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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

VANESSA MURILLO, individually, and on
behalf of all others similarly situated,

Plaintiff,

v.

SAN BERNARDINO MEDICAL
ORTHOPAEDIC GROUP, INC. DBA
ARROWHEAD ORTHOPAEDICS, a California
corporation, and DOES 1 through 10, inclusive,

Defendants.

Case No. CIVSB2128071

CLASS ACTION

*[Assigned for all purposes to Judge David
Cohn, Dept. S-26]*

**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
Vanessa Murillo in Support of Plaintiff's
Motion for Preliminary Approval of Class
Action Settlement; and [Proposed] Order
Granting Plaintiff's Motion for Preliminary
Approval of Class Action Settlement]*

PRELIMINARY APPROVAL HEARING

Date: July 20, 2022

Time: 10:00 a.m.

Dept: S-26

Complaint filed: September 30, 2021

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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 Vanessa Murillo (“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 full service orthopaedic sub-specialty care in the Inland Empire area of California.

4. On September 30, 2021, Plaintiff filed a putative wage-and-hour class action complaint against Defendant for: (1) failure to pay minimum and straight time wages; (2) failure to pay overtime wages; (3) failure to provide meal periods; (4) failure to authorize and permit rest

1 periods; (5) failure to timely pay final wages at termination; (6) failure to provide accurate itemized
2 wage statements; and (7) violation of California's Unfair Competition Law, California Business
3 and Professions Code §§ 17200, et seq. In addition, the Parties stipulate that Plaintiff be afforded
4 leave to file a First Amended Class and Representative Action Complaint, which will add a cause
5 of action for civil penalties under PAGA.

6 DISCOVERY AND INVESTIGATION

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

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

18 SETTLEMENT NEGOTIATIONS

19 7. On April 19, 2022, the Parties participated in private mediation with experienced
20 class action mediator, Hon. Carl J. West (Ret.). The mediation was conducted via Zoom. The
21 settlement negotiations were at arm's length and, although conducted in a professional manner,
22 were adversarial. The Parties went into the mediation willing to explore the potential for a
23 settlement of the dispute, but each side was also prepared to litigate their position through trial and
24 appeal if a settlement had not been reached.

25 8. After extensive negotiations and discussions regarding the strengths and
26 weaknesses of Plaintiff's claims and Defendant's defenses, the Parties were able to reach a
27 resolution, the material terms of which are encompassed within the Settlement Agreement.
28 Attached as **Exhibit 1** is a true and correct copy of the Joint Stipulation of Class Action and PAGA

1 Settlement and Release (“Settlement” or “Settlement Agreement”).

2 9. The Settlement includes \$30,000.00 allocated to Plaintiff’s claims under PAGA,
3 with 75% of which (\$22,500.00) being paid to the Labor and Workforce Development Agency
4 (“LWDA”) and 25% (\$7,500.00) being paid to the Participating PAGA Members. (Settlement,
5 § XVII.) Class Counsel submitted the proposed Settlement to the LWDA before filing the Motion
6 for Preliminary Approval.

7 10. The Settlement provides that Defendant will not oppose a fee application of up to
8 33 1/3% (\$500,000.00) of the Gross Settlement Amount, plus out-of-pocket costs not to exceed
9 \$25,000.00. (Settlement, § XIV.)

10 11. I requested several bids from experienced class action settlement administrators to
11 handle the responsibilities of the Settlement Administrator under this Settlement. The Parties
12 accepted the bid of Simpluris. Simpluris has multiple years of experience in the field of Class
13 Action Administration, particularly in the wage-and-hour arena. In its bid, Simpluris agreed to cap
14 its costs at \$9,995 if there are 900 class members. A true and correct copy of the bid is attached
15 hereto as **Exhibit 2**.

16 12. Plaintiff does not have any interest, financial or otherwise, in the proposed *cy pres*
17 recipient, Legal Aid at Work or the third-party administrator, Simpluris.

18 13. No one at Wilshire Law Firm, PLC (meaning the law firm itself and anyone
19 employed at the law firm) has any interest, financial or otherwise, in the proposed *cy pres* recipient,
20 Legal Aid at Work, or the third-party administrator, Simpluris.

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

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

24 15. Class Counsel has conducted a thorough investigation into the facts of this case.
25 Based on the foregoing discovery and their own independent investigation and evaluation, Class
26 Counsel is of the opinion that the Settlement is fair, reasonable, and adequate and is in the best
27 interests of the Settlement Class Members in light of all known facts and circumstances, the risk
28 of significant delay, the defenses that could be asserted by Defendant both to certification and on

1 the merits, trial risk, and appellate risk.

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

10 Total Class Members: 867

11 Terminated Class Members during 3-year statute: 427

12 Total Workweeks: 75,922

13 PAGA Pay Periods: 18,865

14 Avg. Hourly Rate: \$19.74

15 17. Based on Plaintiff's discovery and investigation, Class Counsel reached the
16 conclusion that Defendant failed to pay class members for all hours worked, including overtime
17 wages, failed to have a legally compliant written policy authorizing and permitting rest periods,
18 and failed to indemnify employees for necessary business-related expenditures. Defendant denied
19 these claims.

20 18. Plaintiff alleges that Defendant failed to pay for all hours worked, including
21 minimum, straight time, and overtime wages. My expert analyzed Defendant's timekeeping and
22 payroll records and found many instances where he concluded that Defendant failed to pay
23 employees for all hours worked, particularly the time performing work-related duties pre-shift,
24 during meal periods, and post-shift. A more conservative estimate was appropriate given the
25 difficulty of proving an off-the-clock work violation on a class-wide basis. Assuming that
26 Defendant failed to pay employees for two hours of off-the-clock work per workweek, with 85%
27 of that work being paid at the overtime rate, potential liability for this claim is \$4,594,374.00.
28 Additionally, my expert investigated the issue regarding Defendant's alleged failure include non-

1 discretionary remuneration in the employees' overtime rate and meal period premiums and found
2 that Defendant's exposure for this theory of liability to be at \$25,350.00. Because individualized
3 issues can be a significant obstacle to certifying and proving off-the-clock claims, I discounted this
4 figure by 80% to account for the difficulty of prevailing on a motion for class certification and a
5 trial on the merits, yielding a realistic damage estimate of **\$923,944.80**.¹

6 19. With respect to the meal period claim, Plaintiff alleges that Defendant required her
7 and similarly situated class members to either work in lieu of taking meal periods, or their meal
8 periods were untimely or interrupted. My expert analyzed Defendant's timekeeping records and
9 opined that approximately 48.2% of all meal breaks had violations of short, missed, or no meal
10 periods. Potential liability for the meal period claim, which includes shifts 5-6 hours long, shifts
11 over six hours long, shifts over ten hours long, and shifts over 12 hours long, is \$3,149,233.00,
12 including interest; however, I discounted this figure by 90% to account for the difficulty of
13 certifying and proving meal period claims, as well as Defendant's contention that the claim lacks
14 merit, yielding a realistic damage estimate of **\$314,923.30**.

15 20. With respect to the rest period claim, Plaintiff alleges that Defendant required him
16 and similarly situated class members to work in lieu of taking rest periods, or their rest periods
17 were untimely or interrupted, and Defendant lacked legally compliance rest period policies during
18 the class period, policies which require that putative class members remain on the premises during
19 breaks. Assuming a 100% violation rate for the class period based on Plaintiff's and other class
20 members' experience working for Defendant, Defendant's potential liability for the rest period
21 claim is \$6,436,712.00; however, I discounted this figure by 90% to account for the difficulty of
22 certifying and proving rest period claims, particularly because rest periods do not have to be
23 recorded, and to account for the possibility of class members voluntarily choosing to forego a rest
24 period, yielding a realistic damage estimate of **\$643,671.20**.

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 21. In sum, I estimated that Plaintiff's maximum recovery for the unpaid wages based
2 on the failure to pay for all hours worked (minimum, straight time, and overtime wages) and the
3 meal and rest period violations, is \$14,205,669.00, but, **after factoring in the risk and**
4 **uncertainty of prevailing at certification and trial, I estimate that Plaintiff's realistic**
5 **estimated recovery for the non-penalty claims is \$1,882,539.30.**

6 22. With respect to Plaintiff's derivative claims for statutory and civil penalties,
7 Plaintiff estimated that Defendant's realistic potential liability is **\$553,990.70**. While Defendant's
8 maximum potential liability for waiting time penalties is \$1,794,357.00 based on approximately
9 427 terminated class members during the 3-year statute, \$1,859,050.00 for inaccurate wage
10 statements based on approximately 549 class members who worked 18,865 pay periods within the
11 1-year statute, and \$1,886,500.00 for PAGA violations based on the Court assessing a \$100 penalty
12 for initial violations for all 18,865 pay periods within the 1-year statute, I believe that it would be
13 unrealistic to expect the Court to award the full \$5,539,907.00 in penalties given Defendant's
14 defenses, the contested nature of Plaintiff's claims, and the discretionary nature of penalties.
15 Considering that the underlying claims are estimated to be \$3,653,407.00, such a disproportionate
16 award would also raise due process concerns. Weighing these factors, and applying a discount to
17 account for the risk and uncertainty of prevailing at trial, I arrived at \$553,990.70 for statutory and
18 civil penalties.

19 23. **Using these estimated figures, Plaintiff predicted that the realistic maximum**
20 **recovery for all claims, including penalties, would be \$2,436,530.00. This means that the**
21 **\$1,500,000.00 settlement figure represents 62% of the realistic maximum recovery**
22 **(\$1,500,000.00/ \$2,436,530.00 = 62%).** Considering the risk and uncertainty of prevailing at class
23 certification and at trial, this is an excellent result for the Class.² Indeed, because of the proposed
24

25 ² See, e.g., *Wise v. Ulta Salon, Cosmetics & Fragrance, Inc.* 2019 WL 3943859 at *8
26 (E.D. Cal. Aug. 21, 2019) (granting preliminary approval where the proposed allocation to settle
27 class claims was between 9.53 percent of plaintiffs' maximum recovery); *Bravo v. Gale Triangle,*
28 *Inc.*, 2017 WL 708766 at * 10 (C.D. Cal. Feb 16, 2017) (finding that "a settlement for fourteen
percent recovery of Plaintiffs' maximum recovery is reasonable"); *In re Omnivision Techs., Inc.*,
559 F.Supp.2d 1036, 1042 (N.D. Cal. 2008) (approving settlement amount that "is just over 9%
of the maximum potential recovery asserted by either party.").

Settlement, class members will receive timely, guaranteed relief and will avoid the risk of an unfavorable judgment.

24. 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.

25. This Settlement avoids the risks and the accompanying expense of further litigation. 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.

26. The Net Settlement Amount available for Class Member settlement payments is estimated to be \$925,000, for a class of 867 persons.³ **As a result, each Settlement Class Member is eligible to receive an average net benefit of approximately \$1,066.90.**

27. The proposed Settlement of \$1,500,000.00 therefore represents a substantial recovery when compared to Plaintiff's reasonably forecasted recovery. When considering the risks of litigation, the uncertainties involved in achieving class certification, the burdens of proof necessary to establish liability, the probability of appeal of a favorable judgment, it is clear that the settlement amount of \$1,500,000.00 is within the "ballpark" of reasonableness, and preliminary settlement approval is appropriate.

ENHANCEMENT AWARD FOR PLAINTIFF IS REASONABLE

28. Class Counsel represent that Plaintiff devoted a great deal of time and work assisting

³ The Net Settlement Amount is: \$1,500,000.00 minus \$500,000.00 for Class Counsel's attorneys' fees, minus \$25,000.00 for Class Counsel's litigation expenses, minus \$10,000.00 in administration costs, minus \$22,500.00 for the PAGA portion sent to the LWDA, minus \$7,500.00 for payments to the Participating PAGA Members, and minus \$10,000.00 for the class representative service award.

1 counsel in the case, communicated with counsel very frequently for litigation and to prepare for
2 mediation, and was frequently in contact with Class Counsel during the mediation. Plaintiff's
3 requested enhancement award is reasonable particularly in light of the substantial benefits Plaintiff
4 generated for all class members.

5 29. Throughout this Litigation, Plaintiff, who is a former employee of Defendant, has
6 cooperated immensely with my office and has taken many actions to protect the interests of the
7 class. Plaintiff provided valuable information regarding unpaid overtime, meal period, and rest
8 period claims. Plaintiff also informed my office of developments and information relevant to this
9 action, participated in decisions concerning this action, made himself available to answer questions
10 during the mediation, and provided my office with the names and contact information of potential
11 witnesses in this action. Before we filed this case, Plaintiff provided my office with documents
12 regarding the claims alleged in this action. The information and documentation provided by
13 Plaintiff was instrumental in establishing the alleged wage and hour violations alleged in this
14 action, and the recovery provided for in the Settlement Agreement would have been impossible to
15 obtain without Plaintiff's participation.

16 30. At the same time, Plaintiff faced many risks in adding herself as the class
17 representative in this matter. Plaintiff faced actual risks with his future employment, as putting
18 herself on public record in an employment lawsuit could also very well affect his likelihood for
19 future employment. Furthermore, as part of this Settlement, Plaintiff is executing a general release
20 of all claims against Defendant.

21 31. In turn, class members will now have the opportunity to participate in a settlement,
22 reimbursing them for alleged wage violations they may have never known about on their own or
23 been willing to pursue on their own. If these class members would have each tried to pursue their
24 legal remedies on their own, that would have resulted in each having to expend a significant amount
25 of their own monetary resources and time, which were obviated by Plaintiff putting himself on the
26 line on behalf of these other class members.

