

**AMENDED PRIVATE ATTORNEYS GENERAL ACT (LABOR CODE SECTION 2698, ET SEQ.) SETTLEMENT AGREEMENT AND RELEASE**

IT IS HEREBY STIPULATED AND AGREED by and among the undersigned Parties, subject to the approval of the Court, that the settlement of this action shall be effectuated upon and subject to the following terms and conditions. Capitalized terms used herein shall have the meanings set forth in Article I or elsewhere in this Amended Private Attorneys General Act (Labor Code section 2698, *et seq.*) ("PAGA") Settlement Agreement and Release ("Agreement").

This Agreement is made by and between MICHAEL CARDA ("CARDA"), for himself and on behalf of the State of California and allegedly aggrieved employees, and DEPUY SYNTHES SALES, INC. ("DEPUY") and its affiliate JOHNSON & JOHNSON SERVICES, INC. (JJSD). This Agreement shall be effective on the date when it has been signed by all Parties.

The Parties agree that the Action shall be, and hereby is, ended, settled, resolved, and concluded by this Agreement, which is intended to effect and complete settlement of this matter.

**Article I.**

**Definitions and Terms**

**Section 1.01 Definitions.**

Unless otherwise defined herein, the following terms used in this Agreement shall have the meanings ascribed to them as set forth below:

- i. "Action" means the lawsuit filed by CARDA on January 21, 2022 in Orange County Superior Court, Case No. 30-2022-01242108-CU-OE-CXC.
- ii. "Agreement," or "Settlement Agreement," means this Amended Private Attorneys General Act (Labor Code section 2698, *et seq.*) Settlement Agreement and Release.
- iii. "Aggrieved Employees" means any and all hourly-paid non-exempt employees who worked for DEPUY in California at any time from November 17, 2020 through June 2, 2022. According to DEPUY, there are approximately six (6) Aggrieved Employees in the covered PAGA Period.
- iv. "PAGA Notice" means the notice submitted to the LWDA on or about November 15, 2021 by CARDA with respect to this Action.
- v. "Attorneys' Costs" means the total amount of litigation costs reasonably incurred by CARDA's Counsel in connection with the Action up to a maximum of \$800.00 which shall be paid from the Gross Settlement Amount as reimbursement of litigation costs.
- vi. "Attorneys' Fees" means the amount in fees CARDA's Counsel may request that the Court award, up to 33.34% of the Gross Settlement Amount, per Section 1.02(b) as compensation for their attorneys' fees.

- vii. "Complaint" means the operative Complaint filed by CARDA in the Action.
- viii. "Court" means the Superior Court for the State of California, County of Orange.
- ix. "Defense Counsel" or "DEPUY's Counsel" is:

Michael S. Kun  
Kevin D. Sullivan  
Chelsea Hadaway  
EPSTEIN BECKER & GREEN, P.C.  
1925 Century Park East, Suite 500  
Los Angeles, CA 90067

- x. "Effective Date" means the date this Agreement is approved as provided herein and the Court's order granting Settlement Approval and entry of Final Judgment becomes final and is no longer appealable. For purposes of this Agreement, "becomes final and is no longer appealable" shall mean the later of: (a) the day after the last date by which a notice of appeal to the applicable Court of Appeal of the order and judgment approving this Agreement may be timely filed and none is filed (*i.e.*, 61 days after notice of entry of judgment is served on the LWDA); (b) if an appeal is filed, and the appeal is finally disposed of by ruling, dismissal, denial, or in any other manner that confirms the validity of the order and judgment, the day after the last date for filing a request for further review of the order and judgment approving this Agreement passes, and no further review is requested; or (c) if an appeal is filed and the order approving this Agreement is affirmed and further review of the order is requested, the day after the review is finally resolved and the order and judgment approving this Agreement is affirmed.
- xi. "Gross Settlement Amount" means Seven Thousand Dollars and Zero Cents (\$7,000.00), which is the maximum amount DEPUY has agreed to pay pursuant to this Agreement.
- xii. "Individual PAGA Payment(s)" means the amount of Labor Code section 2699 penalties to be paid to each respective Aggrieved Employee, which will be 25% of the Net Settlement Amount.
- xiii. "LWDA" means the California Labor and Workforce Development Agency.
- xiv. "LWDA Payment" means the amount of Labor Code section 2699 penalties to be paid to the LWDA, which will be 75% of the Net Settlement Amount.
- xv. "CARDA's Counsel" are as follows:

Craig J. Ackermann  
ACKERMANN & TILAJEF, P.C.  
1180 South Beverly Drive  
Suite 610  
Los Angeles, CA 90035

and

Tatiana Hernandez  
LAW OFFICE OF TATIANA HERNANDEZ, P.C.  
1180 South Beverly Drive  
Suite 610  
Los Angeles, CA 90035

- xvi. "Net Settlement Amount" means the amount remaining from the Gross Settlement Amount after the deduction of the Service Award, Attorneys' Fees, and Attorneys' Costs.
- xvii. "Notice of PAGA Settlement" means the Notice of PAGA Settlement (attached hereto as Exhibit A) DEPUY shall mail, along with each Individual PAGA Payment, to all Aggrieved Employees by first-class United States mail, postage prepaid, to the last known address of each Aggrieved Employee with directions to the Postmaster to forward the Notice and return all undeliverable Notices to DEPUY.
- xviii. "PAGA Period" means the time period from November 17, 2020 through June 2, 2022.
- xix. "Parties" means CARDA, DEPUY, JJSI, and the Aggrieved Employees.
- xx. "Pay Period" means each weekly period in which Aggrieved Employees received wages during their employment at DEPUY during the PAGA Period. According to DEPUY, there were approximately 129 pay periods during the covered PAGA Period.
- xxi. "Released Claims" means all claims for PAGA penalties that were alleged, or could have been alleged, based on the facts stated in the Complaint and the PAGA Notice.
- xxii. "Released Parties" means DEPUY SYNTHES SALES, INC. and each of its respective former and present parents, subsidiaries and affiliated corporations including JOHNSON & JOHNSON SERVICES, INC., and each of their respective officers, directors, managing agents, employees, managers, partners, shareholders, agents, insurers, and any other successors, assigns, or legal representatives, joint ventures, and any joint employers.
- xxiii. "Service Award" means One Thousand Dollars and Zero Cents (\$1,000.00) payable to CARDA for his service to the State of California and the Aggrieved Employees and the risk he undertook by attaching his name to this Action.
- xxiv. "Settlement Administrator" means ILYM Group, Inc.

## Section 1.02 Terms of Agreement

### (a) Gross Settlement Amount

DEPUY agrees to pay **Seven Thousand Dollars and Zero Cents (\$7,000.00)** as a full, complete and final settlement of the Action. This sum includes the following: (i) the LWDA Payment; (ii) the Individual PAGA Payments; (iii) Attorneys' Fees, as approved by the Court; (iv) Attorneys' Costs, as approved by the Court; and (v) the Service Award, as approved by the Court. The settlement is non-reversionary; however, under no circumstances shall the Gross Settlement Amount exceed \$7,000. The Gross Settlement Amount shall be used to satisfy all of the alleged PAGA claims alleged against DEPUY in the Action. The Gross Settlement Amount does not include the Settlement Administrator costs, which will be paid separately by DEPUY.

### (b) Attorneys' Fees and Attorneys' Costs

CARDA's Counsel may request Attorneys Fees' and Attorneys' Costs as compensation for their fees and reimbursement of their costs, respectively, incurred in prosecution of this Action. DEPUY will not oppose any request up to 33.34% of the Gross Settlement Amount for Attorneys' Fees or any request for up to \$800.00 for Attorneys' Costs. Any reduction in these payments by the Court is not grounds to void this Agreement, and any amount requested but not awarded as Attorneys' Fees or Attorneys' Costs will be reallocated to the Net Settlement Amount and distributed to the LWDA and Aggrieved Employees as set forth herein.

## Section 1.03 PAGA Payment - Allocation.

The Net Settlement Amount shall represent Labor Code section 2699 penalties, of which 75% of the payment will be paid to the LWDA as the LWDA Payment and 25% will be paid to Aggrieved Employees as Individual PAGA Payments, unless the Court determines otherwise. A reallocation of the settlement funds amongst PAGA claims directed by the Court shall not be a basis to void the agreement. Aggrieved Employees will be issued Form 1099 for their respective Individual PAGA Payments. The Individual PAGA Payment for each Aggrieved Employee shall be paid pro rata based on the number of weekly payroll periods each Aggrieved Employee received wages from DEPUY during the PAGA Period, as set forth in Section 2.04.

## Article II.

### Approval and Implementation of Agreement

#### Section 2.01 Cooperation

The Parties will cooperate in obtaining through an unopposed motion, an Order from the Court approving the terms of this Agreement at the earliest possible date. The Parties further agree to fully cooperate in the drafting and/or filing of any further documents reasonably necessary to be prepared or filed in order to obtain approval of this Agreement. Prior to filing, CARDA's Counsel will send drafts for approval to DEPUY'S counsel.

