

CLASS, COLLECTIVE AND PAGA REPRESENTATIVE ACTION SETTLEMENT AGREEMENT AND CLASS NOTICE

This Class, Collective, and PAGA Representative Action Settlement Agreement (“Agreement”) is made by and between Plaintiff Caitlin Raymond (“Plaintiff”) and Defendant Alphatec Spine, Inc. (“ASI” or “Defendant”). The Agreement refers to Plaintiff and ASI collectively as “Parties,” or individually as “Party.”

1. DEFINITIONS.

- 1.1. “Action” means the Plaintiff’s pending lawsuit against ASI captioned *Caitlin Raymond v. Alphatec Spine, Inc.*, initiated on March 29, 2023, Case No. 37-2023-00012914-CU-OE-CTL and pending in the Superior Court of California of the State of California, County of San Diego, as amended.
- 1.2. “Administrator” means CPT Group, the neutral entity the Parties have agreed to appoint to administer the Settlement.
- 1.3. “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with Preliminary Approval of the Settlement.
- 1.4. “Aggrieved Employee” means all non-exempt employees employed by ASI in California during the PAGA Period.
- 1.5. “Class” means all non-exempt employees employed by ASI during the Class Period.
- 1.6. “Class Counsel” means Nicholas J. Ferraro and Lauren N. Vega of Ferraro Vega Employment Lawyers, Inc.
- 1.7. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action.
- 1.8. “Class Data” means Class Member identifying information in ASI’s possession including the Class Member’s name, last-known mailing address, Social Security number, and number of Class Period Workweeks and PAGA Pay Periods.
- 1.9. “Class Member” or “Settlement Class Member” means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non-Participating Class Member who qualifies as an Aggrieved Employee).
- 1.10. “Class Member Address Search” means the Administrator’s investigation and search for current Class Member mailing addresses using all reasonably available

sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Class Members.

- 1.11. “Class Notice” means the Court Approved Notice of Class Action Settlement, to be mailed to Class Members in English, attached as Exhibit A and incorporated by reference into this Agreement.
- 1.12. “Class Period” means the period from March 29, 2019 to preliminary approval or April 1, 2024, whichever occurs first.
- 1.13. “Class Representative” means the named Plaintiff Caitlin Raymond in the operative complaint in the Action seeking Court approval to serve as a Class Representative.
- 1.14. “Class Representative Service Payment” means, in exchange for the execution of a stand-alone general release of all claims, the payment to the Class Representative for initiating the Action and providing services in support of the Action.
- 1.15. “Court” means the Superior Court of California, County of San Diego, the forum where the Motion for Preliminary Approval will be filed.
- 1.16. “Defendant” means Defendant Alphatec Spine, Inc.
- 1.17. “Defense Counsel” means Jason Kearnaghan, Tyler Johnson, and Dimiana Saad of Sheppard, Mullin, Richter, and Hampton LLP.
- 1.18. “Effective Date” means the date on which the Final Award becomes final. For purposes of this Section, the Final Award “becomes final” only after the Court grants the Motion for Final Approval enters Judgment and upon service of the Notice of Entry of Order and/or Judgment, and upon the latter of: (i) if no appeal, or other challenge is filed, the seventieth (70th) day following Notice of Entry of the Court’s Order and/or Judgment; (ii) the date of affirmance of an appeal of the Order Granting Final Approval and/or Judgment becomes final under the California Rules of Court; or (iii) the date of final dismissal of any appeal from the Order Granting Final Approval and/or Judgment or the final dismissal of any proceeding on review of any court of appeal decision relating to the Order Granting Final Approval and/or Judgment, and issuance of remittitur.
- 1.19. “Employee Paid Taxes” means taxes paid by an individual employee, including Federal Insurance Contributions Act, federal income tax, state disability insurance, state income tax payments.
- 1.20. “Employer Paid Taxes” means taxes paid by the employer, including Federal Unemployment Tax Act, Federal Insurance Contributions Act, state unemployment insurance, and Employee Training Tax payments.