27 32. In the final analysis, this class action would not have been possible without the aid
28 of Plaintiff, who put his own time and effort into this Litigation, sacrificed the value of his own

1 individual claims, and placed himself at risk for the sake of the class members. The requested
2 enhancement award for Plaintiff for his service as the class representative and for his general
3 release of all individual claims is a relatively small amount of money when the time and effort put
4 into the Litigation are considered and in comparison to enhancements granted in other class actions.
5 The requested incentive award is therefore reasonable to compensate Plaintiff for his active
6 participation in this lawsuit. Indeed, in *Karl Adams, III, et al. v. MarketStar Corporation, et al.*,
7 No. 2:14-cv-02509-TLN-DB, a wage and hour class action alleging that class members were
8 misclassified as exempt outside salespersons, I was co-lead Class Counsel and helped negotiate a
9 \$2.5 million class action settlement for 339 class members, and the court approved a \$25,000.00
10 class representative incentive award for each named plaintiff.

11 THE REQUEST FOR ATTORNEYS' FEES AND COSTS IS REASONABLE

12 33. The Settlement provides for attorney's fees payable to Class Counsel in an amount
13 up to one-third (33 1/3%) of the Settlement Amount, for a maximum fees award of \$500,000.00,
14 plus actual costs and expenses not to exceed \$25,000.00. The proposed award of attorneys' fees
15 to Class Counsel in this case can be justified under either method – lodestar or percentage recovery.
16 Class Counsel, however, intend to base the proposed award of fees, costs and expenses on the
17 percentage method as many of the entries in the time records will have to be redacted to preserve
18 attorney-client and attorney work product privileges.

19 34. I am informed and believe that the fee and costs provision is reasonable. The fee
20 percentage requested is less than that charged by my office for most employment cases. My office
21 invested significant time and resources into the case, with payment deferred to the end of the case,
22 and then, of course, contingent on the outcome.

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

26 36. The risk to my office has been very significant, particularly if we would not be
27 successful in pursuing this class action. In that case, we would have been left with no compensation
28 for all the time taken in litigating this case. Indeed, I have taken on a number of class action cases

1 that have resulted in thousands of attorney hours being expended and ultimately having
2 certification denied or the defendant company going bankrupt. The contingent risk in these types
3 of cases is very real and they do occur regularly. Furthermore, we were precluded from focusing
4 on, or taking on, other cases which could have resulted in a larger, and less risky, monetary gain.

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

14 38. As of the drafting of Plaintiff's Motion for Preliminary Approval of Class Action
15 Settlement, my office has incurred around \$12,213.36 in expenses litigating this action, and we
16 anticipate accruing additional costs up to Final Approval of the Settlement. These expenses were
17 reasonably necessary to the Litigation and were actually incurred by my office. They should be
18 reimbursed in full, up to the maximum amount allowed in the Settlement Agreement.

19 MY EXPERIENCE AND QUALIFICATIONS

20 39. Wilshire Law Firm, PLC was selected by Best Lawyers and U.S. News & World
21 Report as one of the nation's Best Law Firms in 2022 and is comprised of over 55 attorneys and
22 over 300 employees. Wilshire Law Firm, PLC is actively and continuously practicing in
23 employment litigation, representing employees in both individual and class actions in both state
24 and federal courts throughout California.

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

1 and data privacy litigation.

2 41. I graduated from the University of California, Los Angeles's College Honors
3 Program in 2004 with Bachelor of Arts degrees in History and Japanese, *magna cum laude* and *Phi*
4 *Beta Kappa*. As an undergraduate, I also received a scholarship to study abroad for one year at
5 Tokyo University in Tokyo, Japan. I received my Juris Doctor from Notre Dame Law School in
6 2008.

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

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

14 44. I am on the California Employment Lawyers Association ("CELA")'s Wage and
15 Hour Committee and Mentor Committee, and I was selected to speak at CELA's 2019 Advanced
16 Wage & Hour Seminar on the topic of manageability of class actions. Since 2013, I have actively
17 mentored young attorneys through CELA's mentorship program.

18 45. I am also an active member of the Consumer Attorneys of California ("CAOC"). In
19 2020, I was selected for a position on CAOC's Board of Directors. I am also a member of CAOC's
20 Diversity Committee, and I help assist the CAOC in defeating bills that harm employees. Indeed,
21 I recently helped assist Jacqueline Serna, Esq., Legislative Counsel for CAOC, in defeating AB
22 443, which proposed legislation that sought to limit the enforceability of California Labor Code §
23 226.

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

- 1 a. I served as lead or co-lead in negotiating class action settlements worth over \$10
2 million in gross recovery to class members for each year since 2020.
- 3 b. To my knowledge, I am the only attorney to appear on each of the following *Top*
4 *Verdict* lists for 2018 in California: Top 20 Civil Rights Violation Verdicts, Top 20
5 Labor & Employment Settlements, and Top 50 Class Action Settlements.
- 6 c. As lead counsel, on April 29, 2021, I prevailed against CVS Pharmacy, Inc. by
7 winning class certification on behalf of hundreds of thousands of consumers for
8 misleading advertising claims in *Joseph Mier v. CVS Pharmacy, Inc.*, U.S. Dist. Ct.
9 C.D. Cal. no. SA CV 20-1979-DOC-(ADSx).
- 10 d. As lead counsel, I prevailed against Bank of America by: winning class certification
11 on behalf of thousands of employees for California Labor Code violations; defeating
12 appellate review of the court’s order certifying the class; defeating summary
13 judgment; and defeating a motion to dismiss. (*Frausto v. Bank of America, N.A.*
14 (N.D. Cal. 2019) 334 F.R.D. 192, 2020 WL 1290302 (9th Cir. Feb. 27, 2020), 2019
15 WL 5626640 (N.D. Cal. Oct. 31, 2019), 2018 W.L. 3659251 (N.D. Cal. Aug. 2,
16 2018).). The decision certifying the class in *Frausto* is also discussed in *Class*
17 *Certification Under Fed. R. Civ. P. 23 in Action by Information Technology or Call*
18 *Center Employees for Violation of State Law Wage and Hour Rules*, 35 A.L.R. Fed.
19 3d Art. 8.
- 20 e. I was the primary author of the class certification and expert briefs in *ABM*
21 *Industries Overtime Cases* (2017) 19 Cal.App.5th 277, a wage and hour class action
22 for over 40,000 class members for off-the-clock, meal period, split shift, and
23 reimbursement claims. *ABM Industries Overtime Cases* is the first published
24 California appellate authority to hold that an employer’s “auto-deduct policy for
25 meal breaks in light of the recordkeeping requirements for California employers is
26 also an issue amenable to classwide resolution.” (*Id.* at p. 310.)⁴ Notably, the Court

27
28 ⁴ 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*

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.⁵ 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 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

Connectivity Networks, Inc. (N.D. Cal. Feb. 9, 2017) No. 14-CV-04872-EDL, 2017 WL 1758048, *7.)

⁵ <http://www.chamberlitigation.com/cases/abm-industries-inc-v-castro>.

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

1 California Supreme Court.

2 47. Christina M. Le is a Senior Associate Attorney at Wilshire Law Firm. She is
3 admitted to practice in the State of California, the Ninth Circuit Court of Appeals, and the United
4 States District Courts for the Central, Southern, Eastern, and Northern Districts of California. She
5 graduated from Loyola Law School, Los Angeles and attended the University of California,
6 Berkeley for her undergraduate studies, where she obtained a Bachelor of Arts in History. She has
7 over 15 years of litigation experience, which includes the successful handling of numerous
8 employment, wage and hour, and class and representative action matters during the latter half of
9 her career in state and federal court through inception through case resolution. Prior to joining
10 Wilshire Law Firm in November 2021, Ms. Le gained invaluable litigation experience working at
11 various plaintiff and defense firms, including Kristensen Weisberg PLC, Jones Bell LLP, Archer
12 Norris PLC, and Lewis Brisbois Bisgaard & Smith LLP, which is a large firm with a national
13 practice. Ms. Le is a member of NELA, CAALA, LACBA, and the Vietnamese Bar Association
14 of Southern California. Her current contingent billing rate for this case is \$750.00 per hour, which
15 is commensurate with Ms. Le's years of experience and work in this practice area.

16 48. Arsiné Grigoryan is an Associate Attorney at my office. She earned two Bachelor
17 of Arts degrees from the University of California, Berkeley in (1) Political Science with an
18 emphasis on international relations and (2) Media Studies. She obtained her Juris Doctor degree
19 from Southwestern Law School. She is presently admitted to practice in all state courts of
20 California (admitted in 2017) and before all federal district courts in California. The focus of her
21 practice at Wilshire Law Firm is currently on class action wage-and-hour law, including Private
22 Attorneys General Act of 2004 ("PAGA") matters. Prior to joining Wilshire Law Firm, PLC, she
23 worked at a law firm specializing in wage-and-hour class action cases. She is also handling more
24 than a dozen active class action matters currently pending and prosecuting multiple PAGA
25 collective action matters in various courts throughout the State of California. Her current
26 contingent billing rate for this case is \$600.00 per hour.

27 49. My current contingent billing rate of \$850.00 per hour is consistent with my practice
28 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 May 6, 2022 the Hon. Jay A. Garcia-Gregory of the United States District Court
16 in Puerto Rico approved my \$850 hourly rate when he granted final approval of the
17 class action settlement in *Serrano v. Inmediata Corp.*, No. 3:19-cv-01811-JAG, Dkt.
18 57 (U.S. Dist. Ct. P.R. May 6, 2022).
- 19 c. On September 9, 2021, the Hon. Peter Wilson of the Orange County Superior Court
20 approved my \$800 hourly rate when he granted final approval of the class action
21 settlement in *Ricardo Campos Hernandez v. Adams Iron Co., Inc.*, No. 30-2019-
22 01066522-CU-OE-CXC.
- 23 d. On August 6, 2021, the Hon. Stanley Blumenfeld, Jr. of the United States District
24 Court granted final approval of the \$1,600,000 class action settlement in *Carlos*
25 *Moreno v. Pretium Packaging, Inc.* (C.D. Cal. Aug. 6, 2021) No. 8:19-cv-02500-
26 SB-DFM, 2021 WL 3673845 in which I served as lead counsel. In doing so, the
27 Court approved my then \$750 hourly rate after finding it was “reasonable, given the
28 qualifications of the attorneys who worked on this matter.” (*Id.* at p. *3.)

1 e. On January 19, 2021, the Hon. Elihu M. Berle of the Los Angeles County Superior
2 Court approved my \$750 hourly rate when he granted final approval of the class
3 action settlement in *Faye Zhang v. Richemont North America, Inc.*, Case No.
4 19STCV32396.

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

7 Executed on June 27, 2022, at Los Angeles, California.

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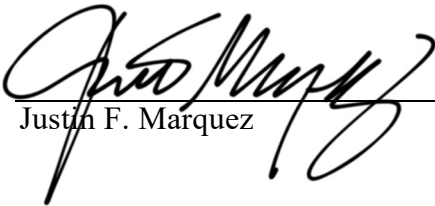

Justin F. Marquez

Exhibit 1

Justin F. Marquez, Esq. (SBN 262417)
justin@wilshirelawfirm.com

Christina M. Le, Esq. (SBN 237697)
cle@wilshirelawfirm.com

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Fax: (213) 250-7900
Attorneys for Defendant

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

VANESSA MURILLO, individually, and
on behalf of all others similarly situated,

Plaintiff,

v.

SAN BERNARDINO MEDICAL
ORTHOPAEDIC GROUP, INC. DBA
ARROWHEAD ORTHOPAEDICS, a
California corporation, and DOES 1 through
10, inclusive,

Defendants.

Case No.: CIVSB2128071

*[Assigned for all purposes to Judge David Cohn,
Dept. S-26]*

CLASS ACTION

**JOINT STIPULATION OF CLASS ACTION
AND PAGA SETTLEMENT AND RELEASE**

Action Filed: September 30, 2021
Trial Date: None Set

IT IS HEREBY STIPULATED AND AGREED by and between Plaintiff Vanessa Murillo

1 (“Plaintiff”), on behalf of herself and all others similarly situated to her and as defined below, and
2 SAN BERNARDINO MEDICAL ORTHOPAEDIC GROUP, INC. DBA ARROWHEAD
3 ORTHOPAEDICS. (“Defendant”), as set forth below:

4 **I. The Conditional Nature of This Stipulation**

5 Defendant and Class Representative enter into this Joint Stipulation of Class Action and
6 PAGA Settlement and Release (“Stipulation,” “Settlement,” or “Settlement Agreement”), including
7 all associated exhibits or attachments, in compromise of disputed claims for the sole purpose of
8 resolving the matter entitled *Murillo v. Arrowhead Orthopaedics*, San Bernardino County Superior
9 Court Case No. CIVSB2128071 (“Action” or “Litigation”). The Settlement is subject to approval by
10 the Court. In the event that the Court does not execute and file the Final Approval Order and
11 Judgment, or in the event that the associated Judgment does not become final for any reason, this
12 Stipulation will be deemed null and void, it will be of no force or effect whatsoever, it will not be
13 referred to or used for any purpose whatsoever, and the negotiation, terms and entry of it shall remain
14 subject to the provisions of California Evidence Code §§ 1119 and 1152.

