 21CV000812. Levine and the Defendants disagree on whether any liability exists on the part of the Defendants, or any of them, but desire to conclude their dispute at this time. Accordingly, the parties agree as follows:

1. Definitions. As used in this Agreement, the following terms shall have the meanings specified below.

1.1. Action. “Action” shall mean Alameda County Superior Court case number 21CV000812.

1.2. Aggrieved Employees. “Aggrieved Employees” shall mean all persons, except Levine, who were employed by Evolution Surgical as Territory Managers or sales representatives at any time between July 16, 2020 and the date on which the Court approves this Settlement.

1.3. Aggrieved Employee Individual Payment. “Aggrieved Employee Individual Payment” shall mean the amount which is ultimately distributed to each individual Aggrieved Employee in settlement of the claims asserted by Levine pursuant to the California Private Attorneys General Act (PAGA), Labor Code sections 2698 et seq.

1.4. Court. “Court” shall mean the Alameda County Superior Court.

1.5. Defendants. “Defendants” shall mean Evolution Surgical, Inc., Kelly Coan and Rob Law.

1.6. Effective Date. “Effective Date” shall mean the date on which the Court issues a final order granting Levine’s motion for approval of the settlement.

1.7. PAGA Period. The “PAGA Period” shall mean the period commencing on July 16, 2020 and concluding on the date on which the Court approves the Settlement.

1.8. PAGA Settlement Amount. The “PAGA Settlement Amount” shall mean the gross sum of \$5,000.00 (five thousand dollars and no cents).

1.9. Parties. The “Parties” shall mean Levine, Evolution Surgical, Coan and Law.

1.10. Plaintiff’s Counsel. “Plaintiff’s Counsel” shall mean Jeffrey M. Curtiss.

1.11. Released PAGA Claims. “Released PAGA Claims” shall mean any and all claims for civil penalties that were asserted or could have been asserted by Levine or the California Labor and Workforce Development Agency (LWDA) pursuant to PAGA on behalf of the Aggrieved Employees based on the facts and violations alleged in the Action during the PAGA Period, including, but not limited to, any claims for civil penalties for failure to pay minimum and overtime wages, failure to provide meal periods, failure to provide rest breaks, failure to issue accurate itemized wage statements, failure to pay all wages due and owing twice each calendar month, failure to pay all wages due and payable upon demand, failure to pay all wages due and owing upon termination, failure to maintain adequate and accurate payroll records, and failure to provide notice of pay.

1.12. Released Parties. “Released Parties” shall mean the Defendants and all of their current and former shareholders, directors, officers, employees, agents and representatives.

1.13. Settlement. “Settlement” shall mean the settlement of the Action as described in this Agreement.

2. Conditional settlement. The Parties agree that the Settlement is contingent upon the Court’s approval. If the Court does not enter a final order(s) or a judgment consistent with the terms of the Settlement for any reason, this Agreement shall be null and void.

3. Settlement of Levine’s individual claims.

3.1. [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

[REDACTED]

3.2. Tax issues. Except as provided in section 3.1(a) above, Levine acknowledges and agrees that he is solely responsible for all tax reporting and payment obligations that may arise as a consequence of his receipt of the payment described in section 3.1 above. Levine agrees to indemnify and hold the Defendants harmless from any taxes, interest or penalties that may be deemed due and owed by him as a consequence of his receipt of the payment described above. In the event that a court or governmental agency later determines that additional taxes, interest and/or penalties are owed, Levine acknowledges and agrees that he is solely responsible for reporting and paying all taxes that may be imposed upon him as a former employee of Evolution Surgical, and Evolution Surgical acknowledges and agrees that it is solely responsible for reporting and paying all taxes that may be imposed upon it as Levine's former employer.

3.3. Release of claims by Levine. In exchange for the consideration described in this section 3, Levine hereby releases and discharges fully Evolution Surgical, its parent, subsidiary and affiliated entities, and the current and former shareholders, members, partners, limited partners, directors, officers, employees, agents and representatives of each (including, but not limited to, Rob Law and Kelly Coan) (which entities and persons, together with Evolution Surgical, are hereafter referred to collectively as "the Released Parties") from any and all claims, liabilities, charges and causes of action of any kind whatsoever which Levine holds or may hold against them as of the date on which he signs this Agreement, including, but not limited to:

- (a) any and all claims relating to or in any manner arising from Levine's employment Evolution Surgical the termination of that employment;
- (b) any and all claims arising under the Civil Rights Act of 1964 (42 U.S.C. 2000, et seq.);
- (c) any and all claims arising under the California Fair Employment and Housing Act (Government Code section 12900 et seq.);
- (d) any and all claims arising under the Americans with Disabilities Act (29 U.S.C. 706 et seq.);
- (e) any and all claims for violation of the Fair Labor Standards Act, California Labor Code, or California Wage Orders, including, but not limited to, claims for violation of Labor Code sections 201, 202, 203, 204, 221, 226, 510, 2698 et seq., 2751, and 2802;
- (f) any and all claims and rights arising under any contracts or agreements between Levine and any of the Released Parties; and
- (g) any and all claims for breach of contract, breach of the covenant of good faith and fair dealing, discrimination, harassment, retaliation,

wrongful discharge, invasion of privacy, infliction of emotional distress, defamation and misrepresentation.

This Agreement shall not apply, however, to any claims not subject to waiver by law, including, but not limited to, claims for unemployment insurance benefits, workers' compensation benefits, or indemnity pursuant to applicable law.

3.4. Scope of release by Levine. Levine understands and intends that the claims and causes of action released herein include all legal, contractual, statutory and equitable claims and causes of action held by him against the Released Parties, or any of them, regardless of whether those claims or causes of action are presently existing, known or anticipated, excepting only those claims not subject to waiver by law.

3.4.1. Administrative complaints and reports excluded. This Agreement does not prohibit Levine from reporting alleged violations of applicable law to any government agency or entity, including, but not limited to, the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, the Department of Justice, the Department of Labor, and the Securities and Exchange Commission, or making other disclosures that are protected under applicable law, provided that he may not personally recover any financial compensation in connection with such claims.

3.4.2. Class action and representative claims. If any other party commences or has commenced any action or proceeding against any of the Released Parties related to or arising out of any aspect of Levine's work for Evolution Surgical, Levine shall, upon learning of the existence of such action or proceeding, take all steps necessary to dismiss himself from the action or proceeding. Levine agrees that he shall not accept any compensation or relief of any type as the result of any claim, complaint or grievance under which he may be deemed a party, complainant, beneficiary or otherwise be entitled to any monetary or other relief for work performed for Evolution Surgical.

3.5. Due consideration. Levine represents and agrees that:

- (a) he has had the opportunity to consider this Agreement for a reasonable time of at least ten days before signing it;
- (b) he has had a reasonable opportunity to consult an attorney before signing this Agreement;
- (c) he has read this Agreement in full and understands all of the terms and conditions set forth herein; and
- (d) he knowingly and voluntarily agrees to all of the terms and conditions set forth herein and intends to be legally bound by them.

3.6. Release of claims by Defendants. The Defendants, and each of them, release and discharge Levine and his legal counsel fully from any and all claims, liabilities, charges and causes of action of any kind whatsoever which they hold or may hold against Levine

as of the date on which they sign this Agreement, including, but not limited to, claims for malicious prosecution, and defamation.

3.7. New or different facts; application of release to unknown claims. Levine and the Defendants each acknowledge that they may hereafter discover facts different from or in addition to those now known or believed to be true regarding the subject matter of the Agreement, but:

- (a) agree that this Agreement shall remain in full force and effect notwithstanding the existence or discovery of any such new or different facts; and
- (b) hereby waive all rights to which they may be entitled pursuant to California Civil Code section 1542, which provides as follows:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

3.8.



3.9. Payment of compensation. Levine acknowledges and agrees that Evolution Surgical has paid to him all compensation he earned during his employment with the Company, with the exception of compensation subject to dispute which is resolved through this Agreement. Levin also acknowledges and agrees that Evolution Surgical reimbursed him for all business expenses he incurred during his employment with the exception of expenses subject to dispute which is resolved through this Agreement.

3.10. Liens and Medicare. Levine represents that no persons or entities hold or have asserted any lien rights with respect to claims he has asserted against the Defendants or money to be paid pursuant to this Agreement. Levine agrees that he is solely responsible for

paying or resolving any such liens and agrees to hold the Released Parties harmless and indemnify them against any cost or expense, including attorney fees and costs, relating to any liens that may exist. Levine also represents that he has not received benefits or treatment pursuant to Medicare or other governmental agencies or programs in connection with any damage that he contends he has experienced as a result of the conduct of the Released Parties, or any of them.