- 1.21. “Final Approval” or “Final Award” means the Court’s order granting final approval of the Settlement.
- 1.22. “Final Approval Hearing” means the Court’s hearing on the Motion for Final Approval of the Settlement.
- 1.23. “Gross Settlement Amount” means \$345,000.00 which is the total gross amount ASI agrees to pay under the Settlement. The Gross Settlement Amount will be used to pay Individual Class Payments (including all Employee Paid Taxes), Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payment, and the Administrator’s Expenses Payment. ASI will be responsible for any and all Employer Paid Taxes required by law on the wage portions of the Individual Class Payments to Class Members, separate and in addition to the Gross Settlement Amount.
- 1.24. “Individual Class Payment” means the Participating Class Member’s pro rata share of the Net Settlement Amount, calculated according to the number of Workweeks worked during the Class Period, less any and all Employee Paid Taxes required by law as a result of the payment of the amount allocated to such Class Member as set forth herein.
- 1.25. “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of 25% of the PAGA Penalties calculated according to the number of Workweeks worked during the PAGA Period.
- 1.26. “Judgment” means the judgment entered by the Court based upon the Final Approval.
- 1.27. “LWDA” means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).
- 1.28. “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).
- 1.29. “Net Settlement Amount” means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The Net Settlement Amount is to be paid to Class Members as Individual Class Payments, including all Employee Paid Taxes.
- 1.30. “Non-Participating Class Member” means any Class Member who opts out of the Settlement by sending the Administrator a valid and timely Request for Exclusion.

- 1.31. “Objection to the Settlement” means a Class Member’s valid and timely written objection to the Settlement Agreement. For the Objection to the Settlement to be valid, it must include: (a) the objector’s full name, address, telephone number, last four digits of the employee’s social security number or employee ID number and (b) a written statement of all grounds for the objection accompanied by legal support, if any, for such objection.
- 1.32. “PAGA Pay Period” means any Pay Period during which an Aggrieved Employee worked for ASI for at least one day during the PAGA Period.
- 1.33. “PAGA Period” means the period from January 18, 2022 to preliminary approval or April 1, 2024, whichever occurs first.
- 1.34. “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).
- 1.35. “PAGA Notice” means Plaintiff’s January 18, 2023 letter to ASI and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a), Case No. LWDA-CM-930434-23.
- 1.36. “PAGA Penalties” means the total amount of \$20,000.00 in PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$5,000.00) and the 75% to LWDA (\$15,000.00) in settlement of PAGA claims.
- 1.37. “Participating Class Member” means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.
- 1.38. “Pay Period” means a pay period during which an Aggrieved Employee worked for ASI, for at least one day, during the PAGA Period.
- 1.39. “Plaintiff” means Caitlin Raymond, the named plaintiff in the Action.
- 1.40. “Preliminary Approval” means the Court’s Order Granting Preliminary Approval of the Settlement.
- 1.41. “Preliminary Approval Order” means the proposed Order Granting Preliminary Approval and Approval of PAGA Settlement.
- 1.42. “Released Class Claims” means the claims being released as described in Paragraph 6.2 below.
- 1.43. “Released PAGA Claims” means the claims being released as described in Paragraph 6.3 below.
- 1.44. “Released Parties” means: ASI and each of their past, present and future agents, employees, servants, officers, directors, managing agents, members, owners (whether

direct or indirect), partners, trustees, representatives, shareholders, stockholders, attorneys, parents, subsidiaries, equity sponsors, related companies/corporations and/or partnerships, divisions, assigns, predecessors, successors, insurers, consultants, joint venturers, joint employers, potential and alleged joint employers, temporary staffing firms (whether direct or indirect), temporary staffing agencies (whether direct or indirect), dual employers, potential and alleged dual employers, co-employers, potential and alleged co-employers, common law employers, potential and alleged common law employers, contractors, affiliates, service providers, alter-egos, potential and alleged alter-egos, vendors, affiliated organizations, any person and/or entity with potential or alleged to have joint liability, and all of their respective past, present and future employees, directors, officers, members, owners, agents, representatives, payroll agencies, attorneys, stockholders, fiduciaries, parents, subsidiaries, other service providers, and assigns, and any and all persons and/or entities acting under, by, through or in concert with any of them.

