

1 **SHALCHI BURCH LLP**
ALI SHALCHI (SBN 239164)
2 AS@SHALCHIBURCHLLP.COM
3 TB@SHALCHIBURCHLLP.COM
TRAVIS J. BURCH (SBN 216175)
23 Corporate Plaza Dr., Ste. 150
4 Newport Beach, California 92660
Telephone: (949) 359-0334
5 Facsimile: (949) 326-0083

6 Attorneys for Plaintiff

7
8 **SUPERIOR COURT OF CALIFORNIA**
9 **COUNTY OF SAN DIEGO**

10
11 CATHERINE DURAN, on behalf of the State of
California, as a private attorney general,

12
13 Plaintiff,

14 vs.

15 SYNERGY ORTHOPEDIC SPECIALISTS, INC.
a California Corporation,

16
17 Defendant.

Lead Case No.: 37-2021-00051081-CU-OE-CTL

[Consolidated with Case No. 37-2021-00053435-
CU-OE-CTL]

[Assigned for all purposes to Hon. Richard S.
Whitney, Dept. C-68]

**[PROPOSED] ORDER GRANTING
APPROVAL OF THE PARTIES' PAGA
SETTLEMENT**

DATE: January 17, 2025
TIME: 10:30 a.m.
LOCATION: C-68

Date Filed: December 22, 2021
Trial Date: None set

21
22 Plaintiff Catherine Duran's Motion for Approval of PAGA Settlement was heard by the
23 Court on January 17, 2025. The Court having reviewed the Motion for Approval of PAGA
24 Settlement, the Joint Stipulation and PAGA Settlement Agreement ("Agreement") attached as
25 Exhibit "1"), the papers, the arguments of counsel, and all other evidence and matters presented, and
26 good cause appearing:

27 **IT IS HEREBY ORDERED** that the Motion for Approval of PAGA Settlement is
28 **GRANTED**, subject to the following findings and orders:

1 1. All terms used herein shall have the same meaning as defined in the Agreement
2 attached to this Order as Exhibit 1.

3 2. The Court hereby approves the settlement in the amount of \$110,000.00 (Gross
4 PAGA Settlement Amount) pursuant to the terms set forth in the Agreement for settlement of
5 PAGA claims and finds in this respect that the Agreement is, in all respects, fair, adequate, and
6 reasonable and directs the Parties to effectuate the PAGA settlement according to the terms set forth
7 in the Agreement. The Court finds that the Parties were able to reasonably evaluate their respective
8 positions. The Court also finds that settlement now will avoid potentially substantial litigation costs,
9 as well as delay and risks if the Parts were to continue to litigate the PAGA claims.

10 3. The Settlement Agreement is not an admission by Defendant or by any other
11 Released Party, nor is this Order a finding of the validity of any allegations or of any wrongdoing by
12 Defendant or any of other Released Parties. Neither this Order, the Agreement, nor any document
13 referred to herein, nor any action taken to carry out the Agreement, may be construed as, or may be
14 used as, an admission of any fault, wrongdoing, omission, concession, or liability whatsoever by or
15 against Defendant or any of the Released Parties.

16 4. The Court hereby approves Simpluris Inc. as the Settlement Administrator for the
17 settlement and approves Administration Costs in the amount of \$3,000.00 to be paid from the Gross
18 Settlement Amount. The Court orders the Administrator to administer the settlement and mail to the
19 Aggrieved Employees pursuant to the Agreement, their pro rata share of 25% of the PAGA Payment
20 amount which in aggregate is \$15,083.33.

21 5. The Court finds that Counsel for Plaintiff's request for attorneys' fees in the amount
22 of \$36,666.67, which is 33.33 percent of the Gross Settlement Amount, is reasonable under the
23 common fund and lodestar methods. The Court awards Counsel for Plaintiff \$36,666.67 in
24 attorneys' fees to be paid from the Gross Settlement Amount.

25 6. The Court finds that Counsel for Plaintiff has incurred at least \$10,000.00 in costs and
26 expenses. Such costs and expenses were reasonably necessary in the prosecution of the PAGA action
27 on behalf of the allegedly aggrieved employees. The Court awards Counsel for Plaintiff \$10,000.00
28 in costs and expenses to be paid from the Gross Settlement Amount.

1 7. The Court approves the Notice of PAGA Settlement in substantially the form
2 attached as Exhibit A to the Joint Stipulation and PAGA Settlement Agreement.

3 8. The Court approves the LWDA Payment in the amount of \$45,250.00, which is
4 75% of the PAGA Payment.

5 9. The Court approves the disbursement of funds per the terms of the Agreement as
6 approved and/or modified by this order. All settlement checks must be cashed within 120
7 days after the checks are mailed to the Aggrieved Employees. After 180 days,
8 uncashed checks or undeliverable checks will be cancelled and the remaining funds will go the
9 Legal Aid at Work organization.

10 10. The Court orders that Plaintiff, all Aggrieved Employees, and the State of
11 California fully, finally, and forever release, relinquish, and discharge the Released Parties from
12 the PAGA Released Claims for the PAGA Period pursuant to the terms of the Agreement.

13 11. This Court shall retain jurisdiction pursuant Code of Civil Procedure section
14 664.6 to enforce the settlement until performance in full of the terms of the Agreement.

15 **IT IS SO ORDERED.**

16 DATED: _____

JUDGE OF THE SUPERIOR COURT

EXHIBIT 1

JOINT STIPULATION AND SETTLEMENT AGREEMENT

Subject to approval by the Court, this Settlement Agreement is between **Catherine Duran** ("Plaintiff"), and Defendant Synergy Orthopedic Specialists, Inc. ("Defendant"). Plaintiff and Defendant collectively are referred to in this Agreement as the "Parties."

