

JUSTICE LAW CORPORATION
Douglas Han (SBN 232858)
Shunt Tatavos-Gharajeh (SBN 272164)
Lizette Rodriguez (SBN 335182)
751 N. Fair Oaks Avenue, Suite 101
Pasadena, California 91103
Telephone: (818) 230-7502
Facsimile: (818) 230-7259

Attorneys for Plaintiffs

ERIKA MORROW, MAYDA AGUIRRE,
ROBERT RODRIGUEZ, KENNETH AGUILERA and DANIEL ALCOCER

SEYFARTH SHAW LLP
Timothy M. Rusche (SBN 230036)
E-mail: trusche@seyfarth.com
Joseph D. Hadacek (SBN 303087)
E-mail: jhadacek@seyfarth.com
601 South Figueroa Street, Suite 3300
Los Angeles, California 90017-5793
Telephone: (213) 270-9600
Facsimile: (213) 270-9601

Attorneys for Defendant

ORMCO CORPORATION

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

ERIKA MORROW, 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. 21STCV36034

[Consolidated with Case No. 22STCV12358]

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

TABLE OF CONTENTS

Page

1.	Definitions.....	1
1.1.	Actions	1
1.2.	Administrative Costs.....	1
1.3.	Agreement.....	1
1.4.	Aguirre.	1
1.5.	California Released Claims.....	1
1.6.	Class Action.	1
1.7.	Class Counsel.....	1
1.8.	Class Counsel Award.....	1
1.9.	Class Members.....	1
1.10.	Class Period	2
1.11.	Class Representatives.....	2
1.12.	Collective Members	2
1.13.	Complaint.....	2
1.14.	Consideration Period.....	2
1.15.	Court	2
1.16.	Defendant.....	2
1.17.	Defense Counsel	2
1.18.	Effective Date	2
1.19.	Fairness Hearing	3
1.20.	Final Approval Order.....	3
1.21.	FLSA Released Claims	3
1.22.	FLSA Released Claims Amount.....	3
1.23.	Gross Settlement Amount.....	3
1.24.	Individual Settlement Payment.....	3

1	1.25. Judgment.....	3
2	1.26. LWDA.....	3
3	1.27. Morrow.. ..	3
4	1.28. <i>Morrow Action</i>	3
5	1.29. Net Settlement Amount.....	4
6	1.30. Notice of Settlement	4
7	1.31. Objection.....	4
8	1.32. Objector.....	4
9	1.33. PAGA Action.....	4
10	1.34. PAGA Payment.....	4
11	1.35. PAGA Period	4
12	1.36. Parties.....	4
13	1.37. Plaintiffs.....	4
14	1.38. Preliminary Approval.....	4
15	1.39. Qualified Settlement Fund	4
16	1.40. Released Parties	5
17	1.41. Request for Exclusion.....	5
18	1.42. Rodriguez.....	5
19	1.43. Service Award.....	5
20	1.44. Settlement Administrator.....	5
21	1.45. Settlement Class.....	5
22	1.46. Settlement Collective	5
23	1.47. Settlement Period.....	5
24	2. Recitals and Procedural History.....	6
25	2.1. Business of Defendant	6
26	2.2. <i>Morrow Action</i>	6
27	2.3. Class Action	6
28	2.5. Third Amended Complaint and Stay	7

1	2.6.	Defendant’s Denials.....	7
2	2.7.	Class Counsel’s Investigation.....	7
3	2.8.	Negotiation of Settlement.....	7
4	2.9.	Certification for Settlement Purposes.....	8
5	3.	The Gross Settlement Amount.	8
6	4.	The Net Settlement Amount.....	8
7	4.1.	Calculation of the Amount.....	8
8	4.2.	Calculation of Estimated Individual Settlement Amounts.....	8
9	5.	Selection of Settlement Administrator and Notice of Settlement.....	9
10	5.1.	Selection of Settlement Administrator.....	9
11	5.2.	Settlement Administration.....	9
12	5.3.	Confidential Data for the Settlement Administrator.....	9
13	5.4.	Mailing Materials to Class Members.....	10
14	5.5.	Proof of Mailing.....	10
15	6.	Responses to Notice of Settlement.....	10
16	6.1.	Consideration Period.....	10
17	6.2.	Requests for Exclusion and Opt Out Rights.....	10
18	6.2.1.	Opt Out Procedure.....	11
19	6.2.2.	Effect of Opting Out.....	11
20	6.2.3.	Tolerance of Opt-Outs—Defendant’s Right to Withdraw.....	11
21	6.3.	Objections.....	11
22	6.3.1.	Objection Procedure.....	11
23	6.3.2.	Obligations of Individuals Who Object.....	Error! Bookmark not defined.
24	6.3.3.	Waiver of Objections.....	12
25	6.4.	Proof of Responses.....	12
26	6.5.	Binding Effect of Settlement.....	12
27	6.6.	No Interference with Class Member Responses.....	12
28			

1	7.	Administration of Settlement Proceeds	12
2	7.1.	Final Funding of Gross Settlement Amount	12
3	7.2.	Administrative Costs.....	12
4	7.3.	Class Counsel Award.....	13
5	7.3.1.	Approval of Class Counsel Award Not Material.....	13
6	7.3.2.	Timing of Class Counsel Award.....	13
7	7.4.	Service Award.....	13
8	7.4.1.	Approval of Service Award Not Material.....	13
9	7.4.2.	Timing of Service Award.....	13
10	7.5.	PAGA Payment.....	14
11	7.5.1.	Reduction of PAGA Payment Not Material	14
12	7.5.2.	Timing of PAGA Payment.....	14
13	7.6.	Individual Settlement Payments	14
14	7.6.1.	Number of Workweeks.....	14
15	7.6.2.	Allocation of California and FLSA Amounts.....	15
16	7.6.3.	Payments as to California Released Claims.....	15
17	7.6.4.	Payments as to FLSA Released Claims.....	15
18	7.6.5.	Two checks—California claims and FLSA claims.....	15
19	7.6.6.	Effect of uncashed FLSA check	15
20	7.7.	Timing of Individual Settlement Payments	16
21	7.8.	Tax Allocation of Individual Settlement Payments.....	16
22	7.8.1.	Responsibility for Taxes	16
23	7.8.2.	Approval of Tax Allocations Not Material.....	16
24	7.9.	Undeliverable or Uncashed Checks	16
25	7.10.	Certification of Completion	17
26	8.	Releases.....	17
27	8.1.	California Released Claims.....	17
28	8.2.	Additional Release by Class Representatives.....	18