- 1.45. “Request for Exclusion” means a valid and timely written statement submitted by a Class Member requesting to be excluded from the settlement of the class claims. The request for exclusion should contain (a) the Class Member’s name, address, telephone number, and the last four digits of the Class Member’s Social Security number and/or the Employee ID number and (b) a clear statement requesting to be excluded from the settlement of the class claims similar to the following: “I wish to exclude myself from the settlement with ASI. I understand that by excluding myself, I will not receive money from the settlement of my individual claims.” To be effective, the Request for Exclusion must be post-marked by the Response Deadline and received by the Settlement Administrator. The Request for Exclusion shall not be effective as to the release of claims arising under the Private Attorneys’ General Act.
- 1.46. “Response Deadline” means 45 calendar days after the Administrator mails Notice to Class Members and Aggrieved Employees, and shall be the last date on which Class Members may: (a) fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail his or her Objection to the Settlement. Class Members to whom Notice Packets are resent after having been returned undeliverable to the Administrator shall have an additional 14 calendar days beyond when the Response Deadline has expired.
- 1.47. “Settlement” means the disposition of the Action effected by this Agreement and the Judgment.
- 1.48. “Settlement Payment Check” means the payment to Class Members.
- 1.49. “Workweek” means any week during which a Class Member worked for ASI, for at least one day, during the Class Period.

2. RECITALS.

- 2.1. On March 29, 2023, Plaintiff commenced this Action by filing a Complaint alleging causes of action against ASI for a violation of the Private Attorney's General Act of 2004 ("PAGA"), which seeks penalties for: (1) failure to pay wages; (2) failure to pay sick pay; (3) failure to timely pay wages during employment; (4) failure to timely pay wages at termination; and (5) failure to provide accurate wage statements (the "Complaint").

In connection with this settlement (and for settlement purposes only), as more fully described in Paragraph 7 herein, the Parties agree to stipulate to Plaintiff filing a First Amended Complaint in the Action. For purposes of effecting settlement only, at least 65 calendar days prior to filing the First Amended Complaint in this Action, Plaintiff will file an amended letter with the LWDA pursuant to LWDA pursuant to Labor Code section 2699.3, subd.(a) to a claim for failure to authorize and permit rest periods. The filed First Amended Complaint in the Action will be referred to herein as the "Operative Complaint."

ASI denies the allegations in the Complaint and the Operative Complaint, denies any failure to comply with the laws identified in the Operative Complaint, and denies all liability for the causes of action alleged.

- 2.2. Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave timely written notice to ASI and the LWDA by sending the PAGA Notice on January 18, 2023, in which, along with the allegations in the Complaint, raises claims for: (i) unpaid hours worked/minimum wage; (ii) failure to pay overtime; (iii) failure to pay sick leave; (iv) failure to provide meal periods; (v) failure to timely pay wages during employment; (vi) failure to timely pay wages upon separation; (vii) failure to provide accurate wage statements; and (viii) failure to maintain accurate records. Moreover, for the purpose of effectuating this settlement only, Plaintiff will file an amended letter with the LWDA pursuant to LWDA pursuant to Labor Code section 2699.3, subd.(a) to add a claim for failure to authorize and permit rest periods.

- 2.3. On January 23, 2024, the Parties participated in an all-day mediation presided over by mediator Tripper Ortman, Esq. which led to this Agreement to settle the Action. For settlement purposes only, Plaintiff will file an amended PAGA Notice to specifically to raise a PAGA claim for failure to authorize and permit rest periods, and will file a First Amended Complaint ("FAC") to add class allegations, as discussed in this Agreement, and to specifically add claims that are raised in the PAGA Notice, but have not yet been pleaded in the Action. Any amendments to the Complaint will be null and void if Final Approval is not granted.

- 2.4. Prior to mediation and in negotiating the Settlement, Plaintiff obtained, through formal and informal discovery, relevant information from ASI, including but not limited to, employee time and payroll records, records relating to Plaintiff, ASI's policy documents, and the exchange of relevant data points pertaining to the Class and PAGA

claims. Plaintiff's investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 ("*Dunk / Kullar*").