I. DEFINITIONS

In addition to the other terms defined in this Agreement, the terms below have the following meaning:

- A. **Action**: The lawsuit currently pending in Superior Court of California, County of San Diego, entitled *Catherine Duran v. Synergy Orthopedic Specialists, Inc.*, Case No.: 37-2021-00053435-CU-OE-CTL.
- B. **Administration Costs**: The costs incurred by the Settlement Administrator to administer this Settlement, which shall not exceed \$3,000. All Administration Costs shall be paid from the Gross Settlement Amount.
- C. **Agreement, Settlement Agreement, Joint Stipulation, or Settlement**: The settlement agreement reflected in this document, titled "Joint Stipulation and Settlement Agreement."
- D. **Aggrieved Employee**: Any of Defendant's exempt and non-exempt employees employed by Defendant in California at any time during the PAGA Period.
- E. **Aggrieved Employees' Amount**: The twenty-five percent (25%) portion of the PAGA Payment that shall be paid to the Aggrieved Employees.
- F. **Attorney Fee Award**: The amount, not to exceed one-third (1/3) of the Gross Settlement Amount or Thirty-Six Thousand Six Hundred Sixty-Six Dollars and Sixty Seven Cents (\$36,666.67), approved by the Court and awarded to Counsel for Plaintiff. The Attorney Fee Award shall be paid from the Gross Settlement Amount and will not be opposed by Defendant.
- G. **Cost Award**: The amount that the Court orders Defendants to pay Counsel for Plaintiff for payment of actual litigation costs, which shall not exceed Ten Thousand Dollars (\$10,000.00). The Cost Award will be paid from the Gross Settlement Amount and will not be opposed by Defendant. The Cost Award is subject to Court approval. If the Court awards less than the amount requested, any amount not awarded will become part of the Net Settlement Amount for distribution to Aggrieved Employees.
- H. **Counsel for Defendants**: Adrienne L. Conrad and Jaclyn M. Reinhart of Jackson Lewis P.C.

- I. **Counsel for Plaintiff:** Travis J. Burch of Shalchi Burch LLP.
- J. **Defendant:** Synergy Orthopedic Specialists, Inc.
- K. **Disbursement of the Settlement:** The date on which the Settlement Administrator shall disburse the Gross Settlement Amount as indicated herein. Under the terms of this Settlement Agreement, within ten (10) business days after receipt of the Settlement funds from Defendant, the Settlement Administrator shall disburse: (1) the PAGA Payment to the LWDA and to the Aggrieved Employees, as approved by the Court; (2) the Attorney Fee Award and Cost Award to Counsel for Plaintiff for attorneys' fees and costs, as approved by the Court; and (3) the Administration Costs, as approved by the Court.
- L. **Effective Final Settlement Date:** The effective date of this Settlement will be when the final approval of the settlement takes place or when judgment can no longer be appealed, or, if there are no objectors, no parties in intervention at the time the court grants final approval of the settlement, and no post judgment challenges to the judgment, ten (10) calendar days from the date the court enters judgment granting final approval of the settlement.
- M. **Funding of Settlement:** Defendant shall remit to the Settlement Administrator the Gross Settlement Amount within thirty (30) calendar days of the Effective Final Settlement Date.
- N. **Final Judgment or Final Approval:** The final order entered by the Court finally approving this Agreement.
- O. **Gross Settlement Amount or GSA:** The total value of the Settlement is a non-reversionary One Hundred Ten Thousand Dollars and Zero Cents (\$110,000.00). This is the gross amount Defendant can be required to pay under this Settlement Agreement, which includes without limitation: (1) the PAGA Payment to the LWDA and to the Aggrieved Employees, as approved by the Court; (2) the Attorney Fee Award and Cost Award to Counsel for Plaintiff for attorneys' fees and costs, as approved by the Court; and (3) the Administration Costs, as approved by the Court. Defendant will pay its portion of payroll taxes as the Aggrieved Employees' current or former employee separate and in addition to the GSA. No portion of the Gross Settlement Amount will revert to Defendant for any reason.
- P. **Individual PAGA Payment Share(s):** The amount payable to each Aggrieved Employee under the terms of this Settlement Agreement. Aggrieved Employees are not required to submit a claim form to receive their Individual PAGA Payment Shares pursuant to this Agreement. Rather, Aggrieved Employees will

receive an Individual PAGA Payment Share automatically, without the return of a claim form.