15 Defendant denies all of the claims and allegations asserted in the Litigation (as defined
16 herein). Defendant has agreed to resolve this Litigation via this Stipulation, but to the extent this
17 Stipulation is deemed void or does not take effect, Defendant does not waive, but rather expressly
18 reserves, all rights to challenge all such claims and allegations in the Litigation upon all procedural
19 and factual grounds, including without limitation the ability to challenge suitability for class treatment
20 or representative adjudication on any grounds or to assert any and all defenses or privileges. The
21 Class Representative and her counsel agree that Defendant retains and reserves these rights. In
22 particular, the Class Representative and her counsel waive and agree not to argue or to present any
23 argument that Defendant would be estopped from contesting class certification because it has entered
24 into this Stipulation.

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27 **II. The Parties to this Stipulation**

1 This Stipulation (with the associated exhibits) is made and entered into by and among Plaintiff
2 (on behalf of herself and each of the members of the Class) and Defendant (Plaintiff and Defendant
3 shall be referred to collectively as “Parties”). This Stipulation is intended by the Parties to result in
4 a Judgment and to fully, finally, and forever resolve, discharge and settle the Released Claims
5 (defined below) upon and subject to the terms and conditions thereof.

6 **III. Procedural Posture**

7 On September 30, 2021, Plaintiff filed a class action complaint against Defendant pleading
8 causes of action for 1) Failure to Pay Minimum and Straight Time Wages (Cal. Lab. Code §§ 204,
9 1194, 1194.2, and 1197); 2) Failure to Pay Overtime Wages (Cal. Lab. Code §§ 1194 and 1198); 3)
10 Failure to Provide Meal Periods (Cal. Lab. Code §§ 226.7, 512); 4) Failure to Authorize and Permit
11 Rest Periods (Cal. Lab. Code §§ 226.7); 5) Failure to Timely Pay Final Wages at Termination (Cal.
12 Lab. Code §§ 201-203); 6) Failure to Provide Accurate Itemized Wage Statements (Cal. Lab. Code §
13 226); and 7) Unfair Business Practices (Cal. Bus. & Prof. Code §§ 17200, et seq.).

14 At the time the parties sign this agreement, a stipulation is also pending with the Court that
15 will allow Plaintiff to file an amended complaint adding in an additional cause of action for
16 representative claims under PAGA.

17 On April 19, 2022, the Parties participated in a mediation before esteemed mediator Judge
18 Carl J. West (Ret.), which concluded in a resolution of Plaintiff’s claims.

19 **IV. Defendant’s Denial of Wrongdoing or Liability**

20 Defendant denies all of the claims and contentions alleged by the Plaintiff in the Litigation,
21 and has asserted multiple defenses to liability, class certification, and damages. Defendant does not,
22 by this Settlement Agreement or otherwise, admit any liability of wrongdoing of any kind.
23 Nonetheless, Defendant has taken into account the uncertainty and risks inherent in any litigation,
24 particularly class action litigation, and concluded that to continue the Litigation would be protracted
25 and expensive and that it is desirable that the Litigation be fully and finally settled in the manner and
26 upon the terms and conditions set forth in this Stipulation.

27 The Parties understand and acknowledge that this Settlement Agreement constitutes a

1 compromise and settlement of disputed claims. No action taken by the Parties whether previously or
2 in connection with the negotiations or proceedings connected with the Settlement or this Agreement
3 shall be deemed or construed to be an admission of the truth or falsity of any allegations, claims, or
4 defenses heretofore made, or an acknowledgment or admission by any party of any fact, fault,
5 liability, or wrongdoing of any kind whatsoever.

6 Neither the Settlement, nor any act performed or document executed pursuant to or in
7 furtherance of the Settlement: (a) is or may be deemed to be, or may be used as, an admission of, or
8 evidence of, the validity of any claim made by the Plaintiff or Class Members, or of any wrongdoing
9 or liability of the Released Parties (as defined below); or (b) is or may be deemed to be, or may be
10 used as, an admission of, or evidence of, any fault or omission of any of the Released Parties, in the
11 Litigation or in any proceeding in any court, administrative agency or other tribunal; or construed as
12 an admission by Plaintiff regarding the validity of any allegation or claim asserted in this Action or
13 that Plaintiff has waived any allegation or claim asserted in the Action.

14 In addition to any other defenses Defendant may have at law, in equity, or otherwise, to the
15 extent permitted by law, this Settlement Agreement may be pleaded as a full and complete defense
16 to, and may be used as the basis for an injunction against, any action, suit or other proceeding that
17 may be instituted, prosecuted or attempted in breach of this Settlement Agreement or the releases
18 contained herein.

19 In light of the above, Defendant has determined that it is desirable and beneficial to it that the
20 Litigation be settled in the manner and upon the terms and conditions set forth in this Stipulation.

21 **V. Claims of the Class Representative and Benefits of Settlement**

22 The Class Representative believes that the claims asserted in the Litigation have merit. The
23 Class Representative and Class Counsel recognize and acknowledge, however, the expense and time
24 associated with continued litigation against Defendant through class certification, trial, and/or
25 appeals. The Class Representative and Class Counsel have also taken into account the uncertain
26 outcome and risks of any litigation, and in particular putative class actions such as this Litigation, as
27 well as the difficulties and delays inherent in such litigation. The Class Representative and Class
28

Counsel are also mindful of the inherent problems of proof in establishing and overcoming potential defenses to the claims asserted in the Litigation. In light of these considerations, the Class Representative and Class Counsel believe that the Settlement set forth in the Stipulation confers substantial benefits and is in the best interests of the Class.

VI. Terms of Stipulation and Agreement of Settlement

1. Definitions

As used in all parts of this Stipulation (including the exhibits which are incorporated as part of the Stipulation), the following terms have the meanings specified below:

1.1 “Settlement Class” or “Class Members” means any and all persons who worked for Defendant in California as an hourly paid or non-exempt employee during the time period of April 5, 2017 through June 18, 2022.

1.2 “Class Counsel” means Justin F. Marquez, Christina M. Le and Rachel J. Vinson of the Wilshire Law Firm, PLC, 3055 Wilshire Blvd., 12th Floor, Los Angeles, CA 90010.

1.3 “Class Period” means the time period from April 5, 2017 through June 18, 2022.

1.4 “Class Workweeks” means the following: the number of Workweeks Participating Class Members worked for Defendant during the Class Period.

1.5 “Court” means the Superior Court of the State of California, for the County of San Bernardino.

1.6 “Effective Date” means the later of: (a) if no objections to the Settlement are submitted, the date on which the Court issues the Final Approval Order and Judgment; (b) if any objections to the Settlement are submitted, the date which is thirty (30) calendar days after notice of entry of the Final Approval Order and Judgment if no notice is filed within that time seeking appeal of the Final Approval Order and Judgment and if no motion for extension to appeal is filed; or (c) if a notice of appeal is filed, the date upon which all appellate and/or other proceedings resulting from the notice of appeal have been terminated in such a manner as to permit the Final Approval Order and Judgment to take effect in substantially the form described herein.

1.7 “Employer Taxes” means Defendant’s share of payroll taxes (e.g. UI, ETT, Social

Security, and Medicare taxes) with respect to the wages portion of Individual Settlement Amounts, which will be paid by Defendant separately and in addition to the Maximum Settlement Amount.

1.8 “Skip Tracing” means the utilization of Accurint or Experian, after the Reasonable Address Verification, to review the accuracy of and, if possible, to update a mailing address for a Class Member in the event that his or her Class Notice is returned to the Settlement Administrator as undeliverable without a forwarding address.

1.9 “Maximum Settlement Amount” is the amount of One Million Five Hundred Thousand Dollars and Zero Cents (\$1,500,000.00), which is the maximum amount to be paid by Defendant pursuant to the Settlement Agreement, which will include: Attorneys’ Fees and Costs, Settlement Administration Costs, Service Payments, PAGA Penalties, and the Net Settlement Amount.

1.10 “Individual Class Settlement Amount” means an individual Participating Class Member’s share of the Net Settlement Amount, which will be allocated as 10% wages and 90% interest and penalties.

1.11 “Individual Class Settlement Payment” means the net payment of a Participating Class Member’s Individual Settlement Amount, after reduction for the applicable taxes.

1.12 “Individual Class Workweeks” means the following: the number of workweeks that the Class Member worked for Defendant during the Class Period.

1.13 “Individual PAGA Settlement Payment” means the net payment of a PAGA Employee’s share of the \$7,500.00 (25% of the \$10,000.00 to be paid in settlement of the PAGA claims in the Litigation), which will be allocated as 100% penalties.

1.14 “Individual PAGA Workweeks” means the following: the number of Workweeks PAGA Employees worked for Defendant during the PAGA Period.

1.15 “Last Known Address” means the most recently recorded mailing address for a Class Member, as such information is contained in employment, payroll, or personnel records maintained by Defendant.

1.16 “Net Settlement Amount” means the Maximum Settlement Amount, less the amount

that will be available for payment to all Participating Class Members (subject to the occurrence of the Effective Date), and is calculated by subtracting all of the following from the Maximum Settlement Amount: (1) attorneys' fees in the amount of up to \$500,000.00 and reimbursement of litigation costs and expenses in the amount of up to \$25,000.00 to Class Counsel ("Attorneys' Fees and Costs"); (2) service award to Plaintiff of \$10,000.00; (3) fees and expenses of administration of the Settlement to the Settlement Administrator in an amount not to exceed \$10,000.00 ("Settlement Administration Costs"); and (4) the \$30,000.00 in PAGA Penalties. The Net Settlement Amount is currently estimated to be approximately \$925,000.00, and this figure may change depending on the actual amounts awarded by the Court for the Settlement Administration Costs, Attorneys' Fees and Costs, and Service Payment, and approved by the Court for PAGA Penalties.

1.17 "Notice of Class Action Settlement" or "Class Notice(s)" means a notice titled "Notice of Class Action Settlement" to be approved by the Court, substantially in the form attached hereto as "**Exhibit 1.**" The Notice of Class Action Settlement will constitute the class notice pursuant to California Rule of Court, Rule 3.769(f).

1.18 "Opt Out" means a Class Member's act of excluding him or herself from the Settlement, by way of submitting a timely and valid Request for Exclusion to the Settlement Administrator, in conformity with the requirements set forth herein and in the Class Notice. PAGA Employees will release their Released PAGA Claims and receive an Individual PAGA Settlement Payment regardless of whether they request exclusion from the Settlement.

1.19 "Final Approval Order and Judgment" means the judgment and order to be entered by the Court, substantially in the form that the parties mutually agree to and lodge with the Court, which will be a judgment for purposes of California Rule of Court, Rule 3.771(a) ("Judgment") and constitute approval pursuant to California Rule of Court, Rule 3.769(a). The Final Approval Order and Judgment will be posted on the Settlement Administrator's website for a period of sixty (60) calendar days in compliance with California Rule of Court, Rule 3.771(b).

1.20 "PAGA Employees" means all Class Members who worked for Defendant at any time from April 5, 2020 through June 18, 2022.

1.21 “PAGA Penalties” means the penalties pursuant to California Labor Code §§ 2698, *et seq.*, the Private Attorneys General Act of 2004 (“PAGA”) in the amount of \$30,000.00 to be paid in settlement of the PAGA claims in the Litigation. PAGA Penalties are to be approved by the Court pursuant to California Labor Code § 2699 and are to be distributed as follows: seventy-five percent (75%) to the LWDA (i.e., the LWDA Payment) and twenty-five percent (25%) that will be distributed to PAGA Employees.

1.22 “PAGA Period” means the time period from April 5, 2020 through June 18, 2022.

1.23 “PAGA Workweeks” means the following: the number of Workweeks PAGA Employees worked for Defendant during the PAGA Period.

1.24 “Participating Class Members” or “Settlement Class” means all Class Members who do not Opt Out pursuant to Paragraph 3.3.4 and, thus, become bound by the Judgment.

1.25 “Person” means a natural person, corporation, company, partnership, firm, association, or society.

1.26 “Preliminary Approval Date” means the date on which the Court grants preliminary approval of the Settlement.

1.27 “Preliminary Approval Order” means an order to be executed and filed by the Court, substantially in the form that the parties mutually agree to and lodge with the Court, which will constitute an order certifying a provisional class for settlement purposes only pursuant to California Rule of Court, Rule 3.769(d) and an order setting a Final Approval Hearing pursuant to California Rule of Court, Rule 3.769(e).

1.28 “Reasonable Address Verification” means the utilization of the National Change of Address Database maintained by the United States Postal Service to review the accuracy of and, if possible, update a mailing address.

1.29 “Released Class Claims” means all claims, demands, rights, liabilities and causes of action of every nature and description whatsoever including without limitation statutory, constitutional, contractual or common law claims, against the Released Parties (as defined below), and any of them, for relief and penalties, that accrued during the Class Period, and as a result of Class

Members' employment by Defendant in California, that arise under any state or local law or state administrative order that was or could have been pled based on the facts alleged in the Operative Complaint, including claims if failure to pay for all hours worked (including minimum, straight time, and overtime wages), failure to provide meal periods, failure to authorize and permit rest periods, failure to timely pay final wages at termination, failure to furnish accurate itemized wage statements, and all damages, interest, penalties, attorneys' fees, costs, and other amounts recoverable under said causes of action under California law, to the extent permissible, including, but not limited to, the California Labor Code and the applicable Wage Orders, including without limitation all related claims for restitution and other equitable relief arising from California Business and Professions Code §§ 17200, *et seq.*, interest on unpaid wages, unpaid wages, attorneys' fees or litigation costs, and any other related claims and/or penalties. The release does not extend to any claims not alleged in the operative Class Action Complaint and specifically excludes claims for workers' compensation, personal injuries, unemployment insurance, state disability compensation, claims under the Employment Retirement Income Security Act of 1974, previously vested benefits under any employer sponsored benefits plan, wrongful termination, discrimination, retaliation, and harassment including but not limited to those arising under the Age Discrimination In Employment Act, the California Fair Employment and Housing Act, Title VII of the Federal Civil Rights Act of 1964, and/or Federal Civil Rights Act of 1991, or any similar state or federal laws, the California Family Rights Act, the Federal Family Medical Leave Act, the California Pregnancy Leave Law, or similar state or federal laws, the Federal Equal Pay Act of 1963, violations of the Americans with Disabilities Act of 1990 or violations of any other state or federal law, rule or regulation concerning discrimination, retaliation and/or harassment. This release does not include any of the claims encompassed within the Released PAGA Claims (as defined below).