- 2.5. The Court has not yet granted class certification.
- 2.6. By entering into this Agreement, ASI does not waive any arbitration agreement that any Aggrieved Employee or Class Member has signed, specifically including any arbitration agreement that Plaintiff has signed should the Court not grant preliminary approval.
- 2.7. The Parties, Class Counsel and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

3. MONETARY TERMS.

- 3.1. Gross Settlement Amount. ASI promises to pay the total gross amount of \$345,000.00 and no more as the Gross Settlement Amount and to separately pay any and all Employer Paid Taxes required by law on the wage portions of the Individual Class Payments. ASI has no obligation to pay the Gross Settlement Amount (or any payroll taxes) before the deadline stated in Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to ASI.
- 3.2. Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval:
 - 3.2.1. To Plaintiff: Class Representative Service Payment to the Class Representative of \$10,000.00 (in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class Member). ASI will not oppose Plaintiff's request for a Class Representative Service Payment that does not exceed this amount. As part of the Motion for Final Approval, Plaintiff will seek Court approval for any Class Representative Service Payment no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Representative Service Payment less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. A reduction by the Court of the Class Representative Service Payment shall not be grounds to nullify this Agreement. The Administrator will pay the Class Representative Service Payment using IRS Form 1099. Plaintiff assumes full responsibility and liability for all Employee Paid Taxes owed on the Class Representative Service Payment. The Class Representative Service Payment will be in addition to Plaintiff's Individual

Settlement Payment paid pursuant to the Settlement, and is conditioned on the execution by Plaintiff of a stand-alone settlement agreement and general release of all claims.

3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than 33.33%, which is currently estimated to be \$114,988.50 and a Class Counsel Litigation Expenses Payment of not more than \$30,000. ASI will not oppose requests for these payments provided that the requested costs and fees do not exceed these amounts. Plaintiff and/or Class Counsel will seek to recover such payments as part of her Motion for Final Approval which will be filed no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Released Parties shall have no liability to Class Counsel or any other Plaintiff's Counsel arising from any claim to any portion any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. A reduction by the Court of either the Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment(s) shall not be grounds to nullify this Agreement. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds ASI harmless, and indemnifies ASI, from any dispute or controversy regarding any division or sharing of any of these Payments.

3.2.3. To the Administrator: An Administration Expenses Payment not to exceed \$12,500 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than \$12,500, the Administrator will retain the remainder in the Net Settlement Amount.

3.2.4. To Each Participating Class Member: An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks.

3.2.4.1. Tax Allocation of Individual Class Payments. 25% of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. The 75% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for interest and penalties (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class

Members assume full responsibility and liability for any Employee Paid Taxes owed on their Individual Class Payment.

3.2.4.2. Effect of Non-Participating Class Members on Calculation of Individual Class Payments. Non-Participating Class Members will not receive any Individual Class Payments. The Administrator will retain amounts equal to their Individual Class Payments in the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis. Non-Participating Class Members shall still receive an Individual PAGA Payment.

3.2.5. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$20,000.00 to be paid from the Gross Settlement Amount, with 75% (\$15,000.00) allocated to the LWDA PAGA Payment and 25% (\$5,000.00) allocated to the Individual PAGA Payments as a satisfaction and release of the Released PAGA claims.

3.2.5.1. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$5,000.00) by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

3.2.5.2. If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms and 100% of such payments will be allocated as penalties.

4. SETTLEMENT FUNDING AND PAYMENTS.

4.1. Class Workweeks and Aggrieved Employee Pay Periods/Escalator Clause. Based on a review of its records to date, it was estimated for purposes of mediation that there were approximately 26,321 work weeks from March 29, 2019 to October 1, 2023. If the number of workweeks in the Class Period exceeds 26,321 by more than the 10% cap (e.g., more than 28,953), Plaintiff has the option to nullify the Agreement upon ten (10) court days' notice ("Notice Period"). If Plaintiff provides such notice, ASI shall have the option to either (a) agree to increase the Gross Settlement Amount by a pro rata basis according to the number of additional compensable workweeks above the cap (i.e., if there was an 11% increase in the number of workweeks during the Class Period, Defendant would agree to increase the Gross Settlement Amount by 1%), or (b) agree to close the Class Period before the date the workweeks hit this 10% cap before the expiration of the Notice Period.

