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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

MAYDA AGUIRRE and ROBERT
RODRIGUEZ, individually, and on behalf of other
members of the general public similarly situated;

Plaintiffs,

v.

ORMCO CORPORATION, a California
corporation; and DOES 1 through 100, inclusive,

Defendants.

Case No. 22STCV12358

[Consolidated with Case Nos. 21STCV36034;
22PSCV00363]

**CLASS, COLLECTIVE, AND
REPRESENTATIVE ACTION
SETTLEMENT AGREEMENT**

1 This Class, Collective, and Representative Action Settlement Agreement is between (1) Plaintiffs
2 Mayda Aguirre, Robert Rodriguez, Daniel Alcocer, and Erika Morrow—individually and on behalf of the
3 Class, Collective, and Representative Action Members defined below, on the one hand—and
4 (2) Defendant Ormco Corporation (collectively, the “Parties”), on the other. By this Agreement, the
5 Parties intend, with judicial approval, to settle the Actions (defined below). If this Agreement is not finally
6 approved, or is otherwise nullified, then the Parties shall return to their positions preceding this Agreement
7 and Defendant shall retain all rights to challenge Plaintiffs’ claims and the certification of any class or
8 collective, unless the Parties agree to seek reconsideration of the ruling or Court approval of a renegotiated
9 agreement.

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EXHIBITS

Notice of Class, Collective and Representative Action Settlement..... A

1 **1. Definitions**

2 The following definitions apply to this Agreement. Each defined term appears throughout in
3 initial capital letters.

4 **1.1. Actions.** “Actions” means collectively, the “Class Action,” the “PAGA Action,”
5 and the *Morrow* Action, as defined herein.

6 **1.2. Administrative Costs.** “Administrative Costs” means all costs that the Settlement
7 Administrator incurs in administering this Agreement.

8 **1.3. Agreement.** “Agreement” means this Class, Collective, and Representative
9 Action Settlement Agreement, which includes all its Recitals and all the attached Exhibits.

10 **1.4. Aguirre.** “Aguirre” means Mayda Aguirre, who filed the Class Action and PAGA
11 Action.

12 **1.5. California Released Claims.** “California Released Claims” means all state-law
13 claims that this Agreement will extinguish as to all Class Members who do not submit a Request for
14 Exclusion.

15 **1.6. Class Action.** “Class Action” means the lawsuit *Mayda Aguirre and Robert*
16 *Rodriguez v. Ormco Corporation*, filed in the Superior Court of the State of California for the County of
17 Los Angeles as Case No. Case No. 22STCV12358, and all complaints filed therein.

18 **1.7. Class Counsel.** “Class Counsel” refers to Justice Law Corporation. For purposes
19 of providing any notice under this Agreement, Class Counsel shall refer to Douglas Han,
20 dhan@justicelawcorp.com, Shunt Tatavos-Gharajeh, statavos@justicelawcorp.com, and Lizette
21 Rodriguez, lrodriguez@justicelawcorp.com.

22 **1.8. Class Counsel Award.** “Class Counsel Award” refers to the amount of attorney’s
23 fees and costs that the Court awards in connection with resolving the Action in accordance with this
24 Agreement.

25 **1.9. Class Members.** “Class Members” refers to those individuals who for purposes
26 of this Agreement will be certified as members of the class, defined as follows: all individuals whom
27
28

Ormco employed in California during the Settlement Period for Class Members who have not entered into an arbitration agreement or release agreement with Ormco.¹

1.10. Class Period. See “Settlement Period.”

1.11. Class Representatives. “Class Representatives” refer to plaintiffs Mayda Aguirre and Robert Rodriguez.

1.12. Collective Members. “Collective Members” refers to those individuals who for purposes of this Agreement will be certified as members of the collective, defined as follows: all individuals whom Ormco employed in California during the Settlement Period for Collective Members who have not entered into an arbitration agreement or release agreement with Ormco.

1.13. Complaint. “Complaint” refers to any and all complaints filed in the Class Action.

1.14. Consideration Period. “Consideration Period” refers to the 60 calendar days following initial mailing of the Notice of Settlement, during which an individual can submit an Objection or a Request for Exclusion.

1.15. Court. “Court” refers to the judge presiding over the Class Action in the California Superior Court for the County of Los Angeles.

1.16. Defendant. “Defendant” refers to Ormco Corporation.

1.17. Defense Counsel. “Defense Counsel” refers to Seyfarth Shaw LLP. For purposes of providing any notices required under this Agreement, Defense Counsel shall refer to Timothy M. Rusche, trusche@seyfarth.com.

1.18. Effective Date. “Effective Date” shall be (a) the Court’s final approval of the Agreement, if no objections have been filed, (b) if an objection has been filed, the time of appeal has expired (c) or the final resolution of any appeal that has been filed.

¹ For avoidance of doubt, Class Members, Collective Members, and PAGA Employees do not include any individuals employed by a third-party staffing agency and assigned to work at Ormco’s facilities, unless those individuals became direct employees of Ormco during the Settlement Period for Class Members, the Settlement Period for Collective Members, and/or the Settlement Period for PAGA Employees, respectively.

1 **1.19. Fairness Hearing.** “Fairness Hearing” is the hearing at which the Court decides
2 whether the terms of the Agreement are fair, reasonable, and adequate and meet all requirements for
3 Final Approval.

4 **1.20. Final Approval Order.** “Final Approval Order” is the order the Court issues, in
5 connection with the Fairness Hearing, that approves this Agreement. **FLSA Released Claims.** “FLSA
6 Released Claims” means all claims under the FLSA that Collective Members will release if they opt in
7 to the collective.

8 **1.22. FLSA Released Claims Amount.** “FLSA Released Claims Amount” is the
9 amount this Agreement sets aside to secure releases of FLSA claims by individuals who opt in to the
10 FLSA collective.

11 **1.23. Gross Settlement Amount.** “Gross Settlement Amount” refers to the maximum
12 payment Defendant may be obligated to make in connection with the Agreement: \$557,000—except for
13 any employer payroll taxes, which will be paid separately. This sum includes all Individual Settlement
14 Payments, any Service Award, the PAGA Payment, Administrative Costs, and the Class Counsel
15 Award.

16 **1.24. Individual Settlement Payment.** “Individual Settlement Payment” refers to the
17 amount the Settlement Administrator distributes from the Net Settlement Amount to each Settlement
18 Class Member and each Settlement Collective Member.

19 **1.25. Judgment.** “Judgment” refers to the final judgment entered by the Court in this
20 Action after finally approving the Agreement.

21 **1.26. LWDA.** “LWDA” refers to the California Labor & Workforce Development
22 Agency, which enforces the Private Attorney General Act of 2004 (“PAGA”), and which receives the
23 LWDA portion of the PAGA Payment.

24 **1.27. Morrow.** “Morrow” shall mean Erika Morrow, who filed the *Morrow Action*.

25 **1.28. Morrow Action.** “*Morrow Action*” shall mean the lawsuit *Erika Morrow v.*
26 *Ormco Corporation*, filed in the Superior Court of the State of California for the County of Los Angeles
27 as Case No. Case No. 21STCV36034, and all complaints filed therein. The *Morrow Action*, the Class
28 Action and the PAGA action are related . The Class Action is the lead case.