1.30 "Released PAGA Claims" means all claims, demands, rights, liabilities and causes of action of every nature and description whatsoever including without limitation statutory, constitutional, contractual or common law claims, against the Released Parties (as defined below), and any of them, for civil penalties pursuant to PAGA, that accrued during the PAGA Period, and as

1 a result of PAGA employees' employment by Defendant in California, that arise under any state or
2 local law or state administrative order that was or could have been pled based on the facts alleged in
3 the Operative Complaint and the Plaintiff's notice to the LWDA, including claims off failure to pay
4 for all hours worked (including minimum, straight time, and overtime wages), failure to provide meal
5 periods, failure to authorize and permit rest periods, failure to timely pay final wages at termination,
6 and failure to furnish accurate itemized wage statements.

7 1.31 "Released Parties" means Defendant San Bernardino Medical Orthopaedics Group,
8 Inc. dba Arrowhead Orthopaedics and each of its parent companies, subsidiaries, affiliates, current
9 and former management companies, shareholders, members, agents (including any investment
10 bankers, accountants, insurers, reinsurers, attorneys and any past, present or future officers, directors
11 and employees) predecessors, successors, and assigns.

12 1.32 "Response Deadline" means the date that is sixty (60) calendar days after the date on
13 which the Settlement Administrator initially mails the Class Notice to the Class Members, which will
14 be the deadline for a Class Member to Opt Out, dispute the number of Workweeks credited to him or
15 her, and/or object to the Settlement, and which will be indicated on the Class Notice that is mailed to
16 the Class Members.

17 1.33 "Request for Exclusion" means a written request to be excluded from the Settlement,
18 which must be made in writing submitted to the Settlement Administrator by mail, postmarked on or
19 before the Response Deadline, and which must contain the case name (*Murillo v. Arrowhead*
20 *Orthopaedics*, San Bernardino County Superior Court Case No. CIVSB2128071), as well as the Class
21 Member's full name, address, telephone number, last four (4) digits of his or her Social Security
22 number, and signature, and a clear statement indicating that he or she seeks to exclude him or herself
23 from the Settlement.

24 1.34 "Settlement Administrator" means the third-party settlement administration firm,
25 Simpluris Class Action Settlement Administration.

26 1.35 "Final Approval Hearing" means a hearing set by the Court for the purpose of
27 determining the fairness, adequacy and reasonableness of the Settlement pursuant to class action

procedures and requirements and entering Judgment, and required under California Rule of Court, Rule 3.769(a).

1.36 “Unknown Claims” means any Released Claims which the Class Representative does not know or suspect to exist in her favor at the time of the entry of the Judgment, and which if known might have affected the settlement with and release of Defendant.

1.37 “Updated Address” means a mailing address that was updated via a Reasonable Address Verification, via an updated mailing address provided by the United States Postal Service or a Class Member, via Skip Tracing, or via a Locator Service.

1.38 “Workweeks” means the numbers of workweeks worked by the Class Members for Defendant during the Class Period.

2. Settlement Amount, Timing of Payments, Tax Reporting Obligations, and Other Obligations of Defendant and the Settlement Administrator

2.1 Defendant will fund the total Maximum Settlement Amount, along with the Employer Taxes (which will be paid by Defendant separately and in addition to the Maximum Settlement Amount). The Maximum Settlement Amount will be paid as follows: Defendant shall deposit the required maximum payout of \$1,500,000.00 with the Settlement Administrator in one installment no later than thirty (30) days after the Effective Date. If the Court’s approval of this settlement is overturned on appeal, all settlement funds deposited by Defendant with the Settlement Administrator to date shall be refunded to Defendant within fourteen (14) days of the Court’s order declining to approve the settlement, and Defendant shall be excused from making any further settlement payment installments.

2.2 The Settlement Administrator will administer the Settlement and perform any function related to settlement administration at the agreed-upon instruction of both Class Counsel and Defendant, including, and not limited to, establishing and maintaining a settlement website and toll-free telephone line for Class Members to call with inquiries regarding the Settlement, distributing the Class Notice, performing skip traces with respect to Class Notices that are returned as undeliverable and without a forwarding address on or before the Response Deadline, receiving and processing

1 Requests for Exclusion and objections to the Settlement, adjudicating Class Members' disputes
2 regarding Workweeks, providing Class Counsel and counsel for Defendant with weekly updates on
3 the status of the settlement administration process (including the names and percentages of Class
4 Members who Opt Out or object), calculating and handling inquiries regarding the calculation of the
5 Individual Settlement Amounts, preparing a declaration to submit to the Court that details the
6 settlement notice administration process and identifies each Class Member who Opts Out, and
7 distributing the Maximum Settlement Amount. The actions of the Settlement Administrator will be
8 governed by the terms of this Stipulation. The Parties, through their counsel, may provide written
9 information needed by the Settlement Administrator pursuant to the Stipulation.

10 2.3 The Parties agree to cooperate in good faith and to coordinate with each other and the
11 Settlement Administrator to carry out the terms of the Settlement, including, without limitation, by
12 providing reasonably available information regarding Class Members.

13 2.4 Defendant, through the Settlement Administrator, will distribute payments as follows:

14 (a) Class Representative Enhancement Payment: Subject to Court approval, the
15 Plaintiff shall receive a service award of \$10,000.00. Defendant agrees not to oppose the amount of
16 the Plaintiff's service award. Since it is the intent of the Parties that the service award to the Plaintiff
17 is for her service to the Class Members, and not wages, the Settlement Administrator will not withhold
18 any taxes from the service award. The Settlement Administrator will report the service award on a
19 Form 1099, which it will provide to the Plaintiff and to the pertinent taxing authorities.

20 (b) Attorneys' Fees and Litigation Costs: Class Counsel shall submit their Application
21 for Award of Attorneys' Fees and Costs to the Court before the Final Approval Hearing. Class
22 Counsel will seek attorneys' fees and costs in the amount of \$500,000.00, and actual costs up to
23 \$25,000.00, subject to court approval. Class Counsel shall serve Defendant with copies of all
24 documents in support of their Application for Award of Attorneys' Fees and Costs. Defendant agrees
25 not to oppose the Application for Award of Attorneys' Fees and Costs. The Settlement Administrator
26 will report the attorneys' fees and costs award on a Form 1099, which it will provide to Class Counsel
27 and to the pertinent taxing authorities.

1 (c) Settlement Administration Costs: Subject to Court approval, the Settlement
2 Administrator shall be paid an amount which is expected to not exceed \$10,000.00 for all fees and
3 costs relating to the administration of this settlement, all tax document preparation, custodial fees and
4 accounting fees, all costs and fees associated with preparing, issuing, and mailing any and all Class
5 Notices, all costs and fees associated with computing, reviewing, and paying distributions from the
6 Maximum Settlement Amount, all costs and fees associated with preparing any tax returns and any
7 other filings required by any governmental taxing authority or agency, all costs and fees associated
8 with preparing any other notices, reports, or filings to be prepared in the course of administering
9 disbursements from the Maximum Settlement Amount, and any other costs and fees incurred and/or
10 charged by the Settlement Administrator in connection with the execution of its duties under this
11 Stipulation.

12 2.5 No later than fourteen (14) calendar days after Defendant's payment of the settlement
13 funds to the Settlement Administrator as set forth in Paragraph 2.1, Defendant, through the Settlement
14 Administrator, and according to the terms, conditions and procedures set forth in Paragraph 2.6 of
15 this Stipulation, shall pay to each Participating Class Member and PAGA Employee their Individual
16 Class Settlement Amount and Individual PAGA Settlement Payment, respectively. Each of the
17 payments to Participating Class Members will be inclusive of interest and penalties, including wage
18 statement penalties, and will be allocated as follows: 25% to satisfaction of claims for unpaid wages;
19 75% to the satisfaction of claims for interest and penalties. All settlement payments for wages shall
20 be subject to required withholdings and deductions as W-2 wage payments. With regard to payments
21 in settlement of claims for penalties and interest, these payments shall be issued through a 1099 form
22 and not subject to withholdings or deductions. The payments to PAGA Employees are allocated as
23 100% penalties and shall also be issued through a 1099 form and not subject to withholdings or
24 deductions.

25 2.6 The Settlement Administrator shall compute the Individual Class Settlement Amount
26 and Individual PAGA Settlement Payment for the Participating Class Members as follows:

27 (a) The payment of the Individual PAGA Settlement Payments will be calculated

1 as follows: \$7,500.00 will be allocated to PAGA Employees as follows: each PAGA Employees'
2 portion will be determined by dividing each PAGA Employees Individual PAGA Workweeks, by the
3 total amount of PAGA Workweeks, and then multiplying the result by \$7,500.00.

4 (b) The payment of the Individual Class Settlement Payments will be calculated
5 as follows: For each Participating Class Member, the Participating Class Members Individual Class
6 Workweeks will be divided by the total number of Participating Class Member Workweeks. The
7 resulting number will then be multiplied by the Net Settlement Amount.

8 (c) The Parties agree that the above-described formulas and distribution methods
9 are reasonable and fair in light of the Parties' investigation of the claims of the Class, and the relative
10 degree of uncertainty, risk of outcome of further litigation, and difficulties and delays inherent in such
11 litigation of these claims.

12 2.7 Defendant, through the Settlement Administrator, will report each payment made on
13 the Maximum Settlement Amount to government authorities including the Internal Revenue Service
14 as required by law, and it shall make all required deductions and/or withholdings. Defendant,
15 through the Settlement Administrator, shall report payments for penalties and interest to the Internal
16 Revenue Service (and other relevant governmental agencies) as non-wage income in the year of
17 payment on a Form 1099, or similar form issued to the Participating Class Members and PAGA
18 Employees in question.

19 2.8 To the extent that there are excess funds from uncashed checks for Class Members
20 and PAGA Employees who cannot be located, the parties agree that such funds shall be submitted to
21 Legal Aid at Work, 180 days after the checks have been mailed to the Class Members and PAGA
22 Employees.

23 **3. Procedure for Approval and Implementation of Settlement**

24 **3.1 Preliminary Approval**

25 3.1.1 The Class Representative, through her counsel of record, will file an
26 unopposed motion for preliminary approval of Settlement, seeking an order approving the Settlement
27 pursuant to the California Rule of Court, Rule 3.769(e), and this Stipulation will be filed with the
28

1 Court contemporaneously and/or as part of the motion. By way of the motion, the Class
2 Representative will request that the Court enter a Preliminary Approval Order, approving the
3 distribution of the Class Notice and scheduling the Final Approval Hearing (pursuant to California
4 Rule of Court, Rule 3.769(e)) for the purposes of determining whether to grant final approval of the
5 Settlement and enter Judgment in conformity with California Rule of Court, Rule 3.769(h).

6 3.1.2 The Settlement will be void if the Court categorically refuses to enter the
7 Preliminary Approval Order in its entirety or in a substantially similar form; however, the Parties are
8 to take all reasonable steps to cure any non-material issues so as to avoid the Settlement being void.

9 **3.2 Notice to Class Members**

10 3.2.1 No later than thirty (30) calendar days after the Preliminary Approval Date,
11 the Settlement Administrator will mail the Court-approved Class Notice to all Class Members. The
12 Class Notice will be mailed via first class mail through the United States Postal Service. The envelope
13 containing the Class Notice will bear the following phrase in bold type, ¼ inch below the return
14 address or ¼ inch above the addressee's address: RETURN SERVICE REQUESTED. The envelope
15 will also bear the following phrase in the bottom left hand corner: IMPORTANT – SAN
16 BERNARDINO MEDICAL ORTHOPAEDIC GROUP, INC. CLASS ACTION SETTLEMENT
17 INFORMATION. PLEASE OPEN IMMEDIATELY. The Class Notice and its envelope or covering
18 will be marked to denote the return address of the Settlement Administrator as set forth in the Class
19 Notice.

20 3.2.2 Defendant will prepare a list, in an electronically usable format for the
21 Settlement Administrator, containing for each Class Member, to the extent Defendant has such
22 information, the following: the full name, Last Known Address, social security number, dates of
23 employment, and weeks of work as a non-exempt or hourly-paid employee of Defendant during the
24 Class Period ("Class List"). By granting preliminary approval of the Settlement, the Court will be
25 deemed to have authorized Defendant to provide the Settlement Administrator with the Class List.
26 Defendant will provide the Class List to the Settlement Administrator and Class Counsel within
27 twenty (20) calendar days following the Preliminary Approval Date.

1 3.2.3 For Class Members who were employees of Defendant as of the Preliminary
2 Approval Date the Settlement Administrator will mail the Class Notice to the Last Known Address
3 provided by Defendant. No Reasonable Address Verification will be conducted for Class Members
4 who were employed by Defendant as of the Preliminary Approval Date.