1	8.3.	FLSA Released Claims	18
2	9.	Settlement Approval Procedure	19
3	9.1.	Motion for Preliminary Approval	19
4	9.1.1.	Contents of Motion	19
5	9.1.2.	Notice to LWDA.....	19
6	9.2.	Motion for Final Approval.....	19
7	9.3.	Motion for Class Counsel Award	19
8	9.4.	Motion for Service Award	20
9	9.5.	Entry of Judgment.....	20
10	9.5.1.	Notice of Final Judgment.....	20
11	9.5.2.	Effect of Failure to Obtain Final Judgment	20
12	9.6.	Appeal Rights.....	20
13	10.	Miscellaneous	21
14	10.1.	Execution of this Agreement	21
15	10.1.1.	Parties' Authority.....	21
16	10.1.2.	Counterparts.....	21
17	10.1.3.	Facsimile or Scanned Signatures	21
18	10.2.	Discharge of Obligations	21
19	10.3.	Construction.....	21
20	10.3.1.	Materiality of Terms	21
21	10.3.2.	No Construction Against the Author	22
22	10.3.3.	Exhibits Incorporated by Reference.....	22
23	10.3.4.	Headings	22
24	10.3.5.	Invalidity of Any Provision	22
25	10.3.6.	Parties' Entire Agreement.....	22
26	10.3.7.	Waivers and Modifications to Be in Writing.....	22
27	10.3.8.	Governing Law	22
28	10.4.	Inadmissibility of Settlement Documents.....	22

10.5.	No Tax Advice.....	23
10.6.	No Impact on Employee Benefits.....	23
10.7.	No Prior Assignments or Undisclosed Liens.....	23
10.8.	Cooperation of the Parties.....	23
10.8.1.	Affirmative Duty to Cooperate	23
10.8.2.	Language of Settlement Documents	24
10.8.3.	Refraining from New Proceedings.....	24
10.8.4.	No Solicitation of Objections or Opt Outs.....	24
10.8.5.	Waiver of Right to Object by Class Representative	24
10.9.	Confidential Information	24
10.10.	No Media Announcements or Other Undue Publicity.....	24
10.11.	Disputes.....	

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 **1.4Aguirre.** “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 ghan@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, Robert Rodriguez, Daniel Alcocer, Kenneth Aguilar, and Erika Morrow.

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.

6 **1.21 FLSA Released Claims.** “FLSA Released Claims” means all claims under the FLSA
7 that Collective Members will release if they opt in 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. This sum includes all Individual Settlement Payments, any Service Award,
14 the PAGA Payment, Administrative Costs, and the Class Counsel Award.

15 **1.24. Individual Settlement Payment.** “Individual Settlement Payment” refers to the
16 amount the Settlement Administrator distributes from the Net Settlement Amount to each Settlement
17 Class Member and each Settlement Collective Member.

18 **1.25. Judgment.** “Judgment” refers to the final judgment entered by the Court in this
19 Action after finally approving the Agreement.

20 **1.26. LWDA.** “LWDA” refers to the California Labor & Workforce Development
21 Agency, which enforces the Private Attorney General Act of 2004 (“PAGA”), and which receives the
22 LWDA portion of the PAGA Payment.

23 **1.27. Morrow.** “Morrow” shall mean Erika Morrow, who filed the *Morrow Action*.

24 **1.28. Morrow Action.** “*Morrow Action*” shall mean the lawsuit *Erika Morrow v.*
25 *Ormco Corporation*, filed in the Superior Court of the State of California for the County of Los Angeles
26 as Case No. Case No. 21STCV36034, and all complaints filed therein. The *Morrow Action*, the Class
27 Action and the PAGA action are related with the *Morrow Action* being the lead case.
28

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

20 **1.35. PAGA Period.** “PAGA Period” refers to the period beginning on September 30,
21 2017 through November 21, 2022.

22 **1.36. Parties.** “Parties” refers collectively to (1) Plaintiffs and (2) Defendant.

23 **1.37. Plaintiffs.** “Plaintiff” refers to Class Representatives Mayda Aguirre, Robert
24 Rodriguez, Daniel Alcocer, and Erika Morrow.

25 **1.38. Preliminary Approval.** “Preliminary Approval” refers to the court order granting
26 preliminary approval of this Agreement.

27 **1.39. Qualified Settlement Fund.** “Qualified Settlement Fund” means a qualified
28 settlement fund established pursuant to U.S. Treasury Regulation section 468B-1, 29 C.F.R. § 468B-1.

1 **1.40. Released Parties.** “Released Parties” refers to Defendant and each and all of its
2 current or former subsidiaries, parents, affiliates, joint ventures, predecessors, insurers, agents,
3 employees, successors, assigns, officers, officials, directors, attorneys, personal representatives,
4 executors, and shareholders, including their respective pension, profit sharing, savings, health, and other
5 employee benefits plans of any nature, the successors of such plans, and those plans’ respective current
6 or former trustees and administrators, agents, employees, and fiduciaries.