- Q. **LWDA:** California Labor and Workforce Development Agency.
- R. **Net Settlement Amount or NSA:** The total amount of money available for payout to Aggrieved Employees, which is the GSA less the Attorney Fee Award, Cost Award, the portion of the PAGA Payment paid to the LWDA, and Administration Costs. In other words, the NSA is the portion of the GSA that will be distributed to Aggrieved Employees.
- S. **PAGA:** The California Labor Code Private Attorneys General Act of 2004 (Cal. Labor Code §§ 2698 *et seq.*).
- T. **PAGA Payment:** The PAGA Payment consists of Sixty Thousand Three Hundred Thirty-Three Dollars and Thirty-Three Cents (\$60,333.33) of the Gross Settlement Amount allocated to satisfy the PAGA penalties claim as alleged in the in the Complaint. Seventy-five percent (75%) of the PAGA Payment, or Forty-Five Thousand Two Hundred Fifty Dollars and Zero Cents (\$45,250.00) shall be paid to the LWDA, and twenty-five percent (25%) of the PAGA Payment, or Fifteen Thousand Eighty-Three Dollars and Thirty-Three Cents (\$15,083.33) shall be part of the Net Settlement Amount distributed to Aggrieved Employees.
- U. **PAGA Period:** October 4, 2020, through April 10, 2024.
- V. **PAGA Released Claims:** Aggrieved Employees will release all claims stated in or based upon the facts alleged in the Complaint, under PAGA from October 4, 2020, through April 10, 2024.
- W. **Parties:** Plaintiff Catherine Duran, on behalf of herself and the State of California, as private attorney general, Defendant Synergy Orthopedic Specialists, Inc.
- X. **Qualified Settlement Fund or QSF:** The Parties agree that the GSA is intended to be a "Qualified Settlement Fund" or "QSF" under Section 468B of the Code and Treasury Regulations § 1.4168B-1, 26 C.F.R. § 1.468B-1 *et seq.* and will be administered by the Settlement Administrator as such. The Parties and Settlement Administrator shall treat the QSF as coming into existence as a Qualified Settlement Fund on the earliest date permitted as set forth in 26 C.F.R. § 1.468B-1, and such election statement shall be attached to the appropriate returns as required by law.
- Y. **Released Parties:** Defendant and any of Defendant's respective officers, directors, employees, and agents.

- Z. Settlement Administration:** The Settlement Administrator will conduct a skip trace for the address of all Aggrieved Employees who are former employees of Defendant. The Settlement Administrator will mail the Settlement Shares to each Aggrieved Employee by first class U.S. mail to all Aggrieved Employees at the address Defendant has on file for those Aggrieved Employees and to all former employee Aggrieved Employees at the address resulting from the skip trace.
- AA. Settlement Administrator:** The third-party administrator agreed upon by Parties to administer this Settlement is Simpluris.
- BB. Settlement Share:** The proportionate amount of the NSA paid out to each Aggrieved Employee.
- CC. Superior Court:** Superior Court of California, County of San Diego.

II. RECITALS

- A.** The Action was filed by Plaintiff Catherin Duran in the Superior Court on December 22, 2021. The Complaint alleged one cause of action for violation of PAGA for violations of Labor Code Sections 201, 202, 203, 204, 210, 213, 218, 226(a), 226.3, 226.7, 256, 510, 511, 512, 558, 558.1, 1174, 1174.5, 1194, 1197.1, 1198, 1199, 2800, 2802, 1102.5, 232.5, and 98.6.
- B.** Defendant Answered the Complaint on February 28, 2022. In its answer Defendant affirmatively denied generally and specifically all claims raised in the complaint.
- C.** On December 6, 2021, Plaintiff brought an action concerning Plaintiff's employment with Defendant, the termination of that employment, and Plaintiff's interactions with Defendant's employees, which is pending as *Catherine Duran v. Synergy Orthopedic Specialists, Inc., a California Corporation; Alejandro Fernandez, an individual; William Derek Wilson, an individual*, Superior Court of California, County of San Diego, Case No.: 37-2021-00051081-CU-OE-CTL (the "Individual Action"). In the Action, Plaintiff asserts claims for unpaid overtime compensation in violation of Labor Code sections 510, 1194, 1198, and Wage Orders; failure to provide meal periods under Labor Code sections 226.7 and 512(a) and Wage Orders; failure to provide rest periods under Labor Code section 226.7 and Wage Orders; wages not timely paid during employment under Labor Code sections 204 and 210; final wages not timely paid under Labor Code sections 201, 202, and 203; non-compliant wage statements under Labor Code section 226(a); failure to keep accurate payroll records under Labor Code sections 1174(d) and 1174.5; failure to indemnify for expenses under Labor Code sections 2800 and 2802; violation of Labor Code section 232.5; retaliation in violation of Labor Code section 1102.5; gender discrimination under FEHA, Government Code

section 12940(a); work environment harassment under FEHA, Government Code sections 12923 and 12940(j); retaliation under FEHA, Government Code section 12940(h); failure to prevent sexual harassment and retaliation under Government Code section 12940(k); and common law constructive discharge in violation of public policy.

- D. On August 19, 2022, the Superior Court of California, County of San Diego, consolidated this Action into the Individual Action.
- E. In or around November 2022, Defendant provided the names and contact information for all current and former employees employed by Defendant from October 4, 2020 through that date to Phoenix Settlement Administrators ("Phoenix"). Upon receipt of that information, Phoenix began the *Belaire-West* notice process, providing the Aggrieved Employees the opportunity to opt out of providing their contact information to Plaintiff and her counsel. On or about January 3, 2023, the *Belaire-West* Notice Process was completed and the names and contact information for all Aggrieved Employees that did not opt out were provided to Plaintiff and her counsel.
- F. The parties attended mediation with Steven Pearl on April 9, 2024. In advance of mediation through the discovery process, Defendant produced records and information to Plaintiff in preparation for mediation, including: the Plaintiff's personnel file and payroll records, Defendant's employee handbooks in effect during the PAGA Period, detailed data regarding a sub-set of the allegedly Aggrieved Employees, including time records, wage statements, rates of pay, and other pertinent information. This substantial amount of data and information permitted Plaintiff to evaluate all the PAGA claims prior to mediation. Following a full day of arm's-length mediation, the Parties came to an agreement as to a settlement amount and subsequently agreed to the principal terms of the Settlement, the terms of which are reflected herein.
- G. **Benefits of Settlement to Aggrieved Employees.** Plaintiff and Counsel for Plaintiff recognize the expense and length of continued proceedings necessary to continue the litigation against Defendant through trial and through any possible appeals. Plaintiff and Counsel for Plaintiff also have taken into account the uncertainty and risk of further litigation, the potential outcome, and the difficulties and delays inherent in such litigation. Plaintiff and Counsel for Plaintiff have conducted extensive settlement negotiations. Based on the foregoing, Plaintiff and Counsel for Plaintiff believe the Settlement set forth in this Agreement is a fair, adequate, and reasonable settlement, and is in the best interests of the Aggrieved Employees.
- H. **Defendant's Reasons for Settlement.** Defendant recognizes that the defense of this litigation will be protracted and expensive. Substantial amounts of time, energy, and resources of Defendant have been and, unless this Settlement is made, will continue to be devoted to the defense of the claims asserted by