5 3.2.4 For Class Members who were not employed by Defendant as of the
6 Preliminary Approval Date prior to mailing the Class Notice, the Settlement Administrator will
7 undertake a Reasonable Address Verification to ascertain the accuracy of the Last Known Address of
8 the Class Member. To the extent this process yields an Updated Address, that Updated Address will
9 be treated as the Last Known Address for purposes of this Stipulation and for Class Notice mailing.

10 3.2.5 If a Class Member is known to be deceased, the Class Notice for that deceased
11 Class Member will be mailed to the Last Known Address (or Updated Address, if applicable) of the
12 legal representative of the deceased Class Member's estate, to the extent known; otherwise, it will be
13 mailed to the Last Known Address (or Updated Address, if applicable) of the deceased Class Member.

14 3.2.6 Unless the Settlement Administrator receives a Class Notice returned from the
15 United States Postal Service for reasons discussed below in this paragraph, on or before the Response
16 Deadline, that Class Notice will be deemed to have been mailed and received by the Class Member
17 to whom it was sent five (5) calendar days after the mailing. In the event that subsequent to the first
18 mailing of a Class Notice and on or before the Response Deadline, the Class Notice is returned to the
19 Settlement Administrator by the United States Postal Service without a forwarding address, the
20 Settlement Administrator will undertake a Skip Tracing on the Class Member to attempt to ascertain
21 the current address of the Class Member, and if such an address is ascertained, the Settlement
22 Administrator will undertake a single re-mailing of the Class Notice to any Updated Address that is
23 located for the Class Member, within three (3) business days of receipt of the returned Class Notice,
24 and the Class Notice will be deemed mailed and received at that point. In the event that subsequent
25 to the initial mailing of a Class Notice and on or before the Response Deadline, the Class Notice is
26 returned to the Settlement Administrator by the United States Postal Service with a forwarding
27 address for the Class Member, the forwarding address will be deemed the Updated Address for the

1 Class Member, the Settlement Administrator will undertake a single re-mailing of the Class Notice
2 to the Updated Address within three (3) business days of receipt of the returned Class Notice, and the
3 Class Notice will be deemed mailed and received at that point. The Settlement Administrator will
4 include a cover letter with any re-mailing to inform the Class Member that the Class Notice was re-
5 mailed and that he or she has the later of the Response Deadline or ten (10) calendar days from the
6 date on which the Class Notice was re-mailed (which shall be the date the re-mailing of the Class
7 Notice is postmarked) to Opt Out, object to the Settlement, and/or dispute the number of Workweeks
8 credited to him or her. Compliance with the procedures described in this paragraph will constitute
9 due and sufficient notice to Class Members of this Settlement and of the Final Approval Hearing, and
10 will satisfy the requirements of due process. Nothing else will be required of or done by the Parties,
11 Class Counsel, counsel for Defendant, or the Settlement Administrator to provide notice of the
12 Settlement and the Final Approval Hearing.

13 3.2.7 No later than seven (7) calendar days after the Response Deadline, the
14 Settlement Administrator will provide Class Counsel and counsel for Defendant with a declaration
15 attesting to completion of the notice process, including any attempts to obtain Updated Addresses for,
16 and the re-sending of, any returned Class Notices, to be filed with the Court by Class Counsel.

17 **3.3 Responses to the Notice of Class Action Settlement**

18 3.3.1 Disputing Workweeks: If a Class Member disagrees with the number of
19 Workweeks credited to him or her as set forth in his or her Class Notice, he or she must submit a
20 written dispute along with documentation that supports his or her belief that he or she should be
21 credited with a different number of Workweeks. The dispute must be submitted to the Settlement
22 Administrator by mail, postmarked on or before the Response Deadline. The dispute must contain
23 the case name and number of the Action (*Murillo v. Arrowhead Orthopaedics*, San Bernardino
24 Angeles County Superior Court Case No. CIVSB2128071) as well as the Class Member's name,
25 address, telephone number, last four (4) digits of his or her Social Security number, and signature.
26 The dispute must also contain a clear statement indicating that the Class Member disputes the number
27 of Workweeks credited to him or her. The Settlement Administrator will review the Workweeks

1 dispute and supporting documentation and make a determination based upon the submitted
2 documentation as to the validity of the Class Member's claim. If the Settlement Administrator needs
3 further information from Defendant concerning the Class Member's claim, the Settlement
4 Administrator will notify Defendant and Class Counsel and request the needed information.
5 Defendant's records will be presumed determinative if there is a dispute over the dates of employment
6 that the Class Member worked as a non-exempt or hourly-paid employee in California, unless the
7 Class Member has submitted valid and compelling documentation to support his or her claim to a
8 different number of Workweeks than the number shown on the Class Notice. The Settlement
9 Administrator will resolve all disputes by applying the above standard.

10 3.3.2 Entry of Appearance at Class Members' Own Expense: Pursuant to California
11 Rule of Court, Rule 3.766(d)(5), any Class Member who does not Opt Out may, if the Class Member
12 so desires, enter an appearance through counsel at his or her own expense, and will be advised of this
13 by way of the Class Notice. Class Members who choose to enter such an appearance are responsible
14 for any attorneys' fees or costs incurred as a result thereof.

15 3.3.3 Objections to Settlement: Class Members who do not Opt Out may object to
16 the Settlement by submitting a written objection to the Settlement Administrator, postmarked no later
17 than the Response Deadline. A written objection to the Settlement must be signed by the Class
18 Member and dated, and additionally state the Class Member's name, last four (4) digits of his or her
19 Social Security number, dates of employment as a non-exempt or hourly-paid employee of Defendant
20 in California, the case name and number of the Action (*Murillo v. Arrowhead Orthopaedics*, San
21 Bernardino County Superior Court Case No. CIVSB2128071), all legal and factual bases for
22 objection to the Settlement, whether the Class Member intends to appear at the Final Approval
23 Hearing, and whether the Class Member is represented by legal counsel (and if so, identifying the
24 legal counsel and providing said legal counsel's mailing address). Alternatively, Class Members may
25 choose to voice their objections at the Final Approval Hearing. A Class Member who objects to the
26 Settlement will still be considered a Participating Class Member who is subject to the Settlement.

27 3.3.4 Opting Out of Settlement: Class Members may elect to Opt Out of the
28

Settlement and, thus, exclude themselves from the Settlement. Class Members who wish to exercise this option must submit a timely and valid Request for Exclusion to the Settlement Administrator. The written request for exclusion must: (a) state the Class Member's name, address, telephone number, and the last four digits of the Class Member's social security number or employee identification number; (b) state the Class Member's intention to exclude themselves from or opt-out of the Settlement; (c) be addressed to the Settlement Administrator; (d) be signed by the Class Member or his or her lawful representative; and (e) be postmarked no later than the Response Deadline, in accordance with Paragraph 3.2.6. If a valid Request for Exclusion is not received by the Settlement Administrator from a Class Member on or before the Response Deadline, then that Class Member will be deemed to have forever waived his or her right to Opt Out. The Class Notice will advise Class Members of their option to Opt Out and will contain instructions on how to do so. Class Members who do not Opt Out by submitting valid and timely Requests for Exclusion will be deemed to be Participating Class Members, will be bound by the Settlement and the Judgment entered based thereon. Class Members who Opt Out by submitting valid and timely Requests for Exclusion will not be bound by the Settlement, will not be entitled to any benefits thereunder, or to make any objection to the Settlement. PAGA Employees will release their Released PAGA Claims and receive an Individual PAGA Settlement Payment regardless of whether they request exclusion from the Settlement.

3.3.5 If a Class Member submits both a Request for Exclusion and an objection to the Settlement, the Request for Exclusion will be accepted and the objection will be disregarded.

3.3.6 The Parties agree that the Response Deadline will not be extended, and no untimely submissions will be honored, under any circumstances, unless mutually agreeable by the Parties and/or except to the extent permitted under Paragraph 3.2.6.

3.4 Final Approval Hearing.

3.4.1 After the Response Deadline, a Final Approval Hearing will be held before the Court in order to: (1) determine whether the Court should grant final approval of the Settlement; (2) consider objections to the Settlement; and (3) consider Class Representative's application for an

award of Attorneys' Fees and Costs to Class Counsel and the Service Payment to the Class Representative. At the Final Approval Hearing, the Parties will request that the Court grant final approval of the Settlement and enter the Final Approval Order and Judgment. The Parties will take all reasonable efforts to secure entry of the Final Approval Order and Judgment. If the Court rejects the Stipulation, fails to enter the Final Approval Order and Judgment, this Stipulation will be void, and Defendant will have no obligation to make any payments under the Settlement, other than the Settlement Administration Costs; however, the Parties and their counsel agree to make all reasonable efforts to fix any issues that the Court cites for its non-approval as set forth in Paragraph 3.1.2.

3.5 Releases

3.5.1 Release by Participating Class Members. Upon the Effective Date, each of the Participating Class Members (including the Class Representative) will be deemed to have, and by operation of the Judgment will have fully, finally, and forever released, relinquished and discharged Defendant and the Released Parties from any and all Released Class Claims.

3.5.2 Release by PAGA Employees. Upon the Effective Date, each of the PAGA Employees will be deemed to have, and by operation of the Judgment will have fully, finally, and forever released, relinquished and discharged Defendant and the Released Parties from any and all Released PAGA Claims.

3.5.3 Class Representative's General Release of Claims

i. In addition to those releases set forth in Paragraph 3.5.1 hereof, with respect to any and all Released Class Claims, upon the Effective Date, the Class Representative will expressly and will be deemed to have, and by operation of the Judgment will have, waived the provisions, rights and benefits of California Civil Code § 1542 with respect to the Released Claims, 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.

1 ii. In consideration for the Service Payments and as an inducement for
2 Defendant to enter into this Stipulation, with respect to the Class Representative only, the Released
3 Claims will additionally include any and all claims including Unknown Claims against Defendant
4 that accrued during the Class Period, but does not include claims for: age discrimination under the
5 Age Discrimination In Employment Act, unemployment insurance, workers' compensation benefits,
6 state disability compensation, previously vested benefits under any Employer-sponsored benefits plan
7 or claims under the Employment Retirement Income Security Act of 1974.

8 iii. The Class Representative may hereafter discover facts in addition to or
9 different from those which she now knows or believes to be true with respect to the subject matter of
10 the Released Claims, but Class Representative, upon the Effective Date, will be deemed to have, and
11 by operation of the Judgment will have fully, finally, and forever settled and released any and all
12 Released Claims, known or unknown, suspected or unsuspected, contingent or non-contingent,
13 whether or not concealed or hidden, which then exist, or previously have existed upon any theory of
14 law or equity now existing or coming into existence in the future, including, but not limited to,
15 conduct which is negligent, intentional, with or without malice, or a breach of any duty, law or rule,
16 without regard to the subsequent discovery or existence of such different or additional facts. The
17 Class Representative acknowledges that the foregoing waiver was separately bargained for and a key
18 element of the Settlement of which this release is a part. Notwithstanding any other provision of this
19 Stipulation, the Parties recognize that because the only Unknown Claims released by this Stipulation
20 are those Unknown Claims that meet the definition of Released Claims, the release effectuated by
21 this Stipulation will not extend to Unknown Claims other than those described in Paragraph 1.44
22 above.

23 **3.6 Termination of Settlement; Reasonable Steps to Cure.**

24 3.6.1 In the event that the Settlement is not be approved in its entirety by the Court,
25 or in the event that the Effective Date does not occur, Defendant will have the option to void the
26 Settlement, and in such case, no payments will be made by Defendant to anyone, other than the cost
27 of administration, in accordance with the terms of this Stipulation, and this Stipulation will be deemed

1 null and void with no effect on the Litigation whatsoever. Notwithstanding this provision, the Parties
2 agree to take all reasonable steps to cure any issues cited by the Court as reason for non-approval of
3 any matter(s) filed with the Court for preliminary and final approval.

4 3.6.2 In the event that ten percent (10%) or more of the Class Members Opt Out by
5 submitting timely and valid Requests for Exclusion to the Settlement Administrator by the Response
6 Deadline, Defendant will have the right to terminate and void this Settlement; however, Defendant
7 must notify Class Counsel, of its intention to nullify the Settlement in writing by certified mail to
8 Justin F. Marquez, Christina M. Le, and Rachel J. Vinson of the Wilshire Law Firm, PLC, 3055
9 Wilshire Blvd., 12th Floor, Los Angeles, CA 90010, within three (3) weeks after the expiration of the
10 Response Deadline.

11 3.6.3 The Maximum Settlement Amount was calculated with, and is premised on,
12 the understanding that there are approximately 75,922 workweeks during the time period of April 5,
13 2017, through March 18, 2022. To the extent that either of the forgoing estimates, as represented by
14 Defendant, increases by more than 10%, or 7,792.2, the settlement will increase proportionately by
15 the workweeks worked in excess of 75,922 multiplied by the workweek value. The Parties agree that
16 the workweek value is \$19.76 (\$1,500,000.00 / 75,922). Thus, for example, should there be 86,936
17 workweeks in the Class Period, then the Maximum Settlement Amount shall be increased by
18 \$195,608.64 ((86,926 workweeks – 75,922 workweeks) x (\$19.76/workweek)).

19 3.7 Miscellaneous Provisions.

20 3.7.1 No Person will have any claim against Class Counsel, the Settlement
21 Administrator, or any of the Released Parties based on the payments made or other actions taken
22 substantially in accordance with the Settlement or further orders of the Court.