- 4.2. Class Data. Not later than fifteen (21) calendar days after the Court grants Preliminary Approval of the Settlement, ASI will simultaneously deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. ASI has a continuing duty to immediately notify Class Counsel if it discovers that the Class Data omitted class member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which ASI must send the Class Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.
- 4.3. Funding of Gross Settlement Amount. ASI shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay the Employer Paid Taxes by transmitting the funds to the Administrator no later than 21 calendar days after the Effective Date.
- 4.4. Payments from the Gross Settlement Amount. Within 14 calendar days after ASI funds the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment. Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment and the Class Representative Service Payment shall not precede disbursement of Individual Class Payments and Individual PAGA Payments.
- 4.4.1. The Administrator will issue checks for the Individual Class Payments and/or Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 calendar days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. The Administrator will send checks for Individual Settlement Payments to all Participating Class Members (including those for whom Class Notice was returned undelivered). The Administrator will send checks for Individual PAGA Payments to all Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved Employees (including those for whom Class Notice was returned undelivered). The Administrator may send Participating Class Members a single check combining the Individual Class Payment and the Individual PAGA Payment. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database.
- 4.4.2. The Administrator must conduct a Class Member Address Search for all other Class Members whose checks are returned undelivered without USPS

forwarding address. Within 7 calendar days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Class Member Address Search. The Administrator need not take further steps to deliver checks to Class Members whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Class Member whose original check was lost or misplaced, requested by the Class Member prior to the void date.

4.4.3. For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b).

4.4.4. The payment of Individual Class Payments and Individual PAGA Payments shall not obligate ASI to confer any additional benefits or make any additional payments to Class Members (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

6. RELEASES OF CLAIMS. Effective on the date when ASI fully funds the entire Gross Settlement Amount and funds all Employer Paid Taxes owed on the Wage Portion of the Individual Class Payments, Plaintiff, Class Members, and Class Counsel will release claims against all Released Parties as follows:

- 6.1 Plaintiff's Release. As a condition of receiving any portion of the Class Representative Service Payment, Plaintiff and each of her respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release and discharge Released Parties (which as defined above specifically includes ASI) from all known and unknown claims, transactions, or occurrences under federal, state and/or local law, statute, ordinance, regulation, common law, or other source of law, including but not limited to claims arising from or related to her employment with ASI and her compensation while so employed ("Plaintiff's Release"). Plaintiff's Release includes all claims asserted in the Action and/or arising from or related to the facts and claims alleged in the Action or the PAGA Notice (including any amended PAGA Notice), or that could have been raised in the Action or the PAGA Notice based on the facts and claims alleged. Plaintiff's Release includes, but is not limited to, all claims for unpaid wages, including, but not limited to, failure to pay minimum wages, straight time compensation, overtime compensation, double-time compensation, and interest; the calculation of the regular rate of pay; wages related to alleged illegal time rounding; failure to pay wages at least twice each calendar month; failure to timely pay wages; failure to timely pay final wages; missed/short/late/interrupted meal period, rest period, and/or recovery period wages/premiums; failure to provide meal periods; failure to authorize and permit rest periods and/or recovery periods; the calculation of meal period, rest period, failure to pay sick pay, and/or recovery period premiums; reimbursement for all necessary business expenses; payment