7 **1.41. Request for Exclusion.** “Request for Exclusion” refers to a timely, written, opt-
8 out request signed by a Class Member and submitted to the Settlement Administrator with the following
9 information: (1) the Class Member’s full name and current mailing address, (2) the last four digits of the
10 Class Member’s social security number, (3) an express statement that the Class Member wishes to be
11 excluded from the terms of the Agreement.

12 **1.42. Rodriguez.** “Rodriguez” means Robert Rodriguez, who filed the Class Action
13 and PAGA Action.

14 **1.43. Service Award.** “Service Award” refers to any payment that the Court awards for
15 service as a Class Representative and for entering into special agreements described in Paragraph 8.2 of
16 this Agreement.

17 **1.44. Settlement Administrator.** “Settlement Administrator” refers to the third-party
18 administrator that the Parties mutually select.

19 **1.45. Settlement Class.** “Settlement Class” refers to all Class Members who do not file
20 a timely and valid Request for Exclusion.

21 **1.46. Settlement Collective.** “Settlement Collective” refers to a Collective Member
22 who, by endorsing and cashing a settlement check, opts in to the FLSA collective and consents to join an
23 FLSA action and release FLSA claims.

24 **1.47. Settlement Period.** “Settlement Period for Class Members” refers to the period
25 beginning on September 30, 2017 through November 21, 2022. “Settlement Period for Collectives
26 Members” refers to the period beginning on September 30, 2018 through November 21, 2022.

1 **2. Recitals and Procedural History**

2 **2.1. Business of Defendant.** Defendant is engaged in the business of developing,
3 manufacturing, and marketing products for the orthodontics industry, and has retained individuals as
4 employees working in California.

5 **2.2. Morrow Action.** On September 30, 2021, Morrow filed the *Morrow* Action,
6 alleging claims for (1) violation of California Labor Code §§ 510 and 1198 (unpaid overtime); (2)
7 violation of California Labor Code §§ 226.7 and 512(a) (unpaid meal period premiums); (3) violation of
8 California Labor Code § 226.7 (unpaid rest period premiums); (4) violation of California Labor Code §§
9 1194, and 1197 (unpaid minimum wages); (5) violation of California Labor Code §§ 201 and 202 (final
10 wages not timely paid); (6) violation of California Labor Code § 226(a) (noncompliant wage
11 statements); (7) violation of California Labor Code §§ 2800 and 2802 (unreimbursed business
12 expenses); and (8) violation of California Business & Professions Code §§ 17200. On May 18, 2022, the
13 court granted Defendant's motion to compel arbitration, and compelled Morrow's claims to individual
14 arbitration, dismissed Morrow's class claims without prejudice, and stayed the action pending the
15 completion of arbitration. On July 18, 2022, Morrow filed a notice of appeal, which she subsequently
16 dismissed.

17 **2.3. Class Action.** On April 12, 2022, Aguirre and Rodriguez filed the Class Action,
18 alleging claims for (1) violation of California Labor Code §§ 510 and 1198 (unpaid overtime); (2)
19 violation of California Labor Code §§ 226.7 and 512(a) (unpaid meal period premiums); (3) violation of
20 California Labor Code § 226.7 (unpaid rest period premiums); (4) violation of California Labor Code §§
21 1194, and 1197 (unpaid minimum wages); (5) violation of California Labor Code §§ 201 and 202 (final
22 wages not timely paid); (6) violation of California Labor Code § 226(a) (noncompliant wage
23 statements); (7) violation of California Labor Code §§ 2800 and 2802 (unreimbursed business
24 expenses); and (8) violation of California Business & Professions Code §§ 17200

25 **2.4. PAGA Action.** On April 12, 2022, Aguirre and Rodriguez filed the PAGA
26 Action, alleging claims under Labor Code section 2698 *et seq.*, based on alleged violations of Labor
27 Code §§ 201, 202, 203, 204, 218.5, 221, 226(a), 226.3, 226.7, 246, 510, 512(a), 558, 1174(d),
28 1194, 1197, 1197.1, 1198, 2800 and 2802, and the IWC Wage Orders.

1 **2.5. First Amended Complaint and Stay.** After the execution of this Agreement,
2 Plaintiffs will, thereafter file an amended complaint in the *Morrow* Action consolidating the parties and
3 claims in the Class Action and the PAGA Action, as well as adding Kenneth Aguilar as a plaintiff and
4 proposed class representative and claims under the Fair Labor Standards Act. The amended complaint
5 shall also conform the class definition to that set forth in this agreement. Defendant's obligation to file
6 an answer to the amended complaint is stayed pending the Preliminary Approval hearing and Fairness
7 Hearing, and will be mooted by Final Approval of this Agreement. Upon filing of the amended
8 complaint, Plaintiffs shall file a notice of settlement in the PAGA Action, staying that lawsuit, and upon
9 entry of a final judgment in the *Morrow* Action, Plaintiffs shall file a request for dismissal of the PAGA
10 Action.

11 **2.6. Defendant's Denials.** Defendant denies (1) all the material allegations in the
12 Actions, (2) that Defendant violated any applicable laws, (3) that Defendant is liable for damages,
13 penalties, interest, restitution, attorneys' fees, or costs, or for any other remedy on account of the claims
14 asserted in the Actions, and (4) that class certification, collective action certification, or representative
15 treatment is appropriate as to any claim in the Actions. Defendant contends that its policies, procedures,
16 and practices comply with all laws asserted in the Actions. Defendant has agreed to settle the Actions
17 solely to avoid the burden, expense, and uncertainty of litigation. Any statements in this Agreement are
18 made for settlement purposes only.