23 3.7.2 In the event that the Settlement is not substantially approved by the Court, after
24 all reasonable steps to cure have been exhausted, or the Settlement is terminated, cancelled, declared
25 void, or fails to become effective in accordance with its terms, or if the Judgment does not become
26 final, or to the extent cancellation is otherwise provided for in this Stipulation, the Parties will resume
27 the Litigation at that time as if no Stipulation had been entered. In such event, the terms and provisions

1 of the Stipulation will have no further force and effect with respect to the Parties and will not be used
2 in this Litigation or in any other proceeding for any purpose, and any Judgment or order entered by
3 the Court in accordance with the terms of the Stipulation will be treated as vacated. Notwithstanding
4 any other provision of this Stipulation, if the Court should fail to award attorneys' fees to Class
5 Counsel in the full amount provided for in this Stipulation, no order of the Court or modification of
6 any order of the Court concerning the amount of any attorneys' fees to be paid by Defendant to Class
7 Counsel pursuant to this Settlement will constitute grounds for cancellation or termination of the
8 Stipulation or grounds for limiting any other provision of the Judgment. It is agreed that no order of
9 the Court, including any order concerning attorneys' fees, may alter or otherwise increase the
10 Maximum Settlement Amount.

11 3.7.3 The Parties (a) acknowledge that it is their intent to consummate this
12 agreement; (b) agree to cooperate to effectuate and implement all terms and conditions of the
13 Stipulation and to exercise their best efforts to accomplish the foregoing terms and conditions of the
14 Stipulation; (c) agree to seek and to attempt to obtain preliminary and final approval by Court of the
15 Settlement; and (d) agree to reasonably work together to seek and attempt to obtain preliminary and
16 final approval of the Stipulation should the Court not grant approval upon the first presentation.

17 3.7.4 The Parties and attorneys agree to keep the Settlement confidential until the
18 motion for preliminary approval of the Settlement is filed. Thereafter, the Parties will agree to make
19 no comments to the media or otherwise publicize the terms of the Settlement.

20 3.7.5 The Parties agree that they will not engage in making or publishing written
21 statements which are disparaging to the reputation of the other or their corporate parents and affiliates.

22 3.7.6 The Stipulation compromises claims which were contested and the subject of
23 a good faith dispute, and it will not be deemed an admission by any of the Parties as to the merits of
24 any claim or defense. The Parties agree that the amounts paid in settlement of the Litigation and the
25 other terms of the Settlement were negotiated at arms-length and in good faith with sufficient
26 information by the Parties and reflect a settlement that was reached voluntarily after consultation with
27 competent legal counsel.

1 3.7.7 All of the exhibits to the Stipulation and material and integral parts hereof and
2 are fully incorporated herein by this reference.

3 3.7.8 The Stipulation may be amended or modified only by a written instrument
4 signed by or on behalf of all Parties or their respective counsel, subject to approval by the Court.

5 3.7.9 The Stipulation constitutes the entire agreement among the Parties hereto and
6 no representations, warranties or inducements have been made to any party concerning the Stipulation
7 or its exhibits other than the representations, warranties and covenants contained and memorialized
8 in such documents. Except as otherwise provided herein, each party will bear its own costs.

9 3.7.10 The Parties understand and acknowledge that: (a) they have performed an
10 independent investigation of the allegations of fact and law made in connection with this Litigation;
11 and (b) even if they may hereafter discover facts in addition to, or different from, those that they now
12 know or believe to be true with respect to the subject matter of the Litigation as reflected in this
13 Settlement Agreement, that will not affect or in any respect limit the binding nature of this Settlement
14 Agreement. It is the Parties' intention to resolve their disputes in connection with this Litigation
15 pursuant to the terms of this Settlement Agreement and thus, in furtherance of their intentions, the
16 Settlement Agreement will remain in full force and effect notwithstanding the discovery of any
17 additional facts or law, or changes in law, and this Settlement will not be subject to rescission or
18 modification by reason of any changes or differences in facts or law, subsequently occurring or
19 otherwise.

20 3.7.11 Class Counsel, on behalf of the Class Members, is expressly authorized by the
21 Class Representative to take all appropriate action required or permitted to be taken by the Class
22 pursuant to the Stipulation to affect its terms and also expressly authorized to enter into any
23 modifications or amendments to the Stipulation.

24 3.7.12 Each counsel or other Person executing the Stipulation or any of its exhibits
25 on behalf of any Parties hereby warrants that such Person has full and express authority to do so.

26 3.7.13 The Stipulation may be executed in one or more counterparts. All executed
27 counterparts and each of them will be deemed to be one and the same instrument. A complete set of
28

1 executed counterparts will be filed with the Court.

2 3.7.14 The Stipulation will be binding upon, and inure to the benefit of, the successors
3 and assigns of the parties hereto; however, this Stipulation is not designed to and does not create any
4 third-party beneficiaries unless otherwise specifically provided herein.

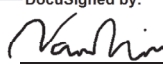
5 3.7.15 The Court will retain jurisdiction with respect to implementation and
6 enforcement of the terms of the Stipulation, and all parties hereto submit to the jurisdiction of the
7 Court for purposes of implementing and enforcing the Settlement embodied in the Stipulation, in
8 conformity with California Rules of Court, Rule 3.769 and California Civil Procedure Code section
9 664.6.

10 3.7.16 The Stipulation and the exhibits hereto will be considered to have been
11 negotiated, executed and delivered, and to have been wholly performed, in the State of California,
12 and the rights and obligations of the parties to the Stipulation will be construed and enforced in
13 accordance with, and governed by, the internal, substantive laws of the State of California without
14 regard to principles of conflicts of law.

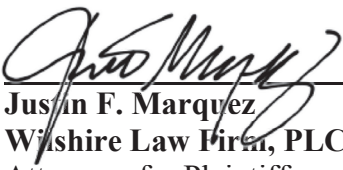
15 3.7.17 The language of all parts of this Stipulation will in all cases be construed as a
16 whole, according to its fair meaning, and not strictly for or against either party. No party will be
17 deemed the drafter of this Stipulation. The Parties acknowledge that the terms of the Stipulation are
18 contractual and are the product of negotiations between the parties and their counsel. Each party and
19 their/its counsel cooperated in the drafting and preparation of the Stipulation. In any construction to
20 be made of the Stipulation, the Stipulation will not be construed against any party and the canon of
21 contract interpretation set forth in California Civil Code § 1654 will not be applied.

22 3.7.18 Should any deadlines set forth in the Stipulation require any action to be taken
23 on a weekend or a Court holiday, then the action may be taken on the next business day, unless
24 otherwise specified by law or rule of Court, except that should the Response Deadline (or extension(s)
25 thereof specified in the Stipulation relating to a deficiency notice or a re-mailing) fall on a Saturday
26 and regular U.S. Mail service is in operation that day, then no further extension pursuant to this
27 paragraph will apply to these specific deadlines.

1 *[signatures on the following page]*

2
3 DATED: 6/3/2022, 2022 By: 
4 Plaintiff Vanessa Murillo

5
6 DATED: _____, 2022 By: _____
7 on behalf of Defendant

8
9 DATED: June 6, 2022 By: 
10 Justin F. Marquez
11 Wyshire Law Firm, PLC
12 Attorneys for Plaintiff

13 DATED: _____, 2022 By: _____
14 Joshua Carlon
15 Lewis Brisbois Bisgaard & Smith LLP
16 Attorneys for Defendant
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18
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26
27

1 [signatures on the following page]
2

3 DATED: _____, 2022 By: _____
4 Plaintiff Vanessa Murillo

5
6 DATED: June 08, 2022 By: Nahel Ruzzon
7 on behalf of Defendant

8
9 DATED: _____, 2022 By: _____
10 **Justin F. Marquez**
11 **Wilshire Law Firm, PLC**
12 Attorneys for Plaintiff

13 DATED: June 20, 2022 By: Joshua Carlon
14 Joshua Carlon
15 **Lewis Brisbois Bisgaard & Smith LLP**
16 Attorneys for Defendant
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Exhibit A

NOTICE OF CLASS ACTION SETTLEMENT

*A court authorized this notice. This is not a solicitation.
This is not a lawsuit against you and you are not being sued.
However, your legal rights are affected by whether you act or don't act.*

**YOU MAY BE ENTITLED TO MONEY UNDER THE PROPOSED CLASS ACTION SETTLEMENT.
PLEASE READ THIS NOTICE CAREFULLY; IT INFORMS YOU ABOUT YOUR LEGAL RIGHTS.**

The California Superior Court, County of San Bernardino has granted preliminary approval to a proposed settlement (“Settlement”) of *Murillo v. Arrowhead Orthopaedics*, San Bernardino County Superior Court Case No. CIVSB2128071. Because your rights may be affected by this Settlement, it is important that you read this Notice of Class Action Settlement (“Notice”) carefully.

The Court has certified the following class for settlement purposes (collectively these individuals are referred to as the “Class” or “Class Members”):

Any and all persons that performed work for Defendant San Bernardino Medical Orthopaedic Group, Inc. DBA Arrowhead Orthopaedics (collectively “Defendant”) in California as an hourly paid or non-exempt employee during the time period of April 5, 2017 through June 18, 2022.

The purpose of this Notice is to provide a brief description of the claims alleged in the Class Action, the key terms of the Settlement, and your rights and options with respect to the Settlement.

WHAT INFORMATION IS IN THIS NOTICE

1. Why Have I Received This Notice?.....	Page 2
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3. Am I a Class Member? Am I A PAGA Employee?	Page 2
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9. How Does This Settlement Affect My Rights?	Page 5
10. How Much Can I Expect To Receive From This Settlement?.....	Page 6
11. How Do I Get More Information About The Case Or The Settlement?.....	Page 7

1. Why Have I Received This Notice?

Defendant's records indicate that you may be a Class Member. The Settlement will resolve all Class Members' Released Class Claims, as described below, during the Class Period.

A Preliminary Approval Hearing was held on [INSERT], in the California Superior Court, County of San Los Angeles. The Court conditionally certified the Classes for settlement purposes only and directed that you receive this Notice.

The Court will hold a Final Approval Hearing concerning the proposed settlement on [DATE], 2022 at [TIME a.m./p.m.], located at 247 W 3rd Street, San Bernardino, CA 92415. The Final Approval Hearing may be continued without further notice to the Class Members. You are advised to check the Court's website (instructions on accessing this site are provided in Section 12 of this Notice) to confirm that the date has not been changed.

2. *What Is This Case About?*

The Class Action filed by Plaintiff Vanessa Murillo, alleges causes of action against Defendant on behalf of Plaintiff and those similarly situated for (1) Failure to Pay All Minimum Wages; (2) Failure to Pay Overtime Wages; (3) Failure to Provide Meal Periods; (4) Failure to Authorize and Permit Rest Periods; (5) Failure to Furnish Accurate Wage Statements; (6) Waiting Time Penalties; (7) Violation of Unfair Competition Law; and (8) Violations of the Private Attorneys General Act, Labor Code §2699, et seq. ("PAGA").

The Court has not made any determination as to whether the claims advanced by Plaintiff have any merit. In other words, the Court has not determined whether any laws have been violated, nor has it decided in favor of Plaintiff or Defendant; instead, both sides agreed to resolve the lawsuit with no decision or admission of who is right or wrong. By agreeing to resolve the lawsuit, all parties avoid the risks and cost of a trial. Defendant expressly denies that it did anything wrong or that it violated the law and further denies any liability whatsoever to Plaintiff or to the Class.

3. *Am I A Class Member? Am I A PAGA Employee?*

You are a Class Member if you performed work for Defendant in the State of California as a non-exempt employee during the time period of April 5, 2017 through June 18, 2022.

If you worked for Defendant in the State of California as a non-exempt employee during the time period of April 5, 2020 through June 18, 2022, you are also an "PAGA Employee" under the settlement.

4. *How Does This Class Action Settlement Work?*

In this Action, Plaintiff sued on behalf of herself and all other similarly situated individuals as defined in Section 3 above. Plaintiff and these individuals comprise a "Class" and are "Class Members." The settlement of this Action resolves the Released Class Claims of all Class Members, except for those who exclude themselves from the Class by requesting to be excluded in the manner set forth below.

Plaintiff and Class Counsel believe the Settlement is fair and reasonable. The Court must also review the terms of the Settlement and determine if it is fair and reasonable to the Class. The Court file has the Settlement documents, which explain the Settlement in greater detail. If you would like copies of the Settlement documents, you can contact Class Counsel, whose contact information is below, and they will provide you with a copy free of charge.

5. *Who Are the Attorneys Representing the Parties?*

The Court has decided that Justin F. Marquez, Christina M. Le, and Arsine Grigoryan or the Wilshire Law Firm, PLC, are qualified as Class Counsel to represent you and all other Class Members simultaneously.

Class Counsel / Attorneys for Plaintiff	Attorneys for Defendant
Wilshire Law Firm, PLC Justin F. Marquez Christina M. Le Arsine Grigoryan 3055 Wilshire Blvd., 12 th Floor Los Angeles, CA 90010 Telephone: (213) 381-9988 Facsimile: (213) 381-9989	LEWIS BRISBOIS BISGAARD & SMITH LLP Joshua D. Carlon Robert Walker 633 W 5th Street, Suite 4000 Los Angeles, California 90071 Telephone: (213) 281-5235 Facsimile: (213) 250-7900

You do not need to hire your own attorney because Class Counsel is working on your behalf. But, if you want your own attorney, you may hire one at your own cost.

6. *What Are My Options?*

The purpose of this Notice is to inform you of the proposed Settlement and of your options. Each option has its consequences, which you should understand before making your decision. Your rights regarding each option, and the steps you must take to select each option, are summarized below and explained in more detail in this Notice.