Plaintiff. Defendant, therefore, has agreed to settle in the manner and upon the terms set forth in this Agreement to put to rest the PAGA Released Claims.

- I. **Defendant's Denial of Wrongdoing.** Defendant generally and specifically denies any and all liability or wrongdoing of any sort with regard to any of the claims alleged and makes no concessions or admissions of liability of any sort. Defendant asserts a number of defenses to the claims and has denied any wrongdoing or liability arising out of any of the alleged facts or conduct in the Action. Neither this Agreement, nor any document referred to or contemplated herein, nor any action taken to carry out this Agreement, is or may be construed as, or may be used as an admission, concession, or indication by or against Defendant or any of the Released Parties of any fault, wrongdoing, or liability whatsoever. There has been no final determination by any court as to the merits of the claims asserted by Plaintiff against Defendant.
- J. **Plaintiff's Claims.** Plaintiff asserts that Defendant's defenses are without merit. Neither this Agreement nor any documents referred to or contemplated herein, nor any action taken to carry out this Agreement is, may be construed as, or may be used as an admission, concession or indication by or against Plaintiff, Counsel for Plaintiff, or the Aggrieved Employees as to the merits of any claims or defenses asserted, or lack thereof, in the Action. However, in the event that this Settlement is approved by the Court, Plaintiff and Counsel for Plaintiff will not oppose Defendant's efforts to use this Agreement to prove that Plaintiff and Aggrieved Employees have resolved and are forever barred from re-litigating the PAGA Released Claims. Approval of this Settlement operates as full satisfaction of the PAGA Released Claims and will have preclusive effect as to those claims in any subsequent proceeding.
- K. **No Right to Opt Out.** The Parties agree that there is no statutory right for any Aggrieved Employee to opt out or otherwise exclude themselves from the Settlement.

III. **SETTLEMENT TERMS AND CONDITIONS**

- A. **Gross Settlement Amount.** Subject to the terms and conditions of this Agreement, the maximum Gross Settlement Amount, that Defendants are obligated to pay under this Settlement Agreement is One Hundred Ten Thousand Dollars and Zero Cents (\$110,000.00).
- B. **Individual Settlement Share.** Subject to the terms and conditions of this Agreement, the Settlement Administrator will pay an Individual Settlement Share from the Net Settlement Amount to each Aggrieved Employee.

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1. Calculation.

a. Individual Settlement Share Calculation. Each Aggrieved Employee will receive a proportionate share of the NSA that is equal to (i) the number of pay periods he or she worked for Defendant in California based on the data provided by Defendant, divided by (ii) the total number of pay periods worked by all Aggrieved Employees based on the same data, which is then multiplied by the NSA amount. One day worked in a given pay period will be credited as a pay period for purposes of this calculation. Therefore, the value of each Aggrieved Employee's Individual Settlement Share ties directly to the number of pay periods that he or she worked.

2. Tax Withholdings. Each Individual Settlement Share will be apportioned 100% as penalties. The amounts paid as penalties shall be reported by IRS 1099-MISC forms.

3. Taxability of Settlement Payments. Plaintiffs, PAGA Counsel, and the PAGA Members are each solely responsible for correctly characterizing any payments made pursuant to this Agreement for tax purposes and for paying any taxes on the amounts received. Defendants make no representations as to the taxability of any portions of the settlement payments, and it is understood and agreed that Defendants have made no such representations. Neither PAGA Counsel nor Defense Counsel intend anything in this Agreement to constitute advice regarding taxes or taxability, nor shall anything in this Agreement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.

C. Constituents of GSA Disbursement. Subject to the terms and conditions of this Agreement, the Settlement Administrator shall disburse the GSA as directed later on herein to the following:

1. To Counsel for Plaintiff. Counsel for Plaintiff will apply to the Court for, and Defendants agree not to oppose, a total Attorney Fee Award not to exceed one-third (1/3 or Thirty-Six Thousand Six Hundred Sixty-Six Dollars and Sixty Seven Cents (\$36,666.67)) of the GSA and a Cost Award not to exceed Ten Thousand Dollars (\$10,000.00). The Settlement Administrator will pay the court-approved amounts for the Attorney Fee Award and Cost Award out of the Gross Settlement Amount. The Settlement Administrator may purchase an annuity to utilize US treasuries and bonds or other attorney fee deferral vehicles for Counsel for Plaintiff. Payroll tax withholding and deductions will not be taken from the Attorney Fee Award or the Cost Award. IRS Forms 1099 will be issued to Counsel for Plaintiff with respect to the Attorney Fee Award. In the event the Court

does not approve the entirety of the application for the Attorney Fee Award and/or Cost Award, the Settlement Administrator shall pay whatever amount the Court awards, and neither Defendant nor the Settlement Administrator shall be responsible for paying the difference between the amount requested and the amount awarded. If the amount awarded is less than the amount requested by Counsel for Plaintiff for the Attorney Fee Award and/or Cost Award, the difference shall become part of the NSA and be available for distribution to the Aggrieved Employees.