1 **1.29. Net Settlement Amount.** “Net Settlement Amount” refers to the portion of the
2 Gross Settlement Amount that remains after accounting for any Service Award, the portion of the PAGA
3 Payment payable to the LWDA, Administrative Costs, and the Class Counsel Award.

4 **1.30. Notice of Class, Collective and Representative Action Settlement.** “Notice of
5 Settlement” means a notice of the terms of the Agreement, substantially in the form attached as Exhibit
6 A.

7 **1.31. Objection.** “Objection” refers to a written statement timely submitted to the
8 Settlement Administrator that contains (1) the Objector’s full name and current mailing address, (2) the
9 last four digits of the Objector’s social security number, (3) the specific reason(s) for the Objection, and
10 (4) all evidence and supporting papers (including, without limitation, all briefs, written evidence, and
11 declarations) for the Court to consider.

12 **1.32. Objector.** “Objector” refers to a Settlement Class Member who has submitted an
13 Objection.

14 **1.33. PAGA Action.** “PAGA Action” shall mean the lawsuit *Mayda Aguirre, Daniel*
15 *Alcocer, and Robert Rodriguez v. Ormco Corporation*, filed in the Superior Court of the State of
16 California for the County of Los Angeles as Case No. 22PSCV00363, and all complaints filed therein.

17 **1.34. PAGA Employees.** “PAGA Employees” refers to those individuals who for
18 purposes of this Agreement include the following: all individuals whom Ormco employed in California
19 during the PAGA Period who have not entered into an arbitration agreement or release agreement with
20 Ormco.

21 **1.35. PAGA Payment.** “PAGA Payment” refers to a payment in settlement of a claim
22 for civil penalties under the Private Attorney General Act of 2004, 75% shall be payable to the LWDA
23 and 25% shall be payable to the Net Settlement Amount.

24 **1.36. PAGA Period.** “PAGA Period” refers to the period beginning on September 30,
25 2017 through November 21, 2022.

26 **1.37. PAGA Representatives.** “PAGA Representatives” refers to plaintiffs Mayda
27 Aguirre, Robert Rodriguez, Daniel Alcocer, and Erika Morrow.

28 **1.38. Parties.** “Parties” refers collectively to (1) Plaintiffs and (2) Defendant.

1 **1.39. Plaintiffs.** “Plaintiff” refers to Plaintiffs Mayda Aguirre, Robert Rodriguez,
2 Daniel Alcocer, and Erika Morrow.

3 **1.40. Preliminary Approval.** “Preliminary Approval” refers to the court order granting
4 preliminary approval of this Agreement.

5 **1.41. Qualified Settlement Fund.** “Qualified Settlement Fund” means a qualified
6 settlement fund established pursuant to U.S. Treasury Regulation section 468B-1, 29 C.F.R. § 468B-1.

7 **1.42. Released Parties.** “Released Parties” refers to Defendant and each and all of its
8 current or former subsidiaries, parents, affiliates, joint ventures, predecessors, insurers, agents,
9 employees, successors, assigns, officers, officials, directors, attorneys, personal representatives,
10 executors, and shareholders, including their respective pension, profit sharing, savings, health, and other
11 employee benefits plans of any nature, the successors of such plans, and those plans’ respective current
12 or former trustees and administrators, agents, employees, and fiduciaries.

13 **1.43. Request for Exclusion.** “Request for Exclusion” refers to a timely, written, opt-
14 out request signed by a Class Member and submitted to the Settlement Administrator with the following
15 information: (1) the Class Member’s full name and current mailing address, (2) the last four digits of the
16 Class Member’s social security number, (3) an express statement that the Class Member wishes to be
17 excluded from the terms of the Agreement.

18 **1.44. Rodriguez.** “Rodriguez” means Robert Rodriguez, who filed the Class Action
19 and PAGA Action.

20 **1.45. Service Award.** “Service Award” refers to any payment that the Court awards for
21 service as a Class or PAGA Representative and for entering into special agreements described in
22 Paragraph 8.2 of this Agreement.

23 **1.46. Settlement Administrator.** “Settlement Administrator” refers to Phoenix Class
24 Action Administration Solutions, the third-party administrator that the Parties mutually select.

25 **1.47. Settlement Class.** “Settlement Class” refers to all Class Members who do not file
26 a timely and valid Request for Exclusion.
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1 **1.48. Settlement Collective.** “Settlement Collective” refers to a Collective Member
2 who, by endorsing and cashing a settlement check, opts in to the FLSA collective and consents to join an
3 FLSA action and release FLSA claims.

4 **1.49. Settlement Period.** “Settlement Period for Class Members” refers to the period
5 beginning on September 30, 2017 through November 21, 2022. “Settlement Period for Collectives
6 Members” refers to the period beginning on September 30, 2018 through November 21, 2022.

7 **2. Recitals and Procedural History**

8 **2.1. Business of Defendant.** Defendant is engaged in the business of developing,
9 manufacturing, and marketing products for the orthodontics industry, and has retained individuals as
10 employees working in California.

11 **2.2. Morrow Action.** On September 30, 2021, Morrow filed the *Morrow* Action,
12 alleging claims for (1) violation of California Labor Code §§ 510 and 1198 (unpaid overtime); (2)
13 violation of California Labor Code §§ 226.7 and 512(a) (unpaid meal period premiums); (3) violation of
14 California Labor Code § 226.7 (unpaid rest period premiums); (4) violation of California Labor Code §§
15 1194, and 1197 (unpaid minimum wages); (5) violation of California Labor Code §§ 201 and 202 (final
16 wages not timely paid); (6) violation of California Labor Code § 226(a) (noncompliant wage
17 statements); (7) violation of California Labor Code §§ 2800 and 2802 (unreimbursed business
18 expenses); and (8) violation of California Business & Professions Code §§ 17200. On May 18, 2022, the
19 court granted Defendant’s motion to compel arbitration, and compelled Morrow’s claims to individual
20 arbitration, dismissed Morrow’s class claims without prejudice, and stayed the action pending the
21 completion of arbitration. On July 18, 2022, Morrow filed a notice of appeal, which she subsequently
22 dismissed.

23 **2.3. Class Action.** On April 12, 2022, Aguirre and Rodriguez filed the Class Action,
24 alleging claims for (1) violation of California Labor Code §§ 510 and 1198 (unpaid overtime); (2)
25 violation of California Labor Code §§ 226.7 and 512(a) (unpaid meal period premiums); (3) violation of
26 California Labor Code § 226.7 (unpaid rest period premiums); (4) violation of California Labor Code §§
27 1194, and 1197 (unpaid minimum wages); (5) violation of California Labor Code §§ 201 and 202 (final
28 wages not timely paid); (6) violation of California Labor Code § 226(a) (noncompliant wage

statements); (7) violation of California Labor Code §§ 2800 and 2802 (unreimbursed business expenses); and (8) violation of California Business & Professions Code §§ 17200

2.4. PAGA Action. On April 12, 2022, Aguirre and Rodriguez filed the PAGA Action, alleging claims under Labor Code section 2698 *et seq.*, based on alleged violations of Labor Code §§ 201, 202, 203, 204, 218.5, 221, 226(a), 226.3, 226.7, 246, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and the IWC Wage Orders.