for all hours worked, including off-the-clock work; wage statements; deductions; failure to keep accurate records; failure to provide suitable seating; failure to maintain temperature providing reasonable comfort; unlawful deductions and/or withholdings from wages; unfair business practices; penalties, including, but not limited to, recordkeeping penalties, wage statement and payroll reporting penalties, minimum-wage penalties, and waiting-time penalties; and attorneys' fees and costs. Plaintiff's Release includes all claims arising under the California Labor Code (including, but not limited to, sections 200, 201, 201.1, 201.3, 201.5, 202, 203, 204, 205.5, 206, 210, 216, 218, 218.5, 218.6, 221, 222, 222.5, 223, 224, 225, 225.5, 226, 226.2, 226.3, 226.7, 226.8, 227.3, 246, 246.5, 247, 247.5, 248.1, 248.2, 248.5, 248.6, 248.7, 256, 450, 510, 511, 512, 515, 516, 550, 551, 552, 558, 1174, 1174.5, 1175, 1182.12, 1194, 1194.2, 1194.3, 1197, 1197.1, 1197.2, 1197.5, 1198, 1198.5, 2698 *et seq.*, 2699 *et seq.*, 2802, and 2804); all claims arising under: the Wage Orders of the California Industrial Welfare Commission; the California Equal Pay Act of 1949; the California Fair Pay Act; the California Private Attorneys General Act of 2004 (PAGA); California Business and Professions Code section 17200, *et seq.*; the California Civil Code, to include sections 3287, 3336 and 3294; 8 CCR §§ 3203, 11070, 11090, 11100; California Code of Civil Procedure § 1021.5; California Code of Civil Procedure § 1281.98; all state and local ordinances related to COVID-19 right of recall; the California common law of contract; the Fair Labor Standards Act ("FLSA"), 29 U.S.C. §§ 201, *et seq.*; 29 CFR 778.223; 29 CFR 778.315; federal common law; and the Employee Retirement Income Security Act, 29 U.S.C. §§ 1001, *et seq.* (ERISA). Plaintiff's Release also includes all claims for lost wages and benefits, emotional distress, retaliation, punitive damages, and attorneys' fees and costs arising under federal, state, or local laws for discrimination, harassment, retaliation, and wrongful termination, such as, by way of example only, (as amended) 42 U.S.C. § 1981, Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act (ADA), the Age Discrimination in Employment Act (ADEA), as amended by OWBPA, and the California Fair Employment and Housing Act (FEHA); and the law of contract and tort. This release excludes the release of claims not permitted by law. This release is intended to have the broadest possible application. Plaintiff's Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time, or based on occurrences outside the Class Period. Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them. The specific terms of Plaintiff's Release will be detailed in a stand-alone individual settlement agreement.

6.1.1 Plaintiff's Waiver of Rights Under California Civil Code Section 1542. For purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

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

- 6.2 Release by Participating Class Members: Plaintiff and all Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, shall fully and finally release the Released Parties of the “Released Class Claims.” The Released Class Claims include all claims asserted in the Action, as amended, and/or arising from the facts alleged in the Action or the PAGA Notice, as amended, or that could have been raised in the Action or the PAGA Notice based on the facts alleged. The Released Class Claims include all claims for unpaid wages, including, but not limited to, failure to pay minimum wages, straight time compensation, overtime compensation, double-time compensation, and interest; the calculation of the regular rate of pay; wages related to alleged illegal time rounding; missed/short/late/interrupted meal period, rest period, and/or recovery period wages/premiums; failure to provide meal periods; failure to authorize and permit rest periods and/or recovery periods; the calculation of meal period, rest period, and/or recovery period premiums; payment for all hours worked, including off-the-clock work; wage statements; failure to keep accurate records; failure to timely pay wages; failure to timely pay final wages; failure to pay sick pay; unfair business practices related to the Labor Code violations alleged in the Operative Complaint; attorneys’ fees and costs associated with recovery of the alleged Labor Code violations alleged in the Operative Complaint; and generally all claims that could have been brought based on the facts alleged in the Operative Complaint arising under: the California Labor Code (including, but not limited to, sections 200, 201, 202, 203, 204, 204b, 206, 210, 218, 218.5, 218.6, 223, 226, 226.3, 226.7, 246, 246.5, 247, 247.5, 248.1, 248.2, 248.6, 248.7, 256, 510, 512, 516, 558, 558.1, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, and 1199); the Wage Orders of the California Industrial Welfare Commission; the California Business and Professions Code section 17200, *et seq.*; the California Civil Code, to include but not limited to, sections 3287, 3336 and 3294; 12 CCR § 11040; 8 CCR § 11060; and California Code of Civil Procedure §§ 1021.5; and federal common law. This release excludes the release of claims not permitted by law.