## Section 2.02 Court Approval

The Parties will seek to obtain the Court's approval of this Agreement by way of a motion to be filed by CARDA's counsel. The Court's approval of this Agreement shall be embodied in a written Order. Should the Court not grant approval of terms set forth in Section 3.02 of this Agreement, then the entirety of this Agreement shall be null and void.

## Section 2.03 Notice to Aggrieved Employees

### (a) Notice.

Notice shall be provided to the Aggrieved Employees in the following manner:

- (1) No later than fourteen (14) days after the Effective Date, DEPUY shall compile the list of all Aggrieved Employees ("Settlement List") and transmit it to the Settlement Administrator. The Settlement List shall state, for each Aggrieved Employee, his or her full name, social security number, last known home address, and the number of pay periods in which the Aggrieved Employee was paid by DEPUY between November 17, 2020 through June 2, 2022.
- (2) The Settlement Administrator shall conduct one National Change of Address ("NCOA") search for all Aggrieved Employees identified on the Settlement List. No later than ten (10) business days after receiving the Settlement List, the Settlement Administrator shall mail the Notice of PAGA Settlement attached hereto as Exhibit A) and each Individual PAGA Payment to all Aggrieved Employees by first-class United States mail, postage prepaid, to the last known address of each Aggrieved Employee with directions to the Postmaster to forward the Notice and Individual PAGA Payment and return all undeliverable Notices and Individual PAGA Payments to DEPUY. For each Notice and Individual PAGA Payment that is returned as undeliverable, the Settlement Administrator shall promptly attempt to locate the Aggrieved Employee by using an address refresher database.

## Section 2.04 Settlement Payment and Procedures

Individual PAGA Payments shall be calculated pro rata based on the number of Pay Periods each Aggrieved Employee was paid wages by DEPUY during the PAGA Period, with each Aggrieved Employee being entitled to a share of the Net Settlement Amount based upon the number of Pay Periods during which the Aggrieved Employee completed the Health Pass questionnaire during the PAGA Period as a numerator and the total number of Pay Periods during which all Aggrieved Employees completed the Health Pass questionnaire during the PAGA Period.

The Individual PAGA Payments are considered penalties and will not be subject to local, state, or federal tax withholdings. All Aggrieved Employees who cash their settlement check may receive a IRS Form 1099 reflecting this portion of the settlement.

The settlement checks issued to Aggrieved Employees shall remain valid for one hundred eighty (180) days. Thereafter, all uncashed checks shall be voided and the funds represented thereby shall be paid to the California Controller's Unclaimed Property Fund.

Within two (2) business days of completing the mailing of the Individual PAGA Payments, and completing the payment of Attorney's Fees and Attorney's Costs, the Settlement Administrator shall remit to DEPUY an invoice for services rendered not to exceed Two Thousand Dollars and Zero Cents (\$2,000.00). DEPUY shall remit payment within twenty-one days of receipt of such invoice.

#### Section 2.05 LWDA Notice

Pursuant to California Labor Code section 2699(l), CARDA will provide a copy of this Agreement to the LWDA concurrently with the filing of the motion for settlement approval. CARDA will also file a declaration in support of the motion for settlement approval confirming that he has submitted the Agreement to the LWDA in compliance with Labor Code section 2699(l). In addition, CARDA shall also serve on the LWDA a notice of entry of the Court's judgment and order approving the Agreement within ten (10) days after entry of the judgment or order.

### **Article III.**

#### **Limitations On Use Of This Agreement**

##### Section 3.01 No Admission

This Agreement and compliance with this Agreement shall not be construed as an admission by DEPUY or JJSI of any liability whatsoever, or as admission by DEPUY OR JJSI of any violations of CARDA's or any other allegedly Aggrieved Employees' rights, violation of any order, law, statute, duty or contract whatsoever. DEPUY and JJSI specifically disclaim any liability to CARDA or any other allegedly Aggrieved Employee for any alleged violation of his/her rights, or for any alleged violation of any order, law, statute, duty or contract.