2.5. Amended Complaint and Stay. After the execution of this Agreement, Plaintiffs will, file a First Consolidated Class and Collective Action Amended Complaint for Damages and Penalties in the *Class* Action consolidating the parties and claims in the Class Action, the PAGA Action, and the *Morrow* Action, as well as adding claims under the Fair Labor Standards Act. The amended complaint shall also conform the class definition to that set forth in this agreement. Defendant's obligation to file an answer to the amended complaint is stayed pending the Preliminary Approval hearing and Fairness Hearing, and will be mooted by Final Approval of this Agreement.

2.6. Defendant's Denials. Defendant denies (1) all the material allegations in the Actions, (2) that Defendant violated any applicable laws, (3) that Defendant is liable for damages, penalties, interest, restitution, attorneys' fees, or costs, or for any other remedy on account of the claims asserted in the Actions, and (4) that class certification, collective action certification, or representative treatment is appropriate as to any claim in the Actions. Defendant contends that its policies, procedures, and practices comply with all laws asserted in the Actions. Defendant has agreed to settle the Actions solely to avoid the burden, expense, and uncertainty of litigation. Any statements in this Agreement are made for settlement purposes only.

2.7. Class Counsel's Investigation. Class Counsel has investigated the facts relating to the claims alleged in the Actions and also has analyzed all defenses. Class Counsel interviewed Class Members regarding the claims in the Actions, and has examined Defendant's compliance with its policies, procedures, and practices.

2.8. Negotiation of Settlement. Class Counsel has engaged in arms-length negotiations with Defendant with a view toward achieving substantial benefits while avoiding the cost, delay, and uncertainty of further litigation. Plaintiffs will urge that the Court approve this Agreement

1 after considering (1) the factual and legal defenses to the claims asserted, which render uncertain the
2 ultimate outcome of the Actions, (2) the potential difficulties Plaintiffs would encounter in establishing
3 their claims and maintaining class or collective treatment, (3) the substantial benefits produced by this
4 Agreement, (4) that this Agreement provides relief in an expeditious and efficient manner, compared to
5 any manner of recovery possible after litigation and potential appeal, and (5) that this Agreement allows
6 Class Members to opt out of the Actions and individually pursue the claims alleged on behalf of the
7 classes in the Actions.

8 **2.9. Certification for Settlement Purposes.** This Agreement is contingent upon
9 approval of class certification under California Code of Civil Procedure Section 382 for settlement
10 purposes only, and the execution of a general release and confidential settlement agreement by
11 Plaintiffs. Defendant expressly reserves the right to challenge the propriety of class certification,
12 collective action certification, or representative treatment for any other purpose should the Court not
13 approve the Agreement.

14 **3. The Gross Settlement Amount.** The Gross Settlement Amount is \$557,000. In no event
15 shall Defendant, absent its further agreement, be obligated to pay more than that amount; provided,
16 however, if the number of workweeks actually worked by Settlement Class Members during the
17 Settlement Period for Class Members is more than 10% greater than 25,121, Defendant will have the
18 option to (1) void this Agreement; (2) increase the Gross Settlement Amount by a proportionate
19 additional amount for each additional workweek worked above 27,633 or (3) adjust the Release date so
20 that the Gross Settlement Amount will cover no more than 27,633 workweeks worked and the Release
21 date will be moved back to only cover the Settlement Period for Class Members during which no more
22 than 27,633 workweeks were worked by the Settlement Class Members. The Gross Settlement Amount
23 includes all Individual Settlement Payments, any Service Award, the Class Counsel Award, the PAGA
24 Payment, and Administrative Costs. Defendant's employer payroll tax obligations shall be paid in
25 addition to the Gross Settlement Amount.
26
27
28

1 **4. The Net Settlement Amount**

2 **4.1. Calculation of the Amount.** The Net Settlement Amount is the portion of the
3 Gross Settlement Amount that remains after deducting amounts for any Service Award, the PAGA
4 Payment, Administrative Costs, and the Class Counsel Award.

5 **4.2. Calculation of Estimated Individual Settlement Amounts.** Estimated
6 Individual Settlement Payments will be calculated on the basis of the number of weeks actually worked
7 and attributed to a Class Member or Collective Member in proportion to the total number of weeks
8 actually worked and attributed to all Class Members during the Settlement Period for Class Members
9 and to all Collective Members during the Settlement Period for Collective Members, following the
10 formula described in Paragraph 7.6 of this Agreement, on the assumption that each eligible individual
11 will fully participate in the Agreement.

12 **5. Selection of Settlement Administrator and Notice of Settlement**

13 **5.1. Selection of Settlement Administrator.** The Parties have mutually selected
14 Phoenix Class Action Administration Solutions to serve as the Settlement Administrator.

15 **5.2. Settlement Administration.** The Settlement Administrator will, as necessary,
16 print, copy, format, and translate materials, mail notices to Class Members, perform a skip trace for
17 undeliverable addresses, establish and maintain a Qualified Settlement Fund, obtain appropriate tax
18 identification numbers, calculate Individual Settlement Payments, calculate payroll withholdings and
19 federal and state payroll taxes, prepare and file all required IRS Forms and state tax forms, mail
20 Individual Settlement Payments and tax forms, establish a hotline telephone number for class member
21 communications, post notices regarding settlement on the Settlement Administrator's website, remit all
22 tax payments and required documentation to federal and state taxing authorities, implement the process
23 for any uncashed settlement checks, and perform all other duties associated with settlement
24 administration, including, but not limited to, all those specified in this Agreement. Any dispute relating
25 to settlement administration shall, after good-faith efforts by the Parties to resolve the dispute, be
26 referred to the Court.

27 **5.3. Confidential Data for the Settlement Administrator.** Within 15 calendar days
28 of Preliminary Approval, Defendant will give the Settlement Administrator a confidential class list

1 containing the names, employee ID numbers, last known address and telephone number(s), dates of
2 employment, and numbers of weeks worked during the Settlement Period for Class Members
3 (“Confidential Data”), the Settlement Period for Collective Members, and the PAGA Period. Defendant
4 shall also provide, when needed, social security numbers to facilitate the administration of this
5 Agreement. The Settlement Administrator shall keep the class data provided by Defendant strictly
6 confidential and shall use the class data only for the purposes described in this Agreement, and shall
7 return the class data to Defendant or confirm the destruction of same upon completing the work called
8 for by this Agreement. Notwithstanding the foregoing, the Settlement Administrator may provide Class
9 Counsel with a redacted list of potential Individual Settlement Payments, which shall not include Class
10 Member names or addresses or identify any Class Member by name or address.

11 **5.4. Mailing Materials to Class Members.** Within 15 calendar days of the receipt of
12 the Confidential Data, the Settlement Administrator shall send the Notice of Settlement to Class
13 Members via First Class U.S. mail, using the last-known mailing address for each Class Member. Any
14 mailing returned as undeliverable shall be sent within five calendar days via First Class U.S. Mail to any
15 available forwarding address. If no forwarding address is available, then the Settlement Administrator
16 shall attempt to determine the correct address by using a computer-based skip-trace search, and shall
17 then perform, if feasible, a re-mailing via First Class U.S. Mail within five calendar days. If no current
18 address is available for a Class Member, then the Notice of Settlement for that Class Member will be
19 deemed undeliverable. Only one re-mailing is required. If a Class Member cannot be located within two
20 attempts at mailing, then the Notice of Settlement for that Class Member will be deemed undeliverable.
21 Class Members who received re-mailed notice shall be provided with an additional 10 days to submit an
22 Objection or a Request for Exclusion.