Participating Class Members who timely cash or otherwise negotiate their Settlement Payment Check will be deemed to have opted into the Action for purposes of the FLSA and, as to those Class Members, the Released Class Claims include any and all claims the Class Members may have under the FLSA asserted in the Action, arising from or related to the facts and claims alleged in the Action, or that could have been alleged in the Action based on the facts and claims alleged in the Action, as amended, during the Class Period. Only those Class Members who timely cash or otherwise negotiate their Settlement Payment Check will be deemed to have opted into the Action for purposes of the FLSA and thereby release and waive any of their claims under the FLSA arising under or relating to the alleged claims.

The following language will be printed on the reverse of each Settlement Payment Check, or words to this effect: “By endorsing or otherwise negotiating this check, I acknowledge that I read, understood, and agree to the terms set forth in the Notice of Class Action Settlement and I consent to join in the Fair Labor Standards Act (“FLSA”) portion of the [Action], elect to participate in the settlement of the FLSA claims, and agree to release all of my FLSA claims that are covered by the Settlement.”

- 6.3 Upon entry of Judgment, Class Members are precluded from filing a wage and hour action under the Fair Labor Standards Act against the Released Parties for claims and/or causes of action encompassed by the Released Class Claims which are extinguished and precluded pursuant to the holding in *Rangel v. PLS Check Cashers of California, Inc.*, 899 F.3d 1106 (2018).

- 6.4 Release by Aggrieved Employees: Plaintiff, the Labor and Workforce Development Agency, and the State of California through Plaintiff as its agent and/or proxy, and all Aggrieved Employees, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, shall release the Released Parties from all claims for civil penalties under PAGA that were alleged, or could have been alleged, based on the facts asserted in Plaintiff’s Complaint in the Action, as amended, and/or in the PAGA Notice, as amended, including but not limited to, claims relating to failure to pay minimum wages, straight time compensation, overtime compensation, double-time compensation, and interest; the calculation of the regular rate of pay; wages related to alleged illegal time rounding; missed/short/late/interrupted meal period, rest period, and/or recovery period wages/premiums; failure to provide meal periods; failure to authorize and permit rest periods and/or recovery periods; the calculation of meal period, rest period, and/or recovery period premiums; payment for all hours worked, including off-the-clock work; wage statements; failure to keep accurate records; failure to timely pay wages; failure to timely pay final wages; non-compliant wage statements; failure to pay sick pay; and alleged violations of Labor Code sections 200, 201, 202, 203, 204, 204b, 206, 210, 218, 218.5, 218.6, 223, 226, 226.3, 226.7, 246, 246.5, 247, 247.5, 248.1, 248.2, 248.6, 248.7, 256, 510, 512, 516, 558, 558.1, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, and 1199); the Wage Orders of the California Industrial Welfare Commission; (“Released PAGA Claims”). The Released PAGA Claims are limited to the PAGA Period. Aggrieved Employees will be bound by the release of the Released PAGA Claims regardless of their decision to participate in or opt out of the release of the Released Class Claims.

7. **MOTION FOR PRELIMINARY APPROVAL AND STIPULATION TO AMEND COMPLAINT.** Plaintiff will prepare and file a motion for preliminary approval (“Motion for Preliminary Approval”) that complies with the San Diego County Superior Court’s and the Court’s current requirements for Preliminary Approvals, as applicable. Prior to the filing of the Motion for Preliminary Approval and for the purposes of approval of this Settlement only, Plaintiff will file an amended PAGA Notice adding a claim for failure to authorize and permit rest periods. Moreover, the Parties will file a joint stipulation to amend the Complaint to add putative wage and hour class claims that mirror the PAGA claims asserted in the PAGA Notice and the amended PAGA Notice. If, for any reason, the

referenced stipulation to amend is not approved by the Court, the Parties will meet and confer in good faith regarding the appropriate process to obtain approval to amend Plaintiff's Complaint. Such stipulation shall be null and void and will have no force or effect if the settlement is not approved by the Court and/or does not receive Final Approval.