19 **2.7. Class Counsel's Investigation.** Class Counsel has investigated the facts relating
20 to the claims alleged in the Actions and also has analyzed all defenses. Class Counsel interviewed Class
21 Members regarding the claims in the Actions, and has examined Defendant's compliance with its
22 policies, procedures, and practices.

23 **2.8. Negotiation of Settlement.** Class Counsel has engaged in arms-length
24 negotiations with Defendant with a view toward achieving substantial benefits while avoiding the cost,
25 delay, and uncertainty of further litigation. Plaintiffs will urge that the Court approve this Agreement
26 after considering (1) the factual and legal defenses to the claims asserted, which render uncertain the
27 ultimate outcome of the Actions, (2) the potential difficulties Plaintiffs would encounter in establishing
28 their claims and maintaining class or collective treatment, (3) the substantial benefits produced by this

Agreement, (4) that this Agreement provides relief in an expeditious and efficient manner, compared to any manner of recovery possible after litigation and potential appeal, and (5) that this Agreement allows Class Members to opt out of the Actions and individually pursue the claims alleged on behalf of the classes in the Actions.

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

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

4. The Net Settlement Amount

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

4.2. Calculation of Estimated Individual Settlement Amounts. Estimated Individual Settlement Payments will be calculated on the basis of the number of weeks actually worked and attributed to a Class Member or Collective Member in proportion to the total number of weeks

1 actually worked and attributed to all Class Members during the Settlement Period for Class Members
2 and to all Collective Members during the Settlement Period for Collective Members, following the
3 formula described in Paragraph 7.6 of this Agreement, on the assumption that each eligible individual
4 will fully participate in the Agreement.

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

6 **5.1. Selection of Settlement Administrator.** The Parties have mutually selected
7 Phoenix Class Action Administration Solutions to serve as the Settlement Administrator.

8 **5.2. Settlement Administration.** The Settlement Administrator will, as necessary,
9 print, copy, format, and translate materials, mail notices to Class Members, perform a skip trace for
10 undeliverable addresses, establish and maintain a Qualified Settlement Fund, obtain appropriate tax
11 identification numbers, calculate Individual Settlement Payments, calculate payroll withholdings and
12 federal and state payroll taxes, prepare and file all required IRS Forms and state tax forms, mail
13 Individual Settlement Payments and tax forms, establish a hotline telephone number for class member
14 communications, post notices regarding settlement on the Settlement Administrator's website, remit all
15 tax payments and required documentation to federal and state taxing authorities, implement the process
16 for any uncashed settlement checks, and perform all other duties associated with settlement
17 administration, including, but not limited to, all those specified in this Agreement. Any dispute relating
18 to settlement administration shall, after good-faith efforts by the Parties to resolve the dispute, be
19 referred to the Court.

20 **5.3. Confidential Data for the Settlement Administrator.** Within 15 calendar days
21 of Preliminary Approval, Defendant will give the Settlement Administrator a confidential class list
22 containing the names, employee ID numbers, last known address and telephone number(s), dates of
23 employment, and numbers of weeks worked during the Settlement Period for Class Members
24 ("Confidential Data"), the Settlement Period for Collective Members, and the PAGA Period. Defendant
25 shall also provide, when needed, social security numbers to facilitate the administration of this
26 Agreement. The Settlement Administrator shall keep the class data provided by Defendant strictly
27 confidential and shall use the class data only for the purposes described in this Agreement, and shall
28 return the class data to Defendant or confirm the destruction of same upon completing the work called

for by this Agreement. Notwithstanding the foregoing, the Settlement Administrator may provide Class Counsel with a redacted list of potential Individual Settlement Payments, which shall not include Class Member names or addresses or identify any Class Member by name or address.

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

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

6. Responses to Notice of Settlement

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

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

1 **6.2.1. Opt Out Procedure.** Class Members may opt out of the class and action
2 settlement by mailing the Settlement Administrator a Request for Exclusion. A Request for Exclusion, to
3 be valid, must be signed and dated by the Class Member, must provide the Class Member's full name
4 (and former names, if applicable), current address, current telephone number, and the last four digits of
5 the Class Member's social security number, and must include an express statement that the Class
6 Member wishes to be excluded from the terms of the class settlement. Any Request for Exclusion that
7 does not include all of the required information or that is not submitted in a timely manner will be
8 deemed ineffective.

9 **6.2.2. Effect of Opting Out.** Any Class Member who opts out of the class
10 settlement may not submit an Objection, shall not receive any Individual Settlement Payment, and shall
11 not be bound by the releases that this Agreement entails; provided, however, any such Class Member
12 employed at during the PAGA Period shall still receive a pro rata portion of the PAGA Payment
13 distributed to the Net Settlement Amount and be bound by the release of PAGA claims contained herein.
14 Each Class Member who does not submit a timely, valid Request for Exclusion shall be bound by the
15 releases that this Agreement entails.

16 **6.2.3. Tolerance of Opt-Outs—Defendant's Right to Withdraw.** If the
17 number of Class Members who opt out by submitting Requests for Exclusion exceeds 5 percent of the
18 total number of Class Members, then Defendant may, in the exercise of its sole discretion, withdraw
19 from this Agreement. Defendant's right to withdraw expires 10 business days after the Consideration
20 Period.

21 **6.3. Objections.** Unless otherwise provided in this Agreement, only those Class
22 Members who do not submit a Request for Exclusion shall be entitled to object to the terms of the
23 Agreement.

24 **6.3.1. Objection Procedure.** Any Objection must be made using the procedures
25 set forth in the Notice of Settlement, and must contain (1) the Objector's full name and current mailing
26 address, (2) the last four digits of the Objector's social security number, and (3) the specific reason(s)
27 for the Objection, An objection may submit evidence and supporting papers (including, without
28 limitation, all briefs, written evidence, and declarations) for the Court to consider.