23 **5.5. Proof of Mailing.** At least five calendar days prior to the Fairness Hearing, the
24 Settlement Administrator shall provide a declaration of due diligence and proof of mailing with regard
25 to the mailing of the Notice of Settlement to Class Counsel and Defense Counsel, which they shall in
26 turn provide to the Court.

1 **6. Responses to Notice of Settlement**

2 **6.1. Consideration Period.** Within the Consideration Period, Class Members may opt
3 out of the proposed class action settlement by submitting a Request for Exclusion (as provided below) or
4 may submit a dispute (as provided for in the Notice of Settlement) or may submit an Objection (as
5 provided below). Except as specifically provided herein, no response postmarked after the Consideration
6 Period shall be considered.

7 **6.2. Requests for Exclusion and Opt Out Rights.** Class Members will have the
8 opportunity to opt out by submitting a Request for Exclusion.

9 **6.2.1. Opt Out Procedure.** Class Members may opt out of the class and action
10 settlement by mailing the Settlement Administrator a Request for Exclusion. A Request for Exclusion, to
11 be valid, must be signed and dated by the Class Member, must provide the Class Member's full name
12 (and former names, if applicable), current address, current telephone number, and the last four digits of
13 the Class Member's social security number, and must include an express statement that the Class
14 Member wishes to be excluded from the terms of the class settlement. Any Request for Exclusion that
15 does not include all of the required information or that is not submitted in a timely manner will be
16 deemed ineffective.

17 **6.2.2. Effect of Opting Out.** Any Class Member who opts out of the class
18 settlement may not submit an Objection, shall not receive any Individual Settlement Payment, and shall
19 not be bound by the releases that this Agreement entails; provided, however, any such Class Member
20 employed at during the PAGA Period shall still receive a pro rata portion of the PAGA Payment
21 distributed to the Net Settlement Amount and be bound by the release of PAGA claims contained herein.
22 Each Class Member who does not submit a timely, valid Request for Exclusion shall be bound by the
23 releases that this Agreement entails.

24 **6.2.3. Tolerance of Opt-Outs—Defendant's Right to Withdraw.** If the
25 number of Class Members who opt out by submitting Requests for Exclusion exceeds 5 percent of the
26 total number of Class Members, then Defendant may, in the exercise of its sole discretion, withdraw
27 from this Agreement. Defendant's right to withdraw expires 10 business days after the Consideration
28 Period.

1 **6.3. Objections.** Unless otherwise provided in this Agreement, only those Class
2 Members who do not submit a Request for Exclusion shall be entitled to object to the terms of the
3 Agreement.

4 **6.3.1. Objection Procedure.** Any Objection must be made using the procedures
5 set forth in the Notice of Settlement, and must contain (1) the Objector’s full name and current mailing
6 address, (2) the last four digits of the Objector’s social security number, and (3) the specific reason(s)
7 for the Objection, An objection may submit evidence and supporting papers (including, without
8 limitation, all briefs, written evidence, and declarations) for the Court to consider.

9 **6.3.2.** Objectors can appear at the Fairness Hearing either in person or through
10 counsel and may provide their objections in writing or in person. An Objection may be withdrawn at any
11 time.

12 **6.3.3.** Only Settlement Class Members may object to the class action
13 components of the Settlement and/or this Agreement, including contesting the fairness of the Settlement,
14 and/or amounts requested for the Class Counsel Award, and/or Service Awards.

15 **6.3.4.** Non-Settlement Class Members have no right to object to any of the class
16 action components of the Settlement.

17 **6.3.5. Waiver of Objections.** Class Members who fail to submit an Objection in
18 the manner specified in the Notice of Settlement shall be deemed to have waived any objection and shall
19 be foreclosed from objecting to this Agreement, whether by appeal or otherwise.

20 **6.4. Proof of Responses.** At least five calendar days prior to the Fairness Hearing, the
21 Settlement Administrator will prepare a declaration to submit to the Court regarding responses to the
22 Notice of Settlement, including such information as any inability to deliver mailings because of invalid
23 addresses, the number of any Requests for Exclusion, and the number of any Objections.

24 **6.5. Binding Effect of Settlement.** Although a Class Member might not timely submit
25 an Objection or a Request for Exclusion because of inability to locate the Class Member’s current
26 address, or for other reasons beyond the Class Member’s control, that Class Member shall nonetheless
27 be bound by this Agreement.
28

1 **6.6. No Interference with Class Member Responses.** Each Party agrees not to
2 encourage any Class Member to submit an Objection or a Request for Exclusion and agrees not to
3 retaliate against any Class Member for participating in this Agreement.

4 **7. Administration of Settlement Proceeds**

5 **7.1. Final Funding of Gross Settlement Amount.** Within 25 business days of the
6 Effective Date, Defendant will deposit the Gross Settlement Amount and its share of employer payroll
7 taxes into the Qualified Settlement Fund.

8 **7.2. Administrative Costs.** Administrative Costs shall not exceed \$9,000, which shall
9 be a payment from the Gross Settlement Amount. The amount of Administrative Costs is not a material
10 term: if the Court approves a lesser amount, then the other terms of this Agreement shall remain in
11 effect. Any unapproved Administrative Costs shall diminish the Class Counsel Award.

12 **7.3. Class Counsel Award.** Class Counsel intend to request—and Defendant agrees
13 not to oppose—a payment from the Gross Settlement Amount for (a) attorney’s fees in an amount up to
14 35% of the Gross Settlement Amount and (b) litigation costs actually incurred in representing the
15 interests of the class, supported by adequate documentation, in an amount up to \$10,000.

16 **7.3.1. Approval of Class Counsel Award Not Material.** Approval of the Class
17 Counsel Award is not a material term. If the Court approves only a lesser amount, then the other terms
18 of this Agreement shall remain in effect.

19 **7.3.2. Timing of Class Counsel Award.** The Settlement Administrator shall
20 issue the Class Counsel Award by 35 business days after the Effective Date. Within 10 calendar days
21 after the Effective Date, Class Counsel shall instruct the Settlement Administrator as to how the Class
22 Counsel Award may be paid. The Settlement Administrator shall issue an appropriate Internal Revenue
23 Service Form 1099 to Class Counsel. Class Counsel shall be solely responsible for paying all applicable
24 taxes on any Class Counsel Award and shall indemnify and hold harmless Defendant from any claim or
25 liability for taxes, penalties, or interest arising as a result of the Class Counsel Award. Plaintiff, Class
26 Counsel, and the Settlement Class waive any additional claim for attorneys’ fees and costs incurred in
27 connection with the Lawsuit.
28

1 **7.4. Service Award.** Class Counsel intends to request a payment from the Gross
2 Settlement Amount for a Service Award for each of the Class Representatives and PAGA
3 Representatives in an amount up to \$10,000. Defendant agrees not to oppose or impede any application
4 or motion for a Service Award for each of the Class Representatives. Any Service Award would be in
5 addition to the Class Representatives' Individual Settlement Payment.