2. **To the Settlement Administrator.** The Settlement Administrator will pay to itself Administration Costs (reasonable fees and expenses) approved by the Court not to exceed \$3,000. This will be paid out of the Gross Settlement Amount. If the actual amount of Administration Costs is less than the amount estimated and/or requested, the difference shall become part of the NSA and be available for distribution to the Aggrieved Employees.
 3. **To the LWDA.** The Settlement Administrator will allocate Sixty Thousand Three Hundred Thirty-Three Dollars and Thirty-Three Cents (\$60,333.33) of the Gross Settlement Amount allocated to satisfy the PAGA penalties claim as alleged in the in the Complaint. Seventy-five percent (75%) of the PAGA Payment, or Forty-Five Thousand Two Hundred Fifty Dollars and Zero Cents (\$45,250.00) shall be paid to the LWDA, and twenty-five percent (25%) of the PAGA Payment, or Fifteen Thousand Eighty-Three Dollars and Thirty-Three Cents (\$15,083.33) shall be part of the Net Settlement Amount distributed to Aggrieved Employees.
 4. **To Aggrieved Employees.** The Settlement Administrator will pay Aggrieved Employees according to the Individual Settlement Share calculations set forth above. All payments to Aggrieved Employees shall be made from the Gross Settlement Amount.
- D. Appointment of Settlement Administrator.** Solely for the purposes of this Settlement, the Parties stipulate and agree that Simpluris shall be retained to serve as Settlement Administrator. The Parties each represent that they do not have any financial interest in Simpluris or otherwise have a relationship with Simpluris that could create a conflict of interest.
- E. Duties of the Settlement Administrator.** The Settlement Administrator shall be responsible for preparing, printing, and mailing Individual Settlement Shares to Aggrieved Employees; performing skip traces; calculating any and all payroll tax deductions as required by law; calculating each Aggrieved Employee's Individual Settlement Share; providing weekly status reports to Counsel for Defendant and Counsel for Plaintiff; providing Counsel for Defendant and Counsel for Plaintiff with a settlement timeline of events (i.e. expected dates for receiving data, funding of settlement, disbursement of settlement, uncashed check expiration date, and

deposit of uncashed funds to the state Legal Aid at Work); providing updates to Counsel for Defendant and Counsel for Plaintiff regarding the funding and disbursement of the GSA; providing a due diligence declaration for submission to the Court; calculating and mailing the PAGA Payment to the LWDA; distributing the Attorney Fee Award and Cost Award to Counsel for Plaintiff; printing and providing Aggrieved Employees and Plaintiff with 1099 forms as required under this Agreement and applicable law; providing any funds remaining in the Gross Settlement Amount as a result of uncashed checks to Legal Aid at Work; and for such other tasks as the Parties mutually agree.

F. Procedure for Approving Settlement.

1. Discovery Stay Pending Approval of the Settlement.

- a. To effectuate the terms of the Settlement, the Parties agree all formal and informal discovery and other proceedings shall be stayed pending Court approval of the Settlement. Counsel for Plaintiff further agrees not to initiate additional communication (oral and written) with the Released Parties' current employees pending the Court's preliminary approval of the Settlement.

2. Motion for Approval.

- a. Plaintiff will file a Motion for Approval of PAGA Settlement with the Court fifteen (15) business days after execution of this Settlement Agreement. Concurrently with the Motion for Approval of PAGA Settlement, Plaintiff will file a proposed order (i) approving the Settlement, (ii) dismissing the PAGA cause of action in Plaintiff's Complaint with prejudice, such dismissal to take effect after Defendant provides the GSA to the Settlement Administrator and delivers to the Settlement Administrator the database of Aggrieved Employees, and (iii) stating that the Court shall retain jurisdiction with respect to all matters related to administration and consummation of the Settlement.
- b. Should the Court decline to approve all material aspects of the Settlement, the Settlement will be null and void, and the Parties will have no further obligations under it. Provided, however, that the amounts of the Attorney Fee Award, Cost Award, and Administration costs shall be determined by the Court, and the Court's determination on these amounts shall be final and binding, and that the Court's approval or denial of any amount requested for these items are not conditions of this Settlement Agreement and are to be considered separate and apart from the fairness, reasonableness, and adequacy of the Settlement. Any order or proceeding relating to an application for the Attorney Fee Award,

Cost Award, and Administration Costs shall not operate to terminate or cancel this Settlement Agreement. Nothing in this Agreement shall limit Plaintiff's or Counsel for Plaintiff's ability to appeal any decision by the Court to award less than the requested Attorney Fee Award, Cost Award, or Administration Costs.

- c. Plaintiff shall be responsible for the timely service and electronic submission of the Settlement Agreement and related filings in this action.

3. Vacating, Reversing, or Modifying Judgment on Appeal. If, after a notice of appeal, the reviewing court vacates, reverses, or modifies the Judgment such that there is a material modification to the Settlement, and that court's decision is not completely reversed and the Judgment is not fully affirmed on review by a higher court, then this Settlement will become null and void and the Parties will have no further obligations under it. A material modification would include, but not necessarily be limited to, any alteration of the Gross Settlement Amount, an alteration in the calculation of the Net Settlement Amount, and any change to the calculation of the Individual Settlement Share.