1 **6.3.2.** Objectors can appear at the Fairness Hearing either in person or through
2 counsel and may provide their objections in writing or in person. An Objection may be withdrawn at any
3 time.

4 **6.3.3** Only Settlement Class Members may object to the class action components
5 of the Settlement and/or this Agreement, including contesting the fairness of the Settlement, and/or
6 amounts requested for the Class Counsel Award, and/or Service Awards.

7 **6.3.4** Non-Settlement Class Members have no right to object to any of the class
8 action components of the Settlement.

9 **6.3.3. Waiver of Objections.** Class Members who fail to submit an Objection in
10 the manner specified in the Notice of Settlement shall be deemed to have waived any objection and shall
11 be foreclosed from objecting to this Agreement, whether by appeal or otherwise.

12 **6.4. Proof of Responses.** At least five calendar days prior to the Fairness Hearing, the
13 Settlement Administrator will prepare a declaration to submit to the Court regarding responses to the
14 Notice of Settlement, including such information as any inability to deliver mailings because of invalid
15 addresses, the number of any Requests for Exclusion, and the number of any Objections.

16 **6.5. Binding Effect of Settlement.** Although a Class Member might not timely submit
17 an Objection or a Request for Exclusion because of inability to locate the Class Member's current
18 address, or for other reasons beyond the Class Member's control, that Class Member shall nonetheless
19 be bound by this Agreement.

20 **6.6. No Interference with Class Member Responses.** Each Party agrees not to
21 encourage any Class Member to submit an Objection or a Request for Exclusion and agrees not to
22 retaliate against any Class Member for participating in this Agreement.

23 **7. Administration of Settlement Proceeds**

24 **7.1. Final Funding of Gross Settlement Amount.** Within 25 business days of the
25 Effective Date, Defendant will deposit the Gross Settlement Amount into the Qualified Settlement Fund.

26 **7.2. Administrative Costs.** Administrative Costs shall not exceed \$20,000, which
27 shall be a payment from the Gross Settlement Amount. The amount of Administrative Costs is not a
28 material term: if the Court approves a lesser amount, then the other terms of this Agreement shall remain

1 in effect. Any unapproved Administrative Costs shall diminish the Class Counsel Award.

2 **7.3. Class Counsel Award.** Class Counsel intend to request—and Defendant agrees
3 not to oppose—a payment from the Gross Settlement Amount for (a) attorney’s fees in an amount up to
4 35% of the Gross Settlement Amount and (b) litigation costs actually incurred in representing the
5 interests of the class, supported by adequate documentation, in an amount up to \$10,000.

6 **7.3.1. Approval of Class Counsel Award Not Material.** Approval of the Class
7 Counsel Award is not a material term. If the Court approves only a lesser amount, then the other terms
8 of this Agreement shall remain in effect.

9 **7.3.2. Timing of Class Counsel Award.** The Settlement Administrator shall
10 issue the Class Counsel Award by 35 business days after the Effective Date. Within 10 calendar days
11 after the Effective Date, Class Counsel shall instruct the Settlement Administrator as to how the Class
12 Counsel Award may be paid. The Settlement Administrator shall issue an appropriate Internal Revenue
13 Service Form 1099 to Class Counsel. Class Counsel shall be solely responsible for paying all applicable
14 taxes on any Class Counsel Award and shall indemnify and hold harmless Defendant from any claim or
15 liability for taxes, penalties, or interest arising as a result of the Class Counsel Award. Plaintiff, Class
16 Counsel, and the Settlement Class waive any additional claim for attorneys’ fees and costs incurred in
17 connection with the Lawsuit.

18 **7.4. Service Award.** Class Counsel intends to request a payment from the Gross
19 Settlement Amount for a Service Award for each of the Class Representatives in an amount up to
20 \$10,000. Defendant agrees not to oppose or impede any application or motion for a Service Award for
21 each of the Class Representatives. Any Service Award would be in addition to the Class
22 Representatives’ Individual Settlement Payment.

23 **7.4.1. Approval of Service Award Not Material.** Approval of a Service Award
24 is not a material term. If the Court does not approve a Service Award or approves only a lesser amount
25 than that requested, then the other terms of this Agreement shall remain in effect.

26 **7.4.2. Timing of Service Award.** The Settlement Administrator shall pay any
27 Service Award within 25 business days of the Effective Date, and shall issue an IRS Form 1099 to the
28 Class Representative. The Class Representative shall be solely responsible for paying all applicable

1 taxes on any Service Award and shall indemnify and hold harmless Defendant from any claim or
2 liability for taxes, penalties, or interest arising as a result of the Service Award.

3 **7.5. PAGA Payment.** The Parties will seek approval for a PAGA Payment from the
4 Gross Settlement Amount in the amount of \$50,000, 75% of which will go to the LWDA and 25% of
5 which will go to the Net Settlement Amount. Notwithstanding anything else in this Agreement, Class
6 Members employed at any time within the PAGA period who submit a valid Request for Exclusion shall
7 receive a pro rata share of the 25% of the PAGA Payment paid to the Net Settlement Amount and shall
8 be bound by the release of PAGA claims set forth in the California Released Claims. The *pro rata*
9 amount payable from the 25% portion of PAGA Payment that will be paid to PAGA Employees based
10 on each PAGA Employee's number of Eligible Workweeks during the PAGA Period.

11 **7.5.1. Reduction of PAGA Payment Not Material.** Any reduction in the
12 requested PAGA Payment is not a material term. If the Court approves only a lesser amount than that
13 requested, then the other terms of this Agreement shall remain in effect. But some approval of a PAGA
14 Payment is a material term. If the Court does not approve a PAGA Payment, then the entire Agreement
15 will be, at Defendant's sole discretion, void and unenforceable.