6 **7.4.1. Approval of Service Award Not Material.** Approval of a Service Award
7 is not a material term. If the Court does not approve a Service Award or approves only a lesser amount
8 than that requested, then the other terms of this Agreement shall remain in effect.

9 **7.4.2. Timing of Service Award.** The Settlement Administrator shall pay any
10 Service Award within 35 business days of the Effective Date, and shall issue an IRS Form 1099 to Class
11 Representatives and PAGA Representatives. Class Representatives and PAGA Representatives shall be
12 solely responsible for paying all applicable taxes on any Service Award and shall indemnify and hold
13 harmless Defendant from any claim or liability for taxes, penalties, or interest arising as a result of the
14 Service Award.

15 **7.5. PAGA Payment.** The Parties will seek approval for a PAGA Payment from the
16 Gross Settlement Amount in the amount of \$50,000, 75% of which will go to the LWDA and 25% of
17 which will go to the Net Settlement Amount. Notwithstanding anything else in this Agreement, Class
18 Members employed at any time within the PAGA period who submit a valid Request for Exclusion shall
19 receive a pro rata share of the 25% of the PAGA Payment paid to the Net Settlement Amount and shall
20 be bound by the release of PAGA claims set forth in the California Released Claims. The *pro rata*
21 amount payable from the 25% portion of PAGA Payment that will be paid to PAGA Employees based
22 on each PAGA Employee's number of weeks worked during the PAGA Period.

23 **7.5.1. Reduction of PAGA Payment Not Material.** Any reduction in the
24 requested PAGA Payment is not a material term. If the Court approves only a lesser amount than that
25 requested, then the other terms of this Agreement shall remain in effect. But some approval of a PAGA
26 Payment is a material term. If the Court does not approve a PAGA Payment, then the entire Agreement
27 will be, at Defendant's sole discretion, void and unenforceable.
28

1 **7.5.2. Timing of PAGA Payment.** The Settlement Administrator shall pay the
2 PAGA Members and 75% of any approved PAGA Payment to the LWDA by 35 business days after the
3 Effective Date.

4 **7.6. Individual Settlement Payments.** Each Settlement Class Member shall be
5 entitled to an Individual Settlement Payment consisting of a share of the Net Settlement Amount,
6 calculated as described below. Defendant's time records regarding the number of work week actually
7 worked shall control for purposes of calculation.

8 **7.6.1. Number of Workweeks.** Defendant will provide to the Settlement
9 Administrator the total number of workweeks that each Settlement Class Member worked during the
10 Settlement Period for Class Members and the total number of workweeks that all Settlement Class
11 Members worked during that period ("Total Settlement Class Member Workweeks"). Defendant will
12 also calculate the total number of work weeks that each Collective Member worked during the
13 Settlement Period for Collective Members and the total number of workweeks that all Collective
14 Members worked during that period ("Total Collective Member Workweeks").

15 **7.6.2. Allocation of California and FLSA Amounts.** Ninety percent (90%) of
16 the Net Settlement Amount (the California Release Claims Amount) will be allocated to the settlement
17 of California Released Claims and ten percent (10%) of the Net Settlement Amount (the FLSA Released
18 Claims Amount) will be allocated to the settlement of FLSA Released Claims.

19 **7.6.3. Payments as to California Released Claims.** Each Settlement Class
20 Member's share of the California Released Claims Amount is the number of workweeks worked and
21 attributed to the Settlement Class Member during the Settlement Period for Class Members, divided by
22 the Total Settlement Class Member Workweeks, and multiplied by the California Released Claims
23 Amount. Otherwise stated, the formula for a Class Member is: (individual's workweeks ÷ Total
24 Settlement Class Member workweeks) * California Released Claims Amount.

25 **7.6.4. Payments as to FLSA Released Claims.** Each Collective Settlement
26 Member's share of the FLSA Released Claims Amount is the number of workweeks worked and
27 attributed to the Collective Member during the Settlement Period for Collective Members, divided by
28 Total Collective Member Workweeks, and multiplied by the FLSA Released Claims Amount. Otherwise

1 stated, the formula for a Collective Member is: (individual's workweeks ÷ Total Collective Member
2 Workweeks) * FLSA Released Claims Amount.

3 **7.6.5. Two checks—California claims and FLSA claims.** The Settlement
4 Administrator will distribute two checks, one from the California Released Claims Amount (which shall
5 include the individual's respective share of the PAGA Payment) and one from the FLSA Released
6 Claims Amount. The second check will bear an endorsement stating: "By cashing or depositing this
7 check, you consent to opt in to a collective asserting FLSA claims and agree to waive FLSA claims as
8 explained in the notice of settlement of *Aguirre v. Ormco Corporation*."

9 **7.6.6. Effect of uncashed FLSA check.** To the extent that Collective Members
10 fail to cash or deposit FLSA checks, the unclaimed amounts will be sent to the California State
11 Controller: Unpaid Wage Fund.

12 **7.7. Timing of Individual Settlement Payments.** The Settlement Administrator shall
13 issue Individual Settlement Payments no later than 35 business days after the Effective Date.

14 **7.8. Tax Allocation of Individual Settlement Payments.** Each Individual Settlement
15 Payment will be allocated for tax purposes as follows: 80% Form 1099 income for statutory and civil
16 penalties and interest, 20% Form W-2 income for wages. Any Class Member payment consisting solely
17 of a share of the PAGA Payment shall be allocated for tax purposes solely as Form 1099 income. The
18 Settlement Administrator will make required tax withholdings from each Individual Settlement Payment
19 for the portion allocated to Form W-2 income and will remit the withholding and the employer's share
20 of payroll taxes to the appropriate federal and state taxing authorities. Defendant's employer payroll tax
21 obligation shall be calculated by the Settlement Administrator and paid separately from the Gross
22 Settlement Amount. The Settlement Administrator shall issue any necessary IRS Form 1099 and Form
23 W-2 statements to Class Members for their respective Individual Settlement Payments.

24 **7.8.1. Responsibility for Taxes.** Class and Collective Members shall be solely
25 responsible for paying all taxes due on their respective payments and shall indemnify and hold harmless
26 Defendant and the Released Parties from any claim or liability for taxes, penalties, or interest arising as
27 a result of the payments. Defendant shall be responsible for paying its share of employer pay roll taxes
28

1 and will separately make a payment to the Settlement Administrator for payment to the relevant state
2 and federal taxing agencies.

3 **7.8.2. Approval of Tax Allocations Not Material.** Approval of the allocations
4 of the payments set forth above is not a material term. If the Court approves a different tax allocation of
5 the payments, then the other terms of this Agreement shall remain in effect.

6 **7.9. Undeliverable or Uncashed Checks.** All individual settlement checks will
7 remain negotiable for 180 days from the date of their mailing. The Settlement Administrator shall notify
8 Class Counsel and Defense Counsel of any undeliverable and uncashed checks. After 180 days from the
9 mailing, the amount of any settlement checks from the California Released Claims Amount that has not
10 been cashed will be directed to the California Controller in the Class Member's name. As to all
11 uncashed settlement checks to Collective Members, those Collective Members will not release FLSA
12 claims and the Settlement Administrator, after 180 days, will direct the associated funds to the
13 California State Controller: Unpaid Wage Fund.