4. Disbursement of Settlement Shared and Payments. After the Effective Final Settlement Date, every Aggrieved Employee will be provided with their respective Individual Settlement Share in accordance with the following procedure:

- a. **Data to Settlement Administrator.** Within ten (10) calendar days after the Effective Final Settlement Date, Defendant shall deliver to the Settlement Administrator an electronic database, which will list for each Aggrieved Employee: (1) first and last name; (2) last known mailing address; (3) last known telephone numbers; and (4) social security number (collectively "Database"). If any or all of this information is unavailable to Defendant, Defendant will so inform Counsel for Plaintiff and the Parties will make their best efforts to reconstruct or otherwise agree upon how to deal with the unavailable information. The Settlement Administrator will conduct a skip trace for the address of all former employee Aggrieved Employees. The Database shall be based on Defendant's payroll, personnel, and other business records. The Settlement Administrator shall maintain the Database and all data contained within the Database as private and confidential. The Parties agree the Aggrieved Employees' contact information and Social Security numbers will be used only by the Settlement Administrator for the sole purpose of effectuating the Settlement,

and will not be provided to Counsel for Plaintiff at any time or in any form.

b. Disbursement of Settlement Shares and Payments. Subject to the Court approving the Settlement, the Settlement Administrator shall distribute funds pursuant to the terms of this Agreement and the Court's order. The maximum amount Defendant can be required to pay under this Settlement for any purpose is the Gross Settlement Amount. Plaintiff shall be responsible for any attorneys' liens related to this Action or the Gross Settlement Amount. The Settlement Administrator shall keep Counsel for Defendant and Counsel for Plaintiff apprised of all distributions from the Gross Settlement Amount. The Settlement Administrator shall respond to questions from Counsel for Defendant and Counsel for Plaintiff. No person shall have any claim against Defendant, Plaintiff, Counsel for Defendant, Counsel for Plaintiff, or the Settlement Administrator based on the distributions and payments made in accordance with this Agreement.

1. **Funding the Settlement:** Defendant shall wire to the Settlement Administrator the Gross Settlement Amount within thirty (30) calendar days of the Court approving the Settlement.
2. **Disbursement:** Within ten (10) calendar days after receipt of the Settlement funds from Defendants, the Settlement Administrator shall disburse: (1) the Net Settlement Amount to be paid to the Aggrieved Employees; (2) the Attorney Fee Award and Cost Award to Counsel for Plaintiff for attorneys' fees and costs, as approved by the Court; (3) the Administration Costs, as approved by the Court; and (4) the PAGA Payment to the LWDA as approved by the Court..
3. **Uncashed Checks.** Aggrieved Employees must cash or deposit their Individual Settlement Share checks within one hundred and twenty (120) calendar days after the checks are mailed to them. If any checks are not redeemed or deposited within sixty (60) calendar days after mailing, the Settlement Administrator will send a reminder postcard indicating that unless the check is redeemed or deposited in the next sixty (60) days, it will expire and become non-negotiable, and offer to replace the check if it was lost or misplaced. If any checks remain uncashed or not deposited by the expiration of the 60-day period after mailing the reminder notice, the Settlement Administrator will, within one hundred and eighty (180) calendar days after the checks are mailed,

cancel the checks. All funds associated with the Individual Settlement Share checks returned as undeliverable and funds associated with those Individual Settlement Share checks remaining un-cashed, shall be distributed by the Settlement Administrator, to Legal Aid at Work.

4. **Final Report by Settlement Administrator.** Within ten (10) business days after the disbursement of all funds, the Settlement Administrator will serve on the Parties a declaration providing a final report on the disbursements of all funds.

- c. **Defendant's Legal Fees.** Defendant is responsible for paying for all of Defendant's own legal fees, costs, and expenses incurred in this Action outside of the Gross Settlement Amount.

G. Release of Claims. As of the date of Effective Final Settlement Date, the Aggrieved Employees release the Released Parties from the PAGA Released Claims. The Aggrieved Employees agree not to sue or otherwise make a PAGA claim in any forum against any of the Released Parties for any of the PAGA Released Claims.

H. Plaintiff's Release of Claims and General Release. As of the Effective Final Settlement Date, and in exchange for the consideration provided in the settlement agreement resolving her Individual Action, Plaintiff shall give the following general release of claims for herself and her respective spouse, heirs, successors and assigns, forever release the Released Parties from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts, penalties and expenses of any nature whatsoever, from the beginning of time through the date of her signature on this Agreement, known or unknown, suspected or unsuspected, whether in tort, contract, equity, or otherwise, for violation of any federal, state or local statute, rule, ordinance or regulation, including but not limited to all claims arising out of, based upon, or relating to her employment with Defendant or the remuneration for, or termination of, such employment. Plaintiff's Release of Claims also includes a waiver of 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.

This release excludes any release of any claims not permitted to be released by law and any and all claims subject to the separate settlement agreement and release of Plaintiff's individual claims. This release also excludes Plaintiff's claims and prayers for relief stemming from the exercise of her rights under Labor Code sections 1030, 1031, and 1033, which are subject to a separate confidential settlement agreement between Plaintiff and the Defendant.