Important Note: *Defendant will not retaliate against you in any way for either participating or not participating in this Settlement.*

- **DO NOTHING:** If you do nothing and the Court grants final approval of the Settlement, you will become part of this Class Action and may receive a payment from the Settlement. You will be bound to the release of the Released Class Claims and Released PAGA Claims as defined in the Settlement Agreement and the Final Judgment. You will also give up your right to pursue the Released Class Claims and Released PAGA Claims as defined in Section No. 9 below.
- **OPT OUT:** If you do not want to participate as a Class Member, you may “opt out,” which will remove you from the Class and this Class Action. If the Court grants final approval of the Settlement, you will not receive a Settlement payment and you will not give up the right to sue Defendant and the Released Parties for the Released Class Claims. If you are a PAGA Employee, you will receive an Individual PAGA Settlement Payment and be bound by the Released PAGA Claims, even if you opt-out of the settlement.
- **OBJECT:** You may file a legal objection to the proposed settlement. If you would like to object, you may not opt out of this case.

The procedures for opting out and objecting are set forth below in the sections entitled “How Do I Opt Out or Exclude Myself From This Settlement” and “How Do I Object To The Settlement?”

7. *How Do I Opt Out Or Exclude Myself From This Settlement?*

Class Members may elect to Opt Out of the Settlement and, thus, exclude themselves from the Settlement. Class Members who wish to exercise this option must submit a timely and valid Request for Exclusion to the Settlement Administrator. The written request for exclusion must: (a) state the Class Member’s name, address, telephone number, and the last four digits of the Class Member’s social security number or employee identification number; (b) state the Class Member’s intention to exclude themselves from or opt-out of the Settlement; (c) be addressed to the Settlement Administrator; (d) be signed by the Class Member or his or her lawful representative; and (e) be postmarked no later than [the Response Deadline]. Class Members who do not Opt Out by submitting valid and timely Requests for Exclusion will be deemed to be Participating Class Members, will be bound by the Settlement and the Judgment entered based thereon.

The proposed settlement includes the settlement of claims for civil penalties under the PAGA. You may not request to be excluded from the settlement of a PAGA claim. Thus, if the court approves of the settlement, even if you request exclusion from the settlement, if you worked during the PAGA Period of April 5, 2020 through June 18, 2022, you will receive an Individual PAGA Settlement Payment and will be deemed to have released the PAGA Released Claims. A request for exclusion will preserve your right to individually pursue only the remaining class claims.

8. *How Do I Object To The Settlement?*

Class Members who do not Opt Out may object to the Settlement by submitting a written objection to the Settlement Administrator, postmarked no later than the Response Deadline. A written objection to the Settlement must be signed by the Class Member and dated, and additionally state the Class Member’s name, last four (4) digits of his or her Social Security number, dates of employment as a non-exempt or hourly-paid employee of Defendant in California, the case name and number of the Action (*Murillo v. Arrowhead Orthopaedics*, San Bernardino County Superior Court Case No. CIVSB2128071), all legal and factual bases for objection to the Settlement, whether the Class Member intends to appear at the Final Approval Hearing, and whether the Class Member is represented by legal counsel (and if so, identifying the legal counsel and providing said legal counsel’s mailing address).

Alternatively, Class Members may choose to voice their objections at the Final Approval Hearing. A Class Member who objects to the Settlement will still be considered a Participating Class Member who is subject to the Settlement.

9. *How Does This Settlement Affect My Rights? What are the Released Claims?*

If the proposed settlement is approved by the Court, a Final Judgment will be entered by the Court. All Class Members who do not opt out of the Settlement will be bound by the Court’s Final Judgment and will release Defendant and the Released Parties¹ from the Released Class Claims. The Released Class Claims are:

¹ “Released Parties” means Defendant San Bernardino Medical Orthopaedics Group, Inc. dba Arrowhead Orthopaedics and each of its parent companies, subsidiaries, affiliates, current and former management companies, shareholders, members, agents (including any investment bankers, accountants, insurers, reinsurers, attorneys and any past, present or future officers, directors and employees) predecessors, successors, and assigns.

All claims, demands, rights, liabilities and causes of action of every nature and description whatsoever including without limitation statutory, constitutional, contractual or common law claims, against the Released Parties (as defined below), and any of them, for relief and penalties, that accrued during the Class Period, and as a result of Class Members' employment by Defendant in California, that arise under any state or local law or state administrative order that was or could have been pled based on the facts alleged in the Operative Complaint, including claims if failure to pay for all hours worked (including minimum, straight time, and overtime wages), failure to provide meal periods, failure to authorize and permit rest periods, failure to timely pay final wages at termination, failure to furnish accurate itemized wage statements, and all damages, interest, penalties, attorneys' fees, costs, and other amounts recoverable under said causes of action under California law, to the extent permissible, including, but not limited to, the California Labor Code and the applicable Wage Orders, including without limitation all related claims for restitution and other equitable relief arising from California Business and Professions Code §§ 17200, *et seq.*, interest on unpaid wages, unpaid wages, attorneys' fees or litigation costs, and any other related claims and/or penalties. The release does not extend to any claims not alleged in the operative Class Action Complaint and specifically excludes claims for workers' compensation, personal injuries, unemployment insurance, state disability compensation, claims under the Employment Retirement Income Security Act of 1974, previously vested benefits under any employer sponsored benefits plan, wrongful termination, discrimination, retaliation, and harassment including but not limited to those arising under the Age Discrimination In Employment Act, the California Fair Employment and Housing Act, Title VII of the Federal Civil Rights Act of 1964, and/or Federal Civil Rights Act of 1991, or any similar state or federal laws, the California Family Rights Act, the Federal Family Medical Leave Act, the California Pregnancy Leave Law, or similar state or federal laws, the Federal Equal Pay Act of 1963, violations of the Americans with Disabilities Act of 1990 or violations of any other state or federal law, rule or regulation concerning discrimination, retaliation and/or harassment. This release does not include any of the claims encompassed within the Released PAGA Claims (as defined below).

If you are a PAGA Employee, you will be bound by the Final Judgment and will release the Released Parties from the Released PAGA Claims, even if you opt-out of the settlement. The Released PAGA Claims are:

All claims, demands, rights, liabilities and causes of action of every nature and description whatsoever including without limitation statutory, constitutional, contractual or common law claims, against the Released Parties (as defined below), and any of them, for civil penalties pursuant to PAGA, that accrued during the PAGA Period, and as a result of PAGA employees' employment by Defendant in California, that arise under any state or local law or state administrative order that was or could have been pled based on the facts alleged in the Operative Complaint and the Plaintiff's notice to the LWDA, including claims off failure to pay for all hours worked (including minimum, straight time, and overtime wages), failure to provide meal periods, failure to authorize and permit rest periods, failure to timely pay final wages at termination, and failure to furnish accurate itemized wage statements.

10. *How Much Can I Expect To Receive From This Settlement?*

The total maximum amount that Defendant could be required to pay under this Agreement shall be up to but no more than \$1,500,000.00 ("Maximum Settlement Amount" or "MSA").

The "Net Settlement Amount" or "NSA" means the portion of the MSA, available for distribution to Class Members after the deduction of (1) the Class Representative Service Awards to Plaintiff Vanessa Murillo in an amount up to \$10,000.00, for prosecution of the Action, risks undertaken for the payment of attorneys' fees and costs, and a general release of all claims; (2) the Settlement Administration Costs to the Settlement

Administrator in an amount estimated not to exceed \$10,000.00; (3) a payment of \$30,000.00 allocated to the PAGA claims; and (4) payment to Class Counsel in an amount not to exceed \$500,000.00 (33 1/3% of the Maximum Settlement Amount) for attorneys' fees and an amount not to exceed \$25,000.00 for litigation costs. All of these payments are subject to court approval.

The portion of the Maximum Settlement Amount which is allocated to the compromise and release of Plaintiff's claims for PAGA Penalties is Thirty Thousand Dollars (\$30,000.00). Of this \$30,000.00, 75%, or \$22,500.00, will be paid to the Labor and Workforce Development Agency ("LWDA"), and the remaining 25%, or \$7,500.00, will be distributed to the PAGA Employees (the "Individual PAGA Settlement Payment").

A. How Will Settlement Payments Be Calculated?

Individual Class Settlement Shares to Class Members: For each Participating Class Member, the Participating Class Member's Individual Class Workweeks will be divided by the total number of Participating Class Member Workweeks. The resulting number will then be multiplied by the Net Settlement Amount.

Individual PAGA Settlement Payments to PAGA Employees: For each PAGA Employee, the PAGA Employee's Individual PAGA Workweeks will be divided by the total number of PAGA Employees Workweeks. The resulting number will then be multiplied by \$7,500 (25% of the \$30,000 to be paid in settlement of the PAGA claims in the Litigation).

One day worked in a given week will be credited as a week for purposes of these calculations. Therefore, the value of each Class Member's and/or PAGA Employee's Settlement payment ties directly to the amount of weeks that he or she worked.

B. How Will My Settlement Payment Be Taxed?

Each Class Member's Individual Class Settlement Share will be apportioned as follows: 10% wages and 90% interest and penalties. The amounts paid as wages shall be subject to all tax withholdings customarily made from an employee's wages and all other authorized and required withholdings and shall be reported on IRS W-2 Forms issued by the Settlement Administrator on behalf of the qualified settlement fund. Defendant shall pay the employer portion of all such tax withholdings on the Individual Class Settlement Share amounts paid as wages separate from, and in addition to, the Maximum Settlement Amount. The Individual Settlement Share amounts paid as penalties and interest shall be subject to all authorized and required withholdings other than the tax withholdings customarily made from employees' wages and shall be reported on IRS 1099 Forms issued by the Settlement Administrator on behalf of the qualified settlement fund. Only the employee share of payroll tax withholdings shall be withheld from each Settlement Class Member's Individual Class Settlement Share.

Each PAGA Employee's Individual PAGA Settlement Payment will be apportioned as follows: 100% penalties. The Individual PAGA Settlement Payment amounts shall be reported on IRS 1099 Forms issued by the Settlement Administrator on behalf of the qualified settlement fund.

C. What Is My Settlement Payment?

Although your exact share of the Net Settlement Amount as a Class Member cannot be precisely calculated until after the time during which individuals may object or seek exclusion from the Settlement concludes, based upon the calculation above, your approximate share of the Net Settlement Amount, is as follows: \$ [REDACTED], less taxes. This is based on the Class List which shows you worked [REDACTED] workweeks during the Class Period.

If you are also a PAGA Employee, you will receive a share of \$7,500.00 (25% of the \$30,000.00 to be paid in settlement of the PAGA claims in the Litigation). Based upon the calculation above, your approximate share is as follows: \$ [REDACTED]. This is based on the Class List which shows you worked [REDACTED] workweeks during the PAGA Period.

Checks issued to Settlement Class Members and Aggrieved Employees shall be valid for 180 days. After this 180 the remaining funds from any uncashed checks shall be submitted to the Legal Aid at Work as the *cy pres* recipient.

11. *How Do I Get More Information About The Case Or The Settlement?*

IF YOU NEED MORE INFORMATION OR HAVE ANY QUESTIONS, you may contact Class Counsel listed above, or the Settlement Administrator at the telephone number listed below, toll free. Please refer to the Arrowhead Orthopaedic Class Action Settlement.

This Notice does not contain all of the terms of the proposed Settlement or all of the details of these proceedings. For more detailed information, you may refer to the underlying documents and papers on file with the Court at 247 W 3rd Street, San Bernardino, CA 92415 in this Action (*Murillo v. Arrowhead Orthopaedics*, San Bernardino County Superior Court Case No. CIVSB2128071) or at the or at the Settlement Administrator's Website: [REDACTED]. You may also contact Class Counsel, whose contact information is above, and they will provide you with a copy of the Settlement documents or case documents free of charge. You can also visit the Court's website at <https://www.sb-court.org/divisions/civil-general-information/court-case-information-and-document-sales>. Click the "Accept" button at the bottom of the screen, then click "Click here to access the Portal (Classic)." Click the "Smart Search" button, then enter the case number CIVSB2128071.

PLEASE DO NOT TELEPHONE THE COURT OR COURT'S CLERK FOR INFORMATION ABOUT THIS SETTLEMENT.

Exhibit 2



3194-C Airport Loop Drive
Costa Mesa, CA 92626
800-779-2104 www.simpluris.com

Estimate #:	14829	Prepared By:	Michael Sutherland
Estimate Date:	4/27/2022	Direct Dial #	321.223.5067
		Email:	Msutherland@simpluris.com

Attorney/Client: Plaintiff Attorney
Justin F. Marquez, Esq.
Firm: Wilshire Law Group
Email: [<Justin@wilshirelawfirm.com>](mailto:Justin@wilshirelawfirm.com)

Attorney/Client: Defense Attorney
Firm:
Email:

Case Name: Murillo v. San Bernardino Medical: Opt Out Settlement

Anticipated Total Cost	\$10,706
Capped Fee*	\$9,995

Terms:

- 1) Capped Fees assume that Simpluris will receive data in a Single Excel file with no substantial change in class size or response rate
- 2) Included is a 2021 Federal 1120 tax return to account for banking activity in 2021.