14 **7.10. Certification of Completion.** Upon fully administering this Agreement, the
15 Settlement Administrator will certify the completion to the Court and counsel for all Parties in a
16 declaration, summarizing the total money paid and the status of any uncashed checks.

17 **8. Releases**

18 **8.1. California Released Claims.** Upon final approval of the Settlement Agreement,
19 and except as to the right to enforce the terms and conditions of the Settlement Agreement, each
20 Settlement Class Member-and each Settlement Class Member's executors, administrators,
21 representatives, agents, heirs, successors, assigns, trustees, or guardians-will release Defendant and each
22 and all of its current or former subsidiaries, parents, affiliates, joint ventures, predecessors, insurers,
23 agents, employees, successors, assigns, officers, officials, directors, attorneys, personal representatives,
24 executors, and shareholders, including their respective pension, profit sharing, savings, health, and other
25 employee benefits plans of any nature, the successors of such plans, and those plans' respective current
26 or former trustees and administrators, agents, employees, and fiduciaries from any and all claims, debts,
27 liabilities, demands, obligations, penalties, guarantees, costs, expenses, attorney's fees, damages, action
28 or causes of action that were alleged in, or arising out of facts asserted in, the First Amended

1 Consolidated Complaint, including, but not limited to, any claims under state law, failure to pay wages,
2 failure to provide paid sick leave, failure to pay wages upon separation of employment, failure to timely
3 pay wages during employment, failure to reimburse business expenses, failure to provide accurate wage
4 statements, failure to provide meal and rest periods premiums, and claims for unfair and unlawful
5 practices, claims under the applicable Wage Orders, Labor Code sections 201, 202, 203, 204, 210 218,
6 218.5, 221, 226, 226(a), 226(e), 226(g), 226.3, 226.7, 226.7(b), 246, 510, 512, 512(a), 558, 1174,
7 1174(d), 1194, 1194(a), 1194.2, 1197, 1197.1, 1198, 2800, 2802, California Code of Regulations Title 8
8 section 11040, and California Civil Code section 1021.5, as well as claims under the California Business
9 and Professions Code sections 17200 et. seq. ("California Released Claims"). The release shall be
10 effective on the date when settlement is fully funded.

11 **8.2. PAGA Release.** Upon final approval of the Settlement Agreement, and except as
12 to the right to enforce the terms and conditions of the Settlement Agreement, each PAGA Employee-and
13 each PAGA Employee executors, administrators, representatives, agents, heirs, successors, assigns,
14 trustees, or guardians-will release Defendant and each and all of its current or former subsidiaries,
15 parents, affiliates, joint ventures, predecessors, insurers, agents, employees, successors, assigns, officers,
16 officials, directors, attorneys, personal representatives, executors, and shareholders, including their
17 respective pension, profit sharing, savings, health, and other employee benefits plans of any nature, the
18 successors of such plans, and those plans' respective current or former trustees and administrators,
19 agents, employees, and fiduciaries from any and all claims under the Private Attorneys General Act of
20 2004 (Labor Code §§ 2698 et seq.) based on PAGA Period facts alleged in, or arising out of the facts
21 alleged in or that reasonably could have been alleged based on the facts alleged in the Action's First
22 Amended Consolidated Complaint, including, but not limited to, any claims under state law, failure to
23 pay wages, failure to provide paid sick leave, failure to pay wages upon separation of employment,
24 failure to timely pay wages during employment, failure to reimburse business expenses, failure to
25 provide accurate wage statements, failure to provide meal and rest periods premiums, and claims for
26 unfair and unlawful practices, claims under the applicable Wage Orders, Labor Code sections 201, 202,
27 203, 204, 210 218, 218.5, 221, 226, 226(a), 226(e), 226(g), 226.3, 226.7, 226.7(b), 246, 510, 512,
28 512(a), 558, 1174, 1174(d), 1194, 1194(a), 1194.2, 1197, 1197.1, 1198, 2800, 2802, California Code of

1 Regulations Title 8 section 11040, and California Civil Code section 1021.5 (“PAGA Released
2 Claims”). The release shall be effective on the date when the settlement is fully funded

3 **8.3. Additional Release by Class Representatives.** In addition to the release given by
4 each Settlement Class Member, the Class Representatives generally release claims against each
5 Released Party through the date of Final Approval. This general release includes claims arising from the
6 Class Representatives’ relationships with Defendant, including, without limitation, claims arising under
7 the California Labor Code and wage orders, claims for unpaid wages and liquidated damages under the
8 Fair Labor Standards Act, claims for discrimination, harassment, or retaliation pursuant to Title VII of
9 the Civil Rights Act of 1964, 42 U.S.C. section 2000 *et seq.*, the California Fair Employment and
10 Housing Act, California Gov’t Code Section 12900 *et seq.*, and claims for violation of public policy.
11 This general release by the Class Representatives also includes a waiver of rights under California Civil
12 Code Section 1542, which states:

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

16 The Class Representatives’ Releases do not extend to any claims or actions to enforce
17 this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits,
18 social security benefits, workers’ compensation benefits that arose at any time.

19 **8.4. FLSA Released Claims.** Any Collective Member—and each Collective
20 Member’s executors, administrators, representatives, agents, heirs, successors, assigns, trustees, or
21 guardians—will release each Released Party from any claim of liability under the Fair Labor Standards
22 Act, including for unpaid minimum or overtime wages or liquidated damages, based on the facts alleged
23 in, or arising out of the facts alleged in the First Amended Consolidated Complaint,. Collective
24 Members who do not cash or deposit a settlement check do not release any FLSA claim. This release
25 applies to any claims arising during the Settlement Period for Collective Members. This release shall be
26 effective on the date when the settlement is fully funded.
27
28

1 **9. Settlement Approval Procedure**

2 **9.1. Motion for Preliminary Approval.** Plaintiffs will obtain a hearing to request
3 preliminary approval of this Agreement, to obtain entry of an order that would (i) conditionally certify a
4 settlement class and settlement collective for settlement purposes only, (ii) grant preliminary approval of
5 this Agreement, (iii) approve a Notice of Settlement, (iv) set a date for a Final Approval hearing.

6 **9.1.1. Contents of Motion.** The motion for preliminary approval shall include
7 the bases for demonstrating that conditional certification of a settlement class and a settlement collective
8 is appropriate, and that the settlement amounts are reasonable in light of the facts and law pertaining to
9 the claims alleged. The motion shall be accompanied by a signed declaration by Class Counsel
10 discussing the risks of continued litigation and the decision that this Agreement serves the best interests
11 of class members. Before filing any motion, Class Counsel will consider in good faith any comments by
12 Defendant's counsel.

13 **9.1.2. Notice to LWDA.** Upon moving for preliminary approval, Plaintiff will
14 also submit the proposed settlement agreement to the LWDA, pursuant to Labor Code section
15 2699(1)(2).