I. Miscellaneous Terms

- 1. No Admission of Liability.** Defendant makes no admission of liability or wrongdoing by virtue of entering into this Agreement. Defendant denies that it has engaged in any unlawful activity, has failed to comply with the law in any respect, or has any liability to anyone under the claims asserted in the Action. This Agreement is entered into solely for the purpose of compromising highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission by Defendant of liability or wrongdoing. This Settlement and Plaintiff's and Defendant's willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (other than solely in connection with this Settlement).
- 2. No Effect on Employee Benefits.** The Individual Settlement Shares paid to Plaintiff and other Aggrieved Employees shall not be deemed to be pensionable earnings and shall not have any effect on the eligibility for, or calculation of, any of the employee benefits (*e.g.*, vacation, holiday pay, retirement plans, etc.) of Plaintiff or the Aggrieved Employees. The Parties agree that any Individual Settlement Share paid to Plaintiff or the Aggrieved Employees under the terms of this Agreement do not represent any modification of Plaintiff's or the Aggrieved Employees' previously credited hours of service or other eligibility criteria under any employee pension benefit plan or employee welfare benefit plan sponsored by Defendant.
- 3. Publicity.** Plaintiff and Counsel for Plaintiff agree that the terms of this Settlement (including, but not limited to, the GSA), the negotiations leading to this Settlement, and all documents related to the Settlement, shall not be discussed with, publicized, or promoted to the public prior to the Court approving this Settlement, except as necessary to enforce the terms of the Settlement. Notwithstanding the foregoing, Plaintiff and Counsel for Plaintiff may tell the public in general only that certain claims "have been resolved by the parties."
- 4. Integrated Agreement.** After this Agreement is signed and delivered by all Parties and their counsel, this Agreement will constitute the entire Agreement between the Parties relating to the Settlement, and it will then be deemed that no oral representations, warranties, covenants, or inducements have been made to any party concerning this Agreement, other

than the representations, warranties, covenants, and inducements expressly stated in this Agreement.

5. **Headings.** The descriptive headings of any paragraphs or sections of this Agreement are inserted for convenience of reference only and do not constitute a part of this Agreement.
6. **Interim Stay of Proceedings.** The Parties agree to stay and hold all proceedings in the Action in abeyance, except such proceedings necessary to implement and complete the Settlement, pending the approval hearing to be conducted by the Superior Court.
7. **Amendment or Modification of Agreement.** This Agreement, and any and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by counsel for all Parties or their successors-in-interest.
8. **Agreement Binding on Successors and Assigns.** This Agreement will be binding upon, and inure to the benefit of, the successors and assigns of the Parties, as previously defined.
9. **No Prior Assignment.** Plaintiff hereby represents, covenants, and warrants that he has not directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or rights herein released and discharged.
10. **Applicable Law.** All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the laws of the State of California, without giving effect to any conflict of law principles or choice of law principles.
11. **Fair, Adequate, and Reasonable Settlement.** The Parties and their respective counsel believe and warrant that this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at this Agreement through arms-length negotiations, taking into account all relevant factors, current and potential.
12. **No Tax or Legal Advice.** The Parties understand and agree that the Parties are neither providing tax or legal advice, nor making representations regarding tax obligations or consequences, if any, related to this Agreement, and that Aggrieved Employees will assume any such tax obligations or consequences that may arise from this Agreement, and that Aggrieved Employees shall not seek any indemnification from the Parties or any of the Released Parties in this regard. The Parties agree that, in the event that any taxing body determines that additional taxes are due from any Aggrieved

Employee, such Aggrieved Employee assumes all responsibility for the payment of such taxes.

- 13. Jurisdiction of the Court.** The Court shall retain jurisdiction with respect to the interpretation, implementation, and enforcement of the terms of this Agreement and all orders and judgment entered in connection therewith, and the Parties and their counsel hereto submit to the jurisdiction of the Court for purposes of interpreting, implementing, and enforcing the Settlement embodied in this Agreement and all orders and judgments in connection therewith.
- 14. Invalidity of Any Provision; Severability.** Before declaring any provision of this Agreement invalid, the Parties request that the Superior Court first attempt to construe the provisions valid to the fullest extent possible consistent with applicable precedents, so as to define all provisions of this Agreement valid and enforceable. In the event any provision of this Agreement shall be found unenforceable, the unenforceable provision shall be deemed deleted, and the validity and enforceability of the remaining provisions shall not be affected thereby.
- 15. Cooperation in Drafting.** The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
- 16. Execution in Counterpart.** This Agreement may be executed in one or more counterparts. All executed counterparts, and each of them, will be deemed to be one and the same instrument provided that counsel for the Parties will exchange between themselves original signed counterparts. Facsimile or PDF signatures will be accepted. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

EXECUTION BY PARTIES:

The Parties execute this Agreement.

Dated: July 10, 2024

PLAINTIFF CATHERINE DURAN

Catherine Duran
Catherine Duran

Dated: 7/10/2024

**DEFENDANT SYNERGY ORTHOPEDIC
SPECIALISTS, INC.**

ALEJANDRO FERNANDEZ

**Alejandro Fernandez
Chief Executive Officer**

4869-4343-8521, v. 5

EXHIBIT

A

Catherine Duran v. Synergy Orthopedic Specialists, Inc., et al.,
California Superior Court, County of San Diego

Case No. 37-2021-00053435-CU-OE-CTL

NOTICE OF SETTLEMENT

To: All current and former California employees of Synergy Orthopedic Specialists, Inc. from October 4, 2020, through April 10, 2024.

First Name, Last Name

Address 1

Address 2

Re: NOTICE OF COURT APPROVED SETTLEMENT

Dear [name of allegedly Aggrieved Employee]:

Enclosed is your settlement payment from the settlement of the lawsuit titled *Catherine Duran v. Synergy Orthopedic Specialists, Inc., et al* filed in the Superior Court of the State of California, County of San Diego, Case No. 37-2021-00053435-CU-OE-CTL (the "Lawsuit").