16 **7.5.2. Timing of PAGA Payment.** The Settlement Administrator shall pay the
17 PAGA Members and 75% of any approved PAGA Payment to the LWDA by 35 business days after the
18 Effective Date.

19 **7.6. Individual Settlement Payments.** Each Settlement Class Member shall be
20 entitled to an Individual Settlement Payment consisting of a share of the Net Settlement Amount,
21 calculated as described below. Defendant's time records regarding the number of work week actually
22 worked shall control for purposes of calculation.

23 **7.6.1. Number of Workweeks.** Defendant will provide to the Settlement
24 Administrator the total number of workweeks that each Settlement Class Member worked during the
25 Settlement Period for Class Members and the total number of workweeks that all Settlement Class
26 Members worked during that period ("Total Settlement Class Member Workweeks"). Defendant will
27 also calculate the total number of work weeks that each Collective Member worked during the
28

Settlement Period for Collective Members and the total number of workweeks that all Collective Members worked during that period (“Total Collective Member Workweeks”).

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

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

7.6.4. Payments as to FLSA Released Claims. Each Collective Settlement Member’s share of the FLSA Released Claims Amount is the number of workweeks worked and attributed to the Collective Member during the Settlement Period for Collective Members, divided by Total Collective Member Workweeks, and multiplied by the FLSA Released Claims Amount. Otherwise stated, the formula for a Collective Member is: (individual’s workweeks ÷ Total Collective Member Workweeks) * FLSA Released Claims Amount.

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

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

1 **7.7. Timing of Individual Settlement Payments.** The Settlement Administrator shall
2 issue Individual Settlement Payments no later than 35 business days after the Effective Date.

3 **7.8. Tax Allocation of Individual Settlement Payments.** Each Individual Settlement
4 Payment will be allocated for tax purposes as follows: 80% Form 1099 income for statutory and civil
5 penalties and interest, 20% Form W-2 income for wages. Any Class Member payment consisting solely
6 of a share of the PAGA Payment shall be allocated for tax purposes solely as Form 1099 income. The
7 Settlement Administrator will make required tax withholdings from each Individual Settlement Payment
8 for the portion allocated to Form W-2 income and will remit the withholding and the employer's share
9 of payroll taxes to the appropriate federal and state taxing authorities. The Settlement Administrator
10 shall issue any necessary IRS Form 1099 and Form W-2 statements to Class Members for their
11 respective Individual Settlement Payments.

12 **7.8.1. Responsibility for Taxes.** Class and Collective Members shall be solely
13 responsible for paying all taxes due on their respective payments and shall indemnify and hold harmless
14 Defendant and the Released Parties from any claim or liability for taxes, penalties, or interest arising as
15 a result of the payments.

16 **7.8.2. Approval of Tax Allocations Not Material.** Approval of the allocations
17 of the payments set forth above is not a material term. If the Court approves a different tax allocation of
18 the payments, then the other terms of this Agreement shall remain in effect.

19 **7.9. Undeliverable or Uncashed Checks.** All individual settlement checks will
20 remain negotiable for 180 days from the date of their mailing. The Settlement Administrator shall notify
21 Class Counsel and Defense Counsel of any undeliverable and uncashed checks. After 180 days from the
22 mailing, the amount of any settlement checks from the California Released Claims Amount that has not
23 been cashed will be directed to the California Controller in the Class Member's name. As to all
24 uncashed settlement checks to Collective Members, those Collective Members will not release FLSA
25 claims and the Settlement Administrator, after 180 days, will direct the associated funds to the
26 California State Controller: Unpaid Wage Fund.

1 **7.10. Certification of Completion.** Upon fully administering this Agreement, the
2 Settlement Administrator will certify the completion to the Court and counsel for all Parties in a
3 declaration, summarizing the total money paid and the status of any uncashed checks.

4 **8. Releases**

5 **8.1. California Released Claims.** Upon final approval of the Settlement Agreement,
6 and except as to the right to enforce the terms and conditions of the Settlement Agreement, each
7 Settlement Class Member-and each Settlement Class Member's executors, administrators,
8 representatives, agents, heirs, successors, assigns, trustees, spouses, or guardians-will release Defendant
9 and each and all of its current or former subsidiaries, parents, affiliates, joint ventures, predecessors,
10 insurers, agents, employees, successors, assigns, officers, officials, directors, attorneys, personal
11 representatives, executors, and shareholders, including their respective pension, profit sharing, savings,
12 health, and other employee benefits plans of any nature, the successors of such plans, and those plans
13 'respective current or former trustees and administrators, agents, employees, and fiduciaries ("Released
14 Parties") from any and all claims, debts, liabilities, demands, obligations, penalties, guarantees, costs,
15 expenses, attorney's fees, damages, action or causes of action of whatever kind or nature, whether
16 known or unknown, contingent or accrued, that were alleged or that reasonably could have been alleged
17 based on the facts alleged in the Actions, including, but not limited to, any claims under state law,
18 failure to pay wages, failure to provide paid sick leave, failure to pay wages upon separation of
19 employment, failure to timely pay wages during employment, failure to reimburse business expenses,
20 failure to provide accurate wage statements, failure to provide meal and rest periods premiums, and
21 claims for unfair and unlawful practices, claims under the applicable Wage Orders, Labor Code sections
22 201, 202, 203, 204, 210 218, 218.5, 221, 226, 226(a), 226(e), 226(g), 226.3, 226.7, 226.7(b), 246, 510,
23 512, 512(a), 558, 1174, 1174(d), 1194, 1194(a), 1194.2, 1197, 1197.1, 1198, 2800, 2802, California
24 Code of Regulations Title 8 section 11040, and California Civil Code section 1021.5, as well as claims
25 under the California Business and Professions Code sections 17200 et. seq., and Labor Code sections
26 2698-2699.5 ("California Released Claims"). This Agreement is conditioned upon the release by all
27 Settlement Class Members of any claim under Labor Code section 2699 as to the released claims set
28 forth above, and upon covenants by all members that they will not participate in any proceeding seeking

1 penalties as to the released claims set forth above. The Parties stipulate that beyond the Gross Settlement
2 Amount, Defendant shall not owe any further monies to the Settlement Class or to the State of California
3 based upon any claim made in the Action or in any complaint filed therein. This release applies to any
4 work for Defendant or claims arising during the Settlement Period for Class Members.