16 **9.2. Motion for Final Approval.** Class Counsel will obtain a hearing for a Motion for
17 Final Approval, to obtain an order to (a) approve this Agreement, (b) adjudge its terms to be fair,
18 reasonable, and adequate, (c) recite the California Released Claims and FLSA Released Claims, (d)
19 direct that the terms of the Agreement be carried out, (e) retain jurisdiction to oversee enforcement of
20 this Agreement.

21 **9.3. Motion for Class Counsel Award.** In connection with a Motion for Final
22 Approval, Class Counsel may move for approval of an attorneys' fees and costs award in the amount of
23 (a) up to 35% of the Gross Settlement Amount for fees and (b) up to \$10,000 for litigation costs actually
24 incurred in representing the interest of the Class, supported by adequate documentation.

25 **9.4. Motion for Service Award.** In connection with a Motion for Final Approval,
26 Class Counsel may move for approval of a Service Award for each Class Representative and PAGA
27 Representative in an amount of up to \$10,000 which will not be opposed by Defendant.
28

1 **9.5. Entry of Judgment.** Upon Final Approval, the Parties shall request that the Court
2 (a) enter Judgment in accordance with this Agreement, without further fees or costs, (b) enter an order as
3 to the Class Counsel Award, (c) enter an order as to any Service Award, (d) enter an order requiring any
4 Settlement Class Member who files suit against Defendant for a reason covered by the releases pay
5 Defendant's reasonable attorneys' fees and costs if not withdrawn after receiving notice of this
6 Agreement.

7 **9.5.1. Notice of Final Judgment.** Notice of Judgment will be posted on the
8 Settlement Administrator's website.

9 **9.5.2. Effect of Failure to Obtain Final Judgment.** If the Court fails to enter
10 Judgment in accordance with this Agreement, or if the Judgment is vacated or reversed, then the Action
11 shall proceed and the Parties shall split the Administrative Costs, unless the Parties jointly agree to seek
12 reconsideration or a renegotiated settlement. Defendant retains the right to contest whether any aspect of
13 the Action should be maintained as a class, collective action, or representative action, and to contest the
14 merits of the claims asserted in the Action.

15 **9.6. Appeal Rights.** Only an Objector has the right to appeal a judgment that is in
16 accord with this Agreement. The Class Representative and Class Counsel hereby waives any right to
17 appeal any judgment, ruling, or order in this Action, including any Final Approval Order and any
18 dismissal of the Action with prejudice. This waiver includes all rights to any post-judgment proceeding
19 and appellate proceeding, such as a motion to vacate judgment, a motion for new trial, and any
20 extraordinary writ, and the Judgment therefore will become nonappealable at the time it is entered. The
21 waiver of appeal does not include any waiver of the right to oppose any appeal or post-judgment
22 proceeding. If an appeal is taken from the Judgment, then the time to consummate this Agreement
23 (including making payments under the Agreement) will be suspended until the appeal is finally resolved.

24 **10. Miscellaneous**

25 **10.1. Execution of this Agreement.**

26 **10.1.1. Parties' Authority.** The signatories hereto represent that they are fully
27 authorized to bind the Parties to all the terms of this Agreement. The Parties agree that Class Members
28

are so numerous that it is impossible or impractical to have each Class Member execute this Agreement. This Agreement may be executed on behalf of Class Members by a Class Representative.

10.1.2. Counterparts. This Agreement may be executed in counterparts, and all signed and delivered counterparts together may constitute one Agreement binding upon the Parties.

10.1.3. Facsimile or Scanned Signatures. A Party may sign and deliver this Agreement by signing on the designated signature block and transmitting that signature page via facsimile or as an attachment to an email to counsel for the other Party. Any such signature shall be deemed an original for purposes of this Agreement and shall be binding upon the Party who transmits the signature page.

10.2. Discharge of Obligations. Defendant shall fully discharge its obligations to Plaintiff and the Settlement Class through the remittance of the Gross Settlement Amount to the Qualified Settlement Fund, regardless of whether checks representing Individual Settlement Payments are actually negotiated by Settlement Class Members. Once Defendant has complied with its obligation to fund the Gross Settlement Amount, it will be deemed to have satisfied all terms and conditions under this Agreement, shall be entitled to all protections afforded to them under this Agreement, and shall have no further obligations under the terms of the agreement, regardless of what occurs with respect to the further administration of the Settlement, including any requests to be included in the Settlement Class, challenges to the completeness or accuracy of any Individual Settlement Payment, or issues regarding the completeness or accuracy of the class data.

10.3. Construction.

10.3.1. Materiality of Terms. Except as otherwise stated herein, each substantive term of this Agreement is a material term that the Parties have relied upon in making this Agreement. If the Court does not approve any substantive term, or if the Court effects a material change to the Agreement—such as increasing any amount that Defendant must pay—then the entire Agreement will be, at Defendant’s sole discretion, void and unenforceable, and the Parties shall split Administrative Costs. Where this Agreement states that a term is not material, then the Court’s refusal to approve that term leaves all the other terms of the Agreement in effect, and does not give Class Counsel or any Class Member any basis to abrogate this Agreement.

1 **10.3.2. No Construction Against the Author.** Each Party participated in drafting
2 this Agreement, and its terms shall not be construed against any Party by virtue of draftsmanship.

3 **10.3.3. Exhibits Incorporated by Reference.** This Agreement shall include the
4 terms set forth in any attached exhibit. Any exhibit to this Agreement is an integral part of it.

5 **10.3.4. Headings.** The headings within this Agreement appear for convenience of
6 reference only and shall not affect the construction or interpretation of any part of this Agreement.

7 **10.3.5. Invalidity of Any Provision.** Before declaring any provision of this
8 Agreement invalid, the Court shall first attempt to construe the provision valid to the fullest extent
9 possible so as to render all provisions of this Agreement enforceable.

10 **10.3.6. Parties' Entire Agreement.** With the exception of the separate Settlement
11 Agreement including General Release from the Plaintiff, this Agreement, with its Definitions, Recitals,
12 and Exhibits, constitutes the entire agreement on its subject matter, and supersedes all prior and
13 contemporaneous negotiations and understandings between the Parties.

14 **10.3.7. Waivers and Modifications to Be in Writing.** No waiver, modification,
15 or amendment of this Agreement shall be valid unless it appears in a writing signed by or on behalf of
16 all Parties, and then shall be valid subject to any required Court approval. Any failure to insist upon the
17 strict performance of any provision shall not be deemed a waiver of future performance of that provision
18 or of any other provision of this Agreement.

19 **10.3.8. Governing Law.** All terms of this Agreement shall be governed by and
20 interpreted according to California law.

21 **10.4. Inadmissibility of Settlement Documents.** The Parties agree that this Agreement
22 and all exhibits thereto shall be inadmissible in any proceeding, except a proceeding to approve or
23 enforce this Agreement. This Agreement will operate as a complete defense to—and may be used as the
24 basis for an injunction against—any proceeding attempted in breach of this Agreement.

25 **10.5. No Tax Advice.** Nothing in this Agreement is advice by Class Counsel or
26 Defense Counsel regarding taxes or taxability, and no Party is relying upon Class Counsel or Defense
27 Counsel for such advice. Each Party instead is relying exclusively on the Party's own independent tax
28 counsel in connection with this Agreement.