##### Section 3.02 Nullification

- (a) If the Court should for any reason fail to approve this Agreement, then (a) this Agreement shall be considered null and void, (b) neither this Agreement nor any of the related negotiations or proceedings shall be of any force or effect, and (c) all Parties to this Agreement shall stand in the same position, without prejudice, as if the Agreement had been neither entered into nor filed with the Court.
- (b) Invalidation of any material portion of this Agreement shall invalidate this Agreement in its entirety unless the Parties shall subsequently agree in writing that the remaining provisions shall remain in full force and effect. Material terms of this Agreement include: the definition of Aggrieved Employees (Section 1.01(iii)); the definition of Effective Date (Section 1.01(x)); the definition of PAGA Period (Section 1.01(xviii)); the definition of Released Claims (Section 1.01(xxi)); the definition of Released Parties (Section 1.01(xxii)); the definition of Gross Settlement Amount (Section 1.01(xi)); the requirement for entry of

an order by the Court approving this Agreement and entering PAGA Judgment as contemplated in Article II. The following terms are not material to this Agreement: the amount of Attorneys' Fees awarded (Section 1.01(vi)); the amount of Attorneys' Costs awarded (Section 1.01(v)); the amount of Service Award approved (Section 1.01(xxiii); or the allocation within the Net Settlement Amount (Section 2.04).

#### **Article IV.**

##### **Release and Waiver of Claims**

It is the desire of the Parties to fully, finally, and forever settle, compromise, and discharge disputes and claims arising from or related to the PAGA Notice and/or the Action. Upon entry of the Order and Final Judgment approving payment of PAGA penalties as described in this Agreement, CARDA, the Aggrieved Employees, and the State of California shall be bound by this Agreement and shall have recourse exclusively to the benefits, rights, and remedies provided hereunder. CARDA, the Aggrieved Employees and the State of California shall be deemed to have, and by operation of the Order and Final Judgment granting approval of this Agreement, shall have fully, finally, and forever released, relinquished, and discharged each and all of the Released Parties from the Released Claims.

#### **Article V.**

##### **Miscellaneous Provisions**

###### **Section 5.01 Voluntariness**

This Agreement is executed voluntarily and without duress or undue influence on the part of or on behalf of any of the Parties, or of any other person, firm or other entity.

###### **Section 5.02 Entire Agreement**

This Agreement, including the Exhibits referred to herein, which form an integral part hereof, contains the entire understanding of the Parties hereto in respect of the subject matter contained herein. This Agreement supersedes all prior agreements and understandings among the Parties hereto with respect to the settlement of the Action.

###### **Section 5.03 Amendments**

The terms and provisions of this Agreement may be amended only by a written agreement that is both (a) signed by CARDA, CARDA's Counsel, representatives of DEPUY, and Defense Counsel who executed this Agreement and (b) approved by the Court. Any waiver of any provision of this Agreement shall not constitute a waiver of any other provision of this Agreement unless expressly so indicated otherwise.

#### Section 5.04 Assignment

None of the rights, commitments, or obligations recognized under this Agreement may be assigned by any Party, Aggrieved Employee, CARDA's Counsel, or Defense Counsel without the express written consent of each other Party and their respective counsel hereto. The representations, warranties, covenants, and agreements contained in this Agreement are for the sole benefit of the Parties under this Agreement, and shall not be construed to confer any right or to avail any remedy to any other person. CARDA expressly warrants that he has not transferred to any person or entity any right or cause of action, or claim released by this Agreement.

#### Section 5.05 Governing Law

This Agreement shall be governed, construed, and interpreted, and the rights of the Parties shall be determined, in accordance with the laws of the State of California, and shall in all cases be shall be interpreted in accordance with the plain meaning of its terms and not strictly for or against any of the Parties hereto.

#### Section 5.06 Mutual Preparation

The Parties have had a full opportunity to negotiate the terms and conditions of this Agreement. Accordingly, this Agreement will not be construed more strictly against one Party merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, it being recognized that, because of the arm's length negotiations between the Parties, all Parties have contributed to the preparation of this Settlement

#### Section 5.07 Representation by Counsel

The Parties acknowledge that they have been represented by counsel throughout all negotiations that preceded the execution of this Settlement, and this Settlement has been executed with the consent and advice of counsel and reviewed in full.

#### Section 5.08 Counterparts

This Agreement, and any amendments hereto, may be executed in any number of counterparts and any Party and/or their respective counsel hereto may execute any such counterpart, each of which when executed and delivered, including facsimile, DocuSign, and scanned copies, shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument. It shall not be necessary in making proof of this Agreement or any counterpart hereof to produce or account for any of the other counterparts.

#### Section 5.09 Judgment and Continued Jurisdiction

After the Court approves this Agreement, the Court will have continuing jurisdiction per California Code of Civil Procedure section 664.6 solely for purposes of addressing: (i) the interpretation and enforcement of the terms of the Settlement; (ii) administration matters; and (iii) such post-judgment matters as may be appropriate under court rules or as set forth in this Settlement.

**IN WITNESS WHEREOF**, the Parties have executed this Private Attorneys General Act Settlement Agreement and Release on the date set forth.