5 **8.2. Additional Release by Class Representatives.** In addition to the release given by
6 each Settlement Class Member, the Class Representatives generally release claims against each
7 Released Party through the date of Final Approval. This general release includes claims arising from the
8 Class Representatives' relationships with Defendant, including, without limitation, claims arising under
9 the California Labor Code and wage orders, claims for unpaid wages and liquidated damages under the
10 Fair Labor Standards Act, claims for discrimination, harassment, or retaliation pursuant to Title VII of
11 the Civil Rights Act of 1964, 42 U.S.C. section 2000 *et seq.*, the California Fair Employment and
12 Housing Act, California Gov't Code Section 12900 *et seq.*, and claims for violation of public policy.
13 This general release by the Class Representatives also includes a waiver of rights under California Civil
14 Code Section 1542, which states:

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

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

21 **8.3. FLSA Released Claims.** Any Collective Member—and each Collective
22 Member's executors, administrators, representatives, agents, heirs, successors, assigns, trustees, spouses,
23 or guardians—will release each Released Party from any claim of liability that was or could have been
24 asserted in this Action under the Fair Labor Standards Act, including for unpaid minimum or overtime
25 wages or liquidated damages. Collective Members who do not cash or deposit a settlement check do not
26 release any FLSA claim. This release applies to any claims arising during the Settlement Period for
27 Collective Members.
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) enjoin Class Members from initiating or
6 prosecuting any claim to be released under this Agreement, unless they first submit a Request for
7 Exclusion, and (v) set a date for a Final Approval hearing.

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

15 **9.1.2. Notice to LWDA.** Upon moving for preliminary approval, Plaintiff will
16 also submit the proposed settlement agreement to the LWDA, pursuant to Labor Code section
17 2699(1)(2).

18 **9.2. Motion for Final Approval.** Class Counsel will obtain a hearing for a Motion for
19 Final Approval, to obtain an order to (a) approve this Agreement, (b) adjudge its terms to be fair,
20 reasonable, and adequate, (c) recite the California Released Claims and FLSA Released Claims, (d)
21 direct that the terms of the Agreement be carried out, (e) enjoin Settlement Class Members from
22 initiating or prosecuting any claim to be released under this Agreement, unless they submitted a Request
23 for Exclusion, and (f) retain jurisdiction to oversee enforcement of this Agreement.

24 **9.3. Motion for Class Counsel Award.** In connection with a Motion for Final
25 Approval, Class Counsel may move for approval of an attorneys' fees and costs award in the amount of
26 (a) up to 35% of the Gross Settlement Amount for fees and (b) up to \$10,000 for litigation costs actually
27 incurred in representing the interest of the Class, supported by adequate documentation.
28

1 **9.4. Motion for Service Award.** In connection with a Motion for Final Approval,
2 Class Counsel may move for approval of a Service Award for each Class Representative in an amount of
3 up to \$10,000 which will not be opposed by Defendant.

4 **9.5. Entry of Judgment.** Upon Final Approval, the Parties shall request that the Court
5 (a) enter Judgment in accordance with this Agreement, without further fees or costs, (b) enter an order as
6 to the Class Counsel Award, (c) enter an order as to any Service Award, (d) enter an order permanently
7 enjoining all members of the Settlement Class from pursuing or seeking to reopen claims that have been
8 released by this Agreement, and (e) enter an order requiring any Settlement Class Member who files suit
9 against Defendant for a reason covered by the releases pay Defendant's reasonable attorneys' fees and
10 costs if not withdrawn after receiving notice of this Agreement.

11 **9.5.1. Notice of Final Judgment.** Notice of Judgment will be posted on the
12 Settlement Administrator's website.

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

19 **9.6. Appeal Rights.** Only an Objector has the right to appeal a judgment that is in
20 accord with this Agreement. The Class Representative and Class Counsel hereby waives any right to
21 appeal any judgment, ruling, or order in this Action, including any Final Approval Order and any
22 dismissal of the Action with prejudice. This waiver includes all rights to any post-judgment proceeding
23 and appellate proceeding, such as a motion to vacate judgment, a motion for new trial, and any
24 extraordinary writ, and the Judgment therefore will become nonappealable at the time it is entered. The
25 waiver of appeal does not include any waiver of the right to oppose any appeal or post-judgment
26 proceeding. If an appeal is taken from the Judgment, then the time to consummate this Agreement
27 (including making payments under the Agreement) will be suspended until the appeal is finally resolved.
28

1 **10. Miscellaneous**

2 **10.1. Execution of this Agreement.**

3 **10.1.1. Parties' Authority.** The signatories hereto represent that they are fully
4 authorized to bind the Parties to all the terms of this Agreement. The Parties agree that Class Members
5 are so numerous that it is impossible or impractical to have each Class Member execute this Agreement.
6 This Agreement may be executed on behalf of Class Members by a Class Representative.

7 **10.1.2. Counterparts.** This Agreement may be executed in counterparts, and all
8 signed and delivered counterparts together may constitute one Agreement binding upon the Parties.

9 **10.1.3. Facsimile or Scanned Signatures.** A Party may sign and deliver this
10 Agreement by signing on the designated signature block and transmitting that signature page via
11 facsimile or as an attachment to an email to counsel for the other Party. Any such signature shall be
12 deemed an original for purposes of this Agreement and shall be binding upon the Party who transmits
13 the signature page.