1 **10.6. No Impact on Employee Benefits.** This Agreement does not affect any right or
2 obligation under any benefits plan. No payment made under this Agreement shall be considered as
3 compensation or hours worked or hours paid for purposes of determining eligibility, vesting,
4 participation, or contributions with respect to any employee benefit plan. For purposes of this
5 Agreement, the term “employee benefit plan” means every “employee benefit plan,” as defined in the
6 Employee Retirement and Income Security Act of 1974, 29 U.S.C. section 1002(3). The term also
7 includes any 401(k) plan, bonus, pension, stock option, stock purchase, stock appreciation, welfare,
8 profit sharing, retirement, disability, vacation, severance, hospitalization, insurance, incentive, deferred
9 compensation, or any other similar benefit plan, practice, program, or policy, regardless of whether any
10 such plan is considered an employee benefit plan.

11 **10.7. No Prior Assignments or Undisclosed Liens.** The Class Representative and
12 Class Counsel represent that they have not assigned, transferred, conveyed, or otherwise disposed of any
13 Released Claim or claim to attorneys’ fees and costs award to be paid under this Agreement. The Class
14 Representative and Class Counsel further represent and warrant that there are not any liens or claims
15 against any amount that Defendant is to pay under this Agreement. The Class Representative, Settlement
16 Class Member, Settlement Collective Member, and Class Counsel agree to defend, to indemnify, and to
17 hold Defendant harmless from any liability, losses, claims, damages, costs, or expenses, including
18 reasonable attorneys’ fees, resulting from a breach of these representations or from any lien or
19 assignment. Nothing herein is intended to constitute legal advice regarding the taxability of any amount
20 paid pursuant to this Agreement, nor may it be relied upon as such.

21 **10.8. Cooperation of the Parties.** The Parties will comply with the covenants of good
22 faith and fair dealing and otherwise cooperate as follows.

23 **10.8.1. Affirmative Duty to Cooperate.** Each Party, upon the request of another,
24 agrees to perform such acts and to execute and to deliver such documents as are reasonably necessary to
25 carry out this Agreement. In the same spirit, the Parties agree to make all reasonable efforts to avoid
26 unnecessary Administrative Costs.

1 **10.8.2. Language of Settlement Documents.** All documents filed with the Court
2 or sent to Class Members in connection with this Agreement must be approved by all Parties before
3 being filed or sent.

4 **10.8.3. Refraining from New Proceedings.** The Parties agree to refrain from
5 further litigation with respect to the Action, except any proceeding needed to obtain Preliminary
6 Approval, Final Approval, or Judgment.

7 **10.8.4. No Solicitation of Objections or Opt Outs.** The Parties represent that
8 they have not solicited, encouraged, or assisted—and will not solicit, encourage, or assist—Objections
9 or Requests for Exclusion.

10 **10.8.5. Waiver of Right to Object by Class Representative.** The Class
11 Representative, by signing this Agreement, agrees not to object to any term of this Agreement.

12 **10.9. Confidential Information.** Class Counsel will destroy all confidential documents
13 and information provided by Defendant within 60 calendar days of this Agreement’s completion. Class
14 Counsel further agree that no information provided by Defendant shall be used for any purpose other
15 than prosecution of this Action.

16 **10.10. No Media Announcements or Other Undue Publicity.** No Party shall make any
17 public statement to the news, print, electronic, or Internet media concerning this Agreement, and the
18 Parties shall decline to respond to media inquiries concerning this Agreement. Nothing in this
19 Agreement, however, prevents Class or Collective Members from discussing or disclosing information
20 about unlawful acts in the workplace, such as harassment or discrimination or any other conduct that
21 they have reason to believe is unlawful, or discussing with any person or persons wages, hours or other
22 terms and conditions of employment, nor from engaging in lawful protected activity with or on behalf of
23 coworkers regarding same. Class Counsel shall not publicize the settlement in their marketing materials,
24 website, or other advertising media. Nothing in this Agreement prevents Class Counsel from placing in
25 their marketing materials, website, or other advertising media a comment that Class Counsel secured
26 payment for their clients in this Action, so long as any such comment does not mention the name of this
27 case, the settlement amount or fees awarded, the name of any Party or Class Member, or the identity of
28 Defense Counsel. Should Plaintiff or Class Counsel breach this provision, Plaintiff shall forfeit to

1 Defendant the full amount of her Service Award and Class Counsel shall forfeit to Defendant the full
2 amount of the Class Counsel Award. Defendant may also enforce this provision through an action for
3 injunctive relief. Plaintiff waives any obligation to post a bond in connection with any such action.
4 Notwithstanding the foregoing, Class Counsel can post on his website that the "Lawsuit Settled" and
5 refer questions to the Settlement Administrator.

6 **10.11. Disputes.** If the Parties dispute the interpretation of this Agreement, then they will
7 attempt to resolve the dispute informally. If those efforts fail, they will mediate the dispute. The Parties
8 will split the costs of the mediator, and the Parties will bear their own fees and costs. The Court shall
9 retain jurisdiction over enforcement and implementation of this Agreement, and can require specific
10 performance, although the Court lacks jurisdiction to modify the terms of this Agreement. If a Party
11 institutes legal action to enforce this Agreement, then the prevailing Party will be entitled to recover
12 attorney's fees and costs incurred in vindicating that Party's position.

13
14 **SO AGREED:**

15
16 DATED: August 10, 2023

ORMCO CORPORATION

By: 

Its President

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19
20 DATED: August 11, 2023

SEYFARTH SHAW LLP

By: 

Attorneys for Defendant ORMCO
CORPORATION

22
23
24 DATED: 08/12/2023, 2023

PLAINTIFF MAYDA AGUIRRE



26
27 DATED: 08/11/2023, 2023

PLAINTIFF ROBERT RODRIGUEZ



1
2 DATED: 08/11/2023, 2023

PLAINTIFF DANIEL ALCOCER

Daniel Alcocer

3
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6 DATED: 08/11/2023, 2023

PLAINTIFF ERIKA MORROW

Erika Morrow

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10 DATED: August 14, 2023

JUSTICE LAW CORPORATION

By: *D. Han*

Attorneys for Plaintiffs

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15 97387090v.1

**PROOF OF SERVICE
1013A(3) CCP**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 751 N. Fair Oaks Ave., Ste. 101 Pasadena, California 91103. My electronic service address is manderson@justicelawcorp.com

On August 14, 2023, I served the foregoing document described as

CLASS, COLLECTIVE, AND REPRESENTATIVE ACTION SETTLEMENT AGREEMENT

for the following case: **Aguirre, et al. v. Ormco Corporation**
LWDA/Court Case No.: **LWDA-CM-855085-21**
Case No. 22STCV12358
Los Angeles County Superior Court

on interested parties in this action by electronically submitting as follows:

State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814

[X] BY ELECTRONIC SUBMISSION

Pursuant to California Senate Bill No. 836, I caused the documents described above to be electronically submitted by and through the procedure stated on the website of the State of California Labor and Workforce Development Agency.

[X] STATE

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

Executed on August 14, 2023, at Pasadena, California.



Mariah Anderson