The lawsuit was filed by Catherine Duran ("Plaintiff") against Synergy Orthopedic Specialists, Inc., ("Defendant") under a claim pursuant to the Labor Code Private Attorneys General Act of 2004, Cal. Lab. Code § 2698 et seq, (commonly called "PAGA") and was brought on behalf of the State of California and all persons who worked for and/or with Synergy Orthopedic Specialists, Inc. in California as exempt employees, and/or non-exempt employees from October 4, 2020 through April 10, 2024 ("PAGA Members").

Plaintiff brought the PAGA claim on behalf of all aggrieved employees that allegedly suffered any of the following violations while employed by Synergy Orthopedic Specialists, Inc. from October 4, 2020 through April 10, 2024: failure to pay minimum wage; failure to pay overtime premium pay; improper alternate workweek schedule; failure to provide compliant meal and rest breaks; failure to provide accurate itemized wage statements; failure to maintain accurate time records for hours worked and meal breaks; failure to pay earned wages during employment; failure to pay earned wages upon separation of employment; failure to reimburse business related expenses; violations of Wage Orders; improper direct deposit of wages without consent; whistleblower retaliation and/or retaliation for complaining about working conditions or unpaid wages.

The Parties have jointly agreed that to avoid additional cost and to avoid further risks associated with the uncertainty of litigation, a settlement has been reached in the Lawsuit. Although the Court has approved the settlement in this case, the Court has made no determination on the merits of the claims in the lawsuit. Defendant denies any liability and wrongdoing of any kind associated with the alleged claims. Defendant contends that they have complied at all times with California and Federal law and that their employees have been paid all wages owed. By approving the settlement

and issuing this Notice, the Court is not suggesting which side would win or lose this case on the merits. Rather, the Court has determined only that the settlement is fair, adequate, and reasonable.

You have been identified as a person who worked for Defendant from October 4, 2020, through April 10, 2024 (“the PAGA Period”). Pursuant to PAGA, after deduction of certain amounts for attorneys’ fees, litigation expenses, settlement administration costs, 75% of the remaining settlement funds must be paid to the State of California. The other 25% of the funds are being distributed among all “Aggrieved Employees”—a group that includes you.

Based on the number of pay periods you worked from October 4, 2020 through April 10, 2024, your individual share of the settlement is \$[REDACTED]. This amount is calculated based on the number of pay periods you worked for Defendants from October 4, 2020 through April 10, 2024, relative to the total number of pay periods other individuals worked for Defendant from October 4, 2020 through the April 10, 2024.

You are receiving an IRS form 1099 for your individual share. Because this payment is for civil penalties and not wages for work you have performed, the payment will be reported on an IRS Form 1099 and no income tax has been withheld by Defendants. **You are responsible for any and all taxes that may be due as a result of the payment.**

The settlement check included with this letter is valid for 180 days. Checks not cashed within that time will be canceled and the funds will be sent to the Legal Aid at Work organization.

As of [REDACTED], you are barred from ever suing Defendant and the Released Parties with respect to the PAGA Released Claims during the PAGA Period whether or not you cash your individual share settlement check.

The Released Parties are Defendant and any of its officers, directors, employees, and agents.

The PAGA Released Claims are any alleged PAGA violation from October 4, 2020 through April 10, 2024, based on the following: failure to pay minimum wage; failure to pay overtime premium pay; improper alternate workweek schedule; failure to provide compliant meal and rest breaks; failure to provide accurate itemized wage statements; failure to maintain accurate time records for hours worked and meal breaks; failure to pay earned wages during employment; failure to pay earned wages upon separation of employment; failure to reimburse business related expenses; violations of Wage Orders; improper direct deposit of wages without consent; whistleblower retaliation and/or retaliation for complaining about working conditions or unpaid wages.

The above is a summary of the basic terms of the settlement. For the precise terms and conditions of the Court’s order and/or settlement, you should consult the “Order Granting Approval of PAGA Settlement and Judgment” which can be accessed at the following website << Administrator URL>>.

THIS NOTICE IS NOT AN EXPRESSION OF ANY OPINION BY THE COURT AS TO THE MERITS OF THE CLAIMS OR DEFENSES BY EITHER SIDE IN THIS PROCEEDING. PLEASE DO NOT CONTACT THE COURT OR THE OFFICE OF THE CLERK REGARDING THIS CASE TO ASK QUESTIONS ABOUT THE SETTLEMENT.

If you have any questions, you may call or write to the claims administrator at:

[insert settlement administrator]

[administrator address]

[administrator contact phone number]

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; my business address is 23 Corporate Plaza, Suite 150, Newport Beach, California 92660.

On **August 6, 2024**, I served the foregoing document(s) described as **[PROPOSED] ORDER GRANTING APPROVAL OF THE PARTIES' PAGA SETTLEMENT** on the interested parties in this action as set forth below:

Jaclyn M. Reinhart, Esq.
Adrienne Conrad, Esq.
Jackson Lewis P.C.
225 Broadway, Ste. 2000
San Diego, CA 92101

Attorneys for Defendant Synergy
Orthopedic Specialists, Inc.

Telephone: (619) 573-4914

Email: adrienne.conrad@jacksonlewis.com
 Email: jaclyn.reinhart@jacksonlewis.com
 Email: kristine.hammett@jacksonlewis.com
 Email: erin.duffy@jacksonlewis.com

[X] VIA E-MAIL/ELECTRONIC TRANSMISSION: Based on an agreement between the Parties, in accordance with Code of Civil Procedure Section 1010.6, San Diego Superior Court General Order 010121-22(A), and CRC 2.251(c) I caused the documents to be sent to the person(s) at the e-mail address(es) listed above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

Executed on **August 6, 2024**, at Newport Beach, California. I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

BY: _____/S/_____
 TRAVIS J. BURCH