14 **10.2. Discharge of Obligations.** Defendant shall fully discharge its obligations to
15 Plaintiff and the Settlement Class through the remittance of the Gross Settlement Amount to the
16 Qualified Settlement Fund, regardless of whether checks representing Individual Settlement Payments
17 are actually negotiated by Settlement Class Members. Once Defendant has complied with its obligation
18 to fund the Gross Settlement Amount, it will be deemed to have satisfied all terms and conditions under
19 this Agreement, shall be entitled to all protections afforded to them under this Agreement, and shall have
20 no further obligations under the terms of the agreement, regardless of what occurs with respect to the
21 further administration of the Settlement, including any requests to be included in the Settlement Class,
22 challenges to the completeness or accuracy of any Individual Settlement Payment, or issues regarding
23 the completeness or accuracy of the class data.

24 **10.3. Construction.**

25 **10.3.1. Materiality of Terms.** Except as otherwise stated herein, each substantive
26 term of this Agreement is a material term that the Parties have relied upon in making this Agreement. If
27 the Court does not approve any substantive term, or if the Court effects a material change to the
28 Agreement—such as increasing any amount that Defendant must pay—then the entire Agreement will

1 be, at Defendant's sole discretion, void and unenforceable, and the Parties shall split Administrative
2 Costs. Where this Agreement states that a term is not material, then the Court's refusal to approve that
3 term leaves all the other terms of the Agreement in effect, and does not give Class Counsel or any Class
4 Member any basis to abrogate this Agreement.

5 **10.3.2. No Construction Against the Author.** Each Party participated in drafting
6 this Agreement, and its terms shall not be construed against any Party by virtue of draftsmanship.

7 **10.3.3. Exhibits Incorporated by Reference.** This Agreement shall include the
8 terms set forth in any attached exhibit. Any exhibit to this Agreement is an integral part of it.

9 **10.3.4. Headings.** The headings within this Agreement appear for convenience of
10 reference only and shall not affect the construction or interpretation of any part of this Agreement.

11 **10.3.5. Invalidity of Any Provision.** Before declaring any provision of this
12 Agreement invalid, the Court shall first attempt to construe the provision valid to the fullest extent
13 possible so as to render all provisions of this Agreement enforceable.

14 **10.3.6. Parties' Entire Agreement.** With the exception of the separate Settlement
15 Agreement including General Release from the Plaintiff, this Agreement, with its Definitions, Recitals,
16 and Exhibits, constitutes the entire agreement on its subject matter, and supersedes all prior and
17 contemporaneous negotiations and understandings between the Parties.

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

23 **10.3.8. Governing Law.** All terms of this Agreement shall be governed by and
24 interpreted according to California law.

25 **10.4. Inadmissibility of Settlement Documents.** The Parties agree that this Agreement
26 and all exhibits thereto shall be inadmissible in any proceeding, except a proceeding to approve or
27 enforce this Agreement. This Agreement will operate as a complete defense to—and may be used as the
28 basis for an injunction against—any proceeding attempted in breach of this Agreement.

1 **10.5. No Tax Advice.** Nothing in this Agreement is advice by Class Counsel or
2 Defense Counsel regarding taxes or taxability, and no Party is relying upon Class Counsel or Defense
3 Counsel for such advice. Each Party instead is relying exclusively on the Party's own independent tax
4 counsel in connection with this Agreement.

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

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

25 **10.8. Cooperation of the Parties.** The Parties will comply with the covenants of good
26 faith and fair dealing and otherwise cooperate as follows.

27 **10.8.1. Affirmative Duty to Cooperate.** Each Party, upon the request of another,
28 agrees to perform such acts and to execute and to deliver such documents as are reasonably necessary to

1 carry out this Agreement. In the same spirit, the Parties agree to make all reasonable efforts to avoid
2 unnecessary Administrative Costs.

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

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

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

12 **10.8.5. Waiver of Right to Object by Class Representative.** The Class
13 Representative, by signing this Agreement, agrees not to object to any term of this Agreement.

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

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

case, the settlement amount or fees awarded, the name of any Party or Class Member, or the identity of Defense Counsel. Should Plaintiff or Class Counsel breach this provision, Plaintiff shall forfeit to Defendant the full amount of her Service Award and Class Counsel shall forfeit to Defendant the full amount of the Class Counsel Award. Defendant may also enforce this provision through an action for injunctive relief. Plaintiff waives any obligation to post a bond in connection with any such action. Notwithstanding the foregoing, Class Counsel can post on his website that the “Lawsuit Settled” and refer questions to the Settlement Administrator.

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

SO AGREED:

DATED: _____, 2023

ORMCO CORPORATION

By: _____
Its _____

DATED: _____, 2023

SEYFARTH SHAW LLP

By: _____
Attorneys for Defendant ORMCO
CORPORATION

DATED: 06/13/2023, 2023

PLAINTIFF MAYDA AGUIRRE

Mayda Aguirre

1
2 DATED: 06/13/2023, 2023

PLAINTIFF ROBERT RODRIGUEZ
Robert Rodriguez

3
4
5 DATED: 06/13/2023, 2023

PLAINTIFF DANIEL ALCOCER
Daniel Alcocer

6
7
8
9 DATED: 06/13/2023, 2023

PLAINTIFF ERIKA MORROW
Erika Morrow

10
11
12 DATED: 06/14/2023, 2023

KENNETH AGUILAR
Kenneth Aguilar

13
14
15 DATED: June 14, 2023

JUSTICE LAW CORPORATION
By: *D. Han*
Attorneys for Plaintiffs

**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 July 7, 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**
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 July 7, 2023, at Pasadena, California.


Mariah Anderson