Total Possible Class Size:	900	Undeliverable Rate:	10%
Response Rate:	1%	Call Rate:	5%
Mailing Document Language:	E/S	Fund Distribution:	Simpluris
Reminder Postcard:	No	Redistribution:	No
Unclaimed Funds:	Cy Pres	State(s):	CA
		Tax Reporting Years	One

Case Setup

Data Compilation - Develop Case Specific Response Tracking - Error Reports

Category	Unit Value	# of Units	Total
Project Manager - Case Setup	\$125.00	6	\$750.00
Translation	\$0.25	3000	\$750.00
Online Posting set up and manage	\$250.00	1	\$250.00
Database Manager - Initial Data Analysis	\$140.00	6	\$840.00
Total			\$2,590.00

Notification

Notice Packet: 4 pg Notice - Double Sided - English

Category	Unit Value	# of Units	Total
Mail Notice Packet	\$0.70	900	\$630.00
Postage	\$0.53	900	\$477.00
NCOA/CASS/LACS	\$0.10	900	\$90.00
Undeliverable Processing	\$0.25	90	\$22.50
Skip Trace RUM	\$1.50	90	\$135.00
Remail Notice Packet	\$0.90	77	\$68.85
Remail Postage	\$0.58	77	\$44.37
Mailing Supervisor	\$50.00	1	\$50.00
Total			\$1,517.72

Call Center

Establish Case Specific Toll Free Number

Category	Unit Value	# of Units	Total
Customer Service Reps/Call Center Support	\$75.00	3	\$225.00



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Administration

Process Mail, Opt-Outs or Objections

Category	Unit Value	# of Units	Total
Database Manager	\$125.00	2	\$250.00
Resolving Mismatched TINs	\$75.00	1	\$75.00
Dispute/Deficiencies - Send One Cure Letter	\$2.50	9	\$22.50
Opt Out Processing	\$1.50	9	\$13.50
Data Entry	\$50.00	1	\$50.00
Weekly Reporting to Counsel	WAIVED	12 Wks of Reporting	\$0.00
Total			\$411.00

Distribution

Setup a Disbursement Account

Print & Mail Checks to Class Members: W2's / 1099's - File Reports with Appropriate Federal & State Taxing Authorities

Account Management & Reconciliation

Category	Unit Value	# of Units	Total
Disbursement Data Preparation	\$140.00	4	\$560.00
Disbursement Manager - Data Validation	\$75.00	1	\$75.00
Setup Banking Account/QSF	\$300.00	1	\$300.00
Print & Mail Check	\$2.00	900	\$1,800.00
Postage	\$0.53	900	\$477.00
Process Returned Checks	\$0.50	9	\$4.50
Skip Trace Search Undeliverable Checks	\$5.00	9	\$45.00
Remail Checks (Includes Postage)	\$4.00	9	\$36.00
QSF Account Reconciliation	\$250.00	1	\$250.00
Individual Federal/State Tax Reporting	\$500.00	1	\$500.00
QSF Reporting/Declaration	\$300.00	1	\$300.00
QSF Annual Tax Preparation Fee, 2022	\$1,000.00	1	\$1,000.00
Reissuing Checks/Mailing	\$5.00	9	\$45.00
Reissue W2's/1099's	\$5.00	9	\$45.00
Responding to IRS, State, Agency Inquiries	\$75.00	1	\$75.00
Disbursement Manager	\$125.00	3	\$375.00
Total			\$5,887.50



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Case Wrap Up

Send Final Reports to Counsel

Category	Unit Value	# of Units	Total
Data Manager-Final Reporting	\$125.00	1	\$125.00
Clerical-Clean Up Any Misc	\$50.00	1	\$50.00
Project Manager-Wrap-up Final Issues	\$125.00	1	\$125.00
Total			\$300.00

Postage \$998.37

Total Case Costs

\$10,706.22

All administration services to be provided by Simpluris to Client, are provided subject to the following terms and conditions:

1. **Services.** Simpluris agrees to provide Client those services set forth in the Bid (the "Services") to which these terms and conditions are attached and which has been provided to Client. As compensation for such Services, Client agrees to pay the fees for Services outlined in the Bid. However, Client such fees for Services are estimated based on the requirements provided by Client and actual fees charged by Simpluris may be greater or less than such estimate and Client will be responsible for the payment of all such fees.
2. **Billing and Payment.** Simpluris will invoice Client on a regular basis unless a specific timeframe is otherwise set forth in the Bid. Client shall pay all invoices within 30 days of receipt. Amounts unpaid after thirty (30) days are subject to a service charge at the rate of 1.5% per month or, if less, the highest rate permitted by law. Services are not provided on a contingency basis and Client shall remain liable to Simpluris for all fees for the Services, regardless of any court decisions, and/or actions by the parties, including disapproval or withdrawal of a settlement.
3. **Retention of Documents.** Unless directed otherwise in writing by the Client, Simpluris will destroy all undeliverable mail (except for undeliverable checks) on the date that it is processed and retained in Simpluris' system. Simpluris will maintain records to establish that the subject mail is undeliverable. Simpluris will retain undeliverable checks until the Qualified Settlement Fund is closed. Simpluris will also retain all other class member and putative class member correspondence (including without limitation, claims forms and opt out forms) 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. Lastly, Simpluris will retain bank & tax documents for such period of time as it determines is required to maintain compliance with various federal and state requirements.
4. **Limitation of Liability; Disclaimer of Warranties.** Simpluris warrants that it will perform the Services diligently, with competence and reasonable care. Simpluris' only obligation will be to correct any non-conformance with the foregoing warranty. In no event will Simpluris be liable for any lost profits/opportunities, business interruption or delay or, special, consequential, or incidental damages incurred by Client relating to the performance of the Services, regardless of whether Client's claim is for breach of contract, tort (including negligence and strict liability) or otherwise. Under no circumstances will Simpluris be liable to Client for any claims, losses, costs, penalties, fines, judgment or damages, including court costs and reasonable attorney's fees (collectively, "Losses"), whether direct or indirect, arising out of, related to, or in connection with Services in an amount in excess of the total fees charged or chargeable to Client for the particular portion of the Services affected by Simpluris' omission or error. THE WARRANTIES SET FORTH IN THIS SECTION ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE.
5. **Force Majeure.** To the extent performance by Simpluris of any of its obligations hereunder is substantially prevented by reason of any act of God or because of any other matter beyond Simpluris' reasonable control, then such performance shall be excused and this Agreement, at Simpluris' option, be deemed suspended during the continuation of such condition and for a reasonable time thereafter.
6. **Rights in Data.** Client agrees that it will not obtain, nor does Simpluris convey, any rights of ownership in the programs, system data, or materials provided or used by Simpluris in the performance of the Services.
7. **Electronic Communications.** During the provision of the Services the parties may wish to communicate electronically with each other at a business e-mail address. However, the electronic transmission of information cannot be guaranteed to be secure or error free and such information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete or otherwise be adversely affected or unsafe to use. Accordingly, each party agrees to use commercially reasonable procedures to check for the then most commonly known viruses and to check the integrity of data before sending information to the other electronically, but each party recognizes that such procedures cannot be a guarantee that transmissions will be virus free. It remains the responsibility of the party receiving an electronic communication from the other to carry out a virus check on any attachments before launching any documents whether received on disk or otherwise.
8. **Notice.** Any notice required or permitted hereunder shall be in writing and shall be delivered personally, by, or sent by registered mail, postage prepaid, or overnight courier 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. Notice should be addressed to an officer or principal of Client and Simpluris, as the case may be.
9. **Waiver.** Failure or delay on the part of a party to exercise any right, power or privilege hereunder shall not operate as a waiver thereof or any of other subject, right, power or privilege.
10. **Termination.** Client may terminate the Services at anytime upon 30 days prior written notice to Simpluris. Termination of Services shall in no event relieve Client of its obligation make any payments due and payable to Simpluris in respect of Services rendered up to the effective date of Termination. Simpluris may terminate this Agreement (i) for any reason upon no less than 90 days prior written notice to the Client; or (ii) upon 15 calendar days' prior written notice, if the Client is not current in payment of fees.
11. **Jurisdiction.** The parties hereto irrevocably and unconditionally 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 irrevocably and unconditionally waive any objection to the laying of venue of any such suit, action or proceeding in such Court.
12. **Survival.** Any remedies for breach of this Agreement, this Section and the following Sections will survive any expiration or termination of this Agreement: Section 4 - Limitation of Liability; Disclaimer of Warranties, Section 6 – Rights in Data, and Section 12- Jurisdiction, 14 -Confidentiality, and Section 15 – Indemnification.
13. **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.
14. **Confidentiality.** Simpluris maintains reasonable and appropriate safeguards to protect the confidentiality and security of data provided by Client to Simpluris in connection with the Services. If, pursuant to a court order or other proceeding, a third party requests that Simpluris to disclose any confidential data provided by or for Client, Simpluris will promptly notify the Client unless prohibited by applicable law. Client will then have the option to provide Simpluris with qualified legal representation at Client's expense to defend against such request. If, pursuant to a court order, Simpluris is required to disclose data, produce documents, or otherwise act in contravention of the obligation to maintain confidentiality set forth in these terms and conditions, Simpluris will not be liable for breach of said obligation.
15. **Indemnification.** Client will indemnify and hold Simpluris (and the officers, employees, affiliates and agents harmless against any Losses incurred by Simpluris, 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 Simpluris 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 Simpluris pursuant to Client's instructions.
16. **Severability.** If any term or condition or provisions of this Agreement shall be held to be invalid, illegal, unenforceable or in conflict with the law of any jurisdiction, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
17. **Database Administration.** Simpluris' database administration for Client assumes that Client will provide complete data that includes all information required to send notifications and calculate and mail settlement payments. Data must be provided in a complete, consistent, standardized electronic format. Simpluris' standardized format is Microsoft Excel, however, Simpluris may accept other formats at its discretion. Further developments or enhancements to non-standardized data will be billed to Client by Simpluris on a time and materials basis according to Simpluris' Standard Rates.

Simpluris Security Summary – White Paper

Simpluris is committed to the security and overall protection of not only our data and information but our client's data and information, as well. As a demonstration of our commitment, we maintain SOC 2 Certification which requires strict adherence to policies and procedures surrounding information security, including processing and storage of confidential customer data. Simpluris supports a comprehensive, written Information Security Program that complies with all applicable laws and regulations (e.g. HIPAA, Gramm-Leach-Bliley Act, MA 201 CMR 17.00) and is designed to (a) ensure the security, privacy and confidentiality of Client and Class Member Information, (b) protect against any reasonably anticipated threats or hazards to the security or integrity of Client or Class Member Information, and (c) protect against unauthorized access to, use, deletion, or modification of Class Member Information. Simpluris has designated specific employees to be responsible for the administration of its Information Security Program. Also, Simpluris regularly and routinely monitors, tests, and updates our Information Security Program.

Simpluris uses Client and Class Member Information only for the purposes for which its' clients provide it, as described in any Agreements or Court Orders governing the provision of Simpluris' services in any particular case. Simpluris maintains a process for identifying, assessing, and mitigating the risks to Class Member Information in each relevant area of Simpluris' operations. At Simpluris, we continuously evaluate the effectiveness of the safeguards for controlling these risks to data and bank accounts. Simpluris restricts access to Class Member Information only to those employees, agents, or subcontractors who need to know the information to perform their jobs. Simpluris performs background checks of all its employees that will have access to Sensitive Personal Information, including a review of their references, employment eligibility, education, and criminal history to ensure they do not pose a risk to the security of Client or Class Member Information.

Simpluris adheres to the following industry best practices to safeguard its systems which process, store or transmit Client and Class Member Information:

- Identity and Access Management;
- Complex passwords are routinely and regularly changed;
- Role-based access control systems to limit individual employee access to network applications and systems based on their particular job role and function;
- Data Loss Prevention and Intrusion Prevention System software at multiple layers to prevent from internal and external threats of data leaks, malicious activity, and policy violations
- Encryption of Class Member Information if transmitted over public or wireless networks (e.g., via email, FTP, the Internet, etc.);
- Implementation of a Secure File Transfer system (using SSL encryption) for transmitting documents back and forth to clients;
- Encryption of servers, portable media, laptops, desktops, smartphones, mobile devices, and new technologies that store Class Member Information;
- Complex password authentication for remote access to Company's networks;
- Upon hire and annually after that, training of all employees with access to Class Member Information, (including any agents, and subcontractors with access to Class Member Information) about their obligations to implement the Information Security Program;
- Strict disciplinary measures for employees who violate the Information Security Program;
- Preventing terminated employees from accessing Class Member Information;
- Appropriately configured and updated firewall, antivirus, and spyware software;
- Prompt application of vendor-recommended security patches and updates to systems and other applications to avoid any adverse impact on Class Member Information;
- Separation of Duties;
- Infrastructure and Physical Security;
- Business Continuity Planning;
- Disaster Recovery Planning

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[illegible]

I, Sandy S. Sespene, 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 ssespene@wilshirelawfirm.com.

On **June 27, 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:

Joshua Carlon (SBN 263838)
joshua.carlon@lewisbrisbois.com
 Robert Walker (SBN 254337)
Robert.Walker@lewisbrisbois.com

LEWIS BRISBOIS
633 W. 5th Street, Suite 4000
Los Angeles, CA 90071
Telephone: (213) 281-5235
Fax: (213) 250-7900

*Attorneys for Defendant,
San Bernardino Medical Orthopedic Group, Inc.*

- (X) **BY MAIL:** I enclosed the above documents in a sealed envelope with postage thereon fully prepaid and placed for collection and mailing on the above date in accordance with ordinary business practices. I am readily familiar with this firm's practice of collection and processing of correspondence for mailing with the United States Postal Service, and that the correspondence shall be deposited with the United States Postal Service the same day in the ordinary course of business pursuant to Cal. Code Civ. Proc. § 1013(a).
- (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.

Executed on **June 27, 2022**, at Los Angeles, California.


Sandy S. Sespene