**APPROVED AND ACCEPTED.**

Dated: 5/25/2023, 2023

DocuSigned by:  
Michael Carda  
MICHAEL CARDA

Dated: MAY 25, 2023

David J. Croft  
By David J. Croft  
Its: Secretary and VP Law  
DEPUY SYNTHES SALES, INC.

**APPROVED AS TO FORM AND  
ATTORNEY OBLIGATIONS ONLY**

Dated: 5/29/2023, 2023

ACKERMANN & TILAJEF, P.C.

DocuSigned by:  
Craig J. Ackermann  
Craig J. Ackermann  
Attorneys for CARDA and the Aggrieved  
Employees, and on behalf of the State of  
California

Dated: May 25, 2023

EPSTEIN BECKER & GREEN, P.C.

Michael S. Kun  
By Michael S. Kun  
Kevin D. Sullivan  
Chelsea Hadaway  
Attorneys for DEPUY SYNTHES SALES,  
INC.

# EXHIBIT A

## NOTICE OF SETTLEMENT

*Carda v. DePuy Synthes Sales, Inc., et al.*

Superior Court of the State of California, County of Orange Case No. 30-2022-01242108-CU-OE-CXC

«Barcode»  
«BarcodeString»  
SIMID «SIMID»  
«FirstName» «LastName»  
«Address1» «Address2»  
«City» «State» «Zip»

You are receiving this notice and a check made payable to you as a result of a lawsuit brought on a representative basis under the California Private Attorneys General Act, Labor Code §§ 2698 *et seq.* (“PAGA”) by Plaintiff Michael Carda (“Carda”) against Defendant DePuy Synthes Sales, Inc. (“DePuy”) and its affiliate J&J Services, Inc. (collectively, “Defendants”) (the “Action”). Through the Action, Plaintiff sought to recover civil penalties for purported violations of the California Labor Code on behalf of individuals employed by Depuy in California at any time from November 17, 2020 to June 2, 2022 (the “PAGA Period”) and who were classified as “non-exempt” employees (the “Aggrieved Employees”). You are not a party to the Action, but you and the government will be bound by the judgment in this matter as to civil penalties.

Defendants deny all claims and allegations in the Action, deny that they owe any penalties to Plaintiff and/or the Aggrieved Employees, and assert that they have fully complied with the California Labor Code and all other provisions of law noted below. Nevertheless, to avoid further costs and time in defending the Action, Defendants have settled the Action, and the Court has approved the settlement and release of the PAGA claims. The settlement resolves all claims for PAGA penalties that were alleged, or could have been alleged, based on the facts stated in the Complaint and the notice submitted to the California Labor and Workforce Development Agency on or about November 15, 2021 by Carda with respect to this Action (“Released Claims”). By Order dated [insert], the Superior Court of California for the County of Orange approved the settlement of the Action and the above release of PAGA claims.

According to DePuy’s records, you are an Aggrieved Employee and are therefore entitled to a share of the PAGA settlement proceeds based upon the Court-approved allocation, which is based upon the pay periods you worked during the PAGA Period. The enclosed settlement check, which you are receiving in your capacity as an Aggrieved Employee in connection with the settlement of the PAGA claim for civil penalties, shall remain valid for 180 days after mailing (the “Settlement Payment”). Checks remaining un-cashed for more than 180 days after issuance will become void and the funds will be paid to the California Controller’s Unclaimed Property Fund. Regardless of whether you cash the check, you are releasing DePuy and each of its respective former and present parents, subsidiaries and affiliated corporations including J&J Services, Inc., and each of their respective officers, directors, managing agents, employees, managers, partners, shareholders, agents, insurers, and any other successors, assigns, or legal representatives, joint ventures, and any joint employers from the Released Claims.

Please Note: One hundred percent (100%) of your payment will be considered civil penalties; may be subject to local, state, and/or federal tax withholdings; and will be reported to the IRS and applicable state tax authorities. You should rely on your own tax advisors as to the tax consequences of your Settlement Payment. Neither Plaintiff nor Defendants have made or will make any representations or warranties regarding the taxation of your Settlement Payment. Nothing within this notice or any other communication shall constitute or be construed or relied upon as tax advice within the meaning of United States Treasury Department Circular 230 (31 C.F.R. Part 10, as amended).

Do not call or write the Court or Office of the Clerk to ask questions about the settlement or your Settlement Payment. If you have any questions, you may call or write to PAGA Counsel: Craig Ackermann of Ackermann & Tilajef, P.C. (310) 277-0614 and Tatiana Hernandez of Law Office of Tatiana Hernandez, P.C. (213) 909-1248.