4. Settlement of PAGA claims.

4.1. Payment by Evolution Surgical. If the Court approves the Settlement, Evolution Surgical shall, within 45 days of the Effective Date, pay \$5,000.00 (five thousand dollars and no cents) to resolve the PAGA claims asserted in the Action, as follows:

4.1.1. Labor and Workforce Development Agency (LWDA). Evolution Surgical shall pay 75% of the PAGA Settlement Amount to the LWDA.

4.1.2. Aggrieved Employees. Evolution Surgical shall pay 25% of the PAGA Settlement Amount to the Aggrieved Employees collectively, and shall calculate the Aggrieved Employee Individual Payment for each individual Aggrieved Employee by dividing the number of months worked by the Aggrieved Employee during the PAGA Period by the total number of months worked by all Aggrieved Employees collectively during the PAGA Period and multiplying by \$5,000.00, as follows:

(Number of months worked by individual Aggrieved Employee during PAGA Period / Total number of months worked by all Aggrieved Employees during PAGA Period) x \$5,000.00

4.2. Release of PAGA Claims. In exchange for the payments described in this section 4, each Aggrieved Employee shall release and waive his or her right to assert the Released PAGA Claims or pursue such claims in any manner.

4.3. Motion for Court approval of Settlement to be filed by Levine. Levine's counsel shall prepare a motion seeking the Court's approval of the Settlement, and shall confer with Evolution Surgical's counsel regarding the motion and provide a draft of the motion to Evolution Surgical's counsel at least five days prior to the date on which the motion is filed.

4.4. No additional legal fees or costs. Levine and his counsel shall not seek any legal fees or costs in connection with the settlement of the PAGA claims in the Action.

■ [REDACTED]

[REDACTED]

[REDACTED]

6. Miscellaneous.

6.1. Successors and assigns. Each Party represents that it has not transferred to any person or entity any of the rights released or transferred through this Agreement. The Parties agree that this Agreement shall be binding upon their future successors and assignees, if any.

6.2. Severability. If a court of competent jurisdiction declares or determines that any provision of this Agreement is invalid, illegal or unenforceable, the invalid, illegal or unenforceable provision(s) shall be deemed not a part of the Agreement, but the remaining provisions shall continue in full force and effect. If a court declares or determines that any of the release provisions set forth in sections 3.3 above are invalid, illegal or unenforceable, however, and Levine pursues claims against the Defendants, or any of them, that are otherwise released pursuant to this Agreement, the Defendants, and each of them, shall have the option of declaring section 3.1 of this Agreement null and void and, in the event that any Defendant exercises that option, Levine shall return all consideration received by him pursuant to this Agreement to Evolution Surgical within 15 days of the date on which any Defendant informs Levine's counsel that it has declared section 3.1 of this Agreement null and void.

6.3. Further Assurances. Levine and the Defendants agree to perform such actions, and to execute such additional documents, if any, as may be necessary or appropriate to effectuate the intent of this Agreement.

6.4. Costs and fees. Except as otherwise provided herein, each Party shall bear any costs and fees it may incur in connection with this Agreement, including legal fees, and neither shall be entitled to recover such costs or fees from the other.

6.5. Governing law. The laws of the State of California shall govern the construction and enforcement of this Agreement.

6.6. Dispute resolution. In the event a dispute arises between them in the future, the Parties shall first attempt to resolve the dispute informally through a meet and confer effort. In the event that the parties fail to resolve their dispute through a meet and confer effort, they shall resolve it in the Superior Court of the County of Alameda, and each consents to mandatory personal jurisdiction and venue exclusively in these courts pursuant to, *inter alia*, California Code of Civil Procedure Section 664.6.

6.7. Entire agreement; modification. Except as otherwise provided in this Agreement, this Agreement sets forth the entire agreement between the parties and supersedes all prior agreements or understandings, both written and oral, between the parties regarding the subject matter of this Agreement. The parties may modify this Agreement only through a writing signed by each.

Date: _____
_____ Benjamin Levine

Evolution Surgical, Inc.

Date: _____ By: _____
Title: _____

Date: _____
_____ Rob Law

Date: _____
_____ Kelly Coan

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Date: Nov 8, 2022


Benjamin levine (Nov 8, 2022 12:46 PST)
Benjamin Levine

Evolution Surgical, Inc.

Date: 10/9/2022

By: 

Title: OWNER

Date: 10/9/2022


Rob Law

Date: _____

Kelly Coan

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Date: _____

By: _____

Title: _____

Date: _____

Rob Law

Date: 10/9/2022



Kelly Coan