- 7.1 Plaintiff's Responsibilities. Plaintiff will prepare and deliver to ASI's Counsel all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice, and memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the Settlement under *Dunk/Kullar*; (ii) a draft proposed Order Granting Preliminary Approval; (iii) a draft proposed Class Notice; (iv) a signed declaration from the Administrator attaching its "not to exceed" bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Class Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Class Members; and the nature and extent of any financial relationship with Plaintiff, Class Counsel or Defense Counsel; (v) a signed declaration from Plaintiff confirming willingness and competency to serve and disclosing all facts relevant to any actual or potential conflicts of interest with Class Members and/or the Administrator; (vi) a signed declaration from each Class Counsel firm attesting to its competency to represent the Class Members; and all facts relevant to any actual or potential conflict of interest with Class Members or the Administrator; and (vii) provide the necessary statutory notice to the LWDA regarding the settlement of the PAGA claims asserted in the Operative Complaint and final approval/judgment. In their Declarations, Plaintiff and Class Counsel shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.
- 7.2 Responsibilities of Counsel. Class Counsel shall be responsible for expeditiously finalizing and filing the Motion for Preliminary Approval no later than 30 calendar days after the full execution of this Agreement; obtaining a prompt hearing date for the Motion for Preliminary Approval, and providing the necessary statutory notice to the LWDA regarding the settlement of the PAGA claims asserted in the Operative Complaint, final approval, and judgment being entered in this case. All Parties shall appear in Court to advocate in favor of the Motion for Preliminary Approval. Class Counsel is responsible for delivering the Court's Preliminary Approval to the Administrator.
- 7.3 Duty to Cooperate. If the Court does not grant Preliminary Approval or conditions Preliminary Approval on any material change to this Agreement, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns.

8. SETTLEMENT ADMINISTRATION.

8.1 Selection of Administrator. The Parties have jointly selected CPT Group to serve as the Administrator and verified that, as a condition of appointment, CPT Group agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.

8.2 Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports state and federal tax authorities.

8.3 Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund (“QSF”) under US Treasury Regulation section 468B-1.

8.4 Notice to Class Members.

8.4.1 No later than three (3) court days after receipt of the Class Data, the Administrator shall notify Class Counsel that the list has been received and state the number of Class Members, PAGA Members, Workweeks, and Pay Periods in the Class Data.

8.4.2 Using best efforts to perform as soon as possible, and in no event later than 14 calendar days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service (“USPS”) mail, the Class Notice, substantially in the form attached to this Agreement as Exhibit 1. The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member, and the number of Workweeks and PAGA Pay Periods (if applicable) used to calculate these amounts. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database.

8.4.3 Not later than 3 court days after the Administrator’s receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. The Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a second time.

8.4.4 The deadlines for Class Members' written objections, Challenges to Workweeks and/or Pay Periods, and Requests for Exclusion will be extended an additional 14 calendar days beyond the 45 calendar days otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice.

8.4.5 If the Administrator, ASI or Class Counsel is contacted by or otherwise discovers any persons who believe they should have been included in the Class Data and should have received Class Notice, the Parties will expeditiously meet and confer in person or by telephone, and in good faith, in an effort to agree on whether to include them as Class Members. If the Parties agree, such persons will be Class Members entitled to the same rights as other Class Members, and the Administrator will send, via email or overnight delivery, a Class Notice requiring them to exercise options under this Agreement not later than 14 calendar days after receipt of Class Notice, or the deadline dates in the Class Notice, which ever are later.

8.5 Requests for Exclusion (Opt-Outs).

8.5.1 Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than 45 calendar days after the Administrator mails the Class Notice (plus an additional 14 calendar days for Class Members whose Class Notice is re-mailed). A Request for Exclusion should contain (a) the Class Member's name, address, telephone number, and the last four digits of the Class Member's Social Security number and/or the Employee ID number and (b) a clear statement requesting to be excluded from the settlement of the class claims similar to the following: "I wish to exclude myself from the settlement with Alphatec Spine, Inc. I understand that by excluding myself, I will not receive money from the settlement of my individual claims." To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline.

8.5.2 The Administrator may not reject a Request for Exclusion as invalid because it fails to contain all the information specified in the Class Notice. The Administrator shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the person as a Class Member and the Class Member's desire to be excluded. The Administrator's determination shall be final and not appealable or otherwise susceptible to challenge. If the Administrator has reason to question the authenticity of a Request for Exclusion, the Administrator may demand additional proof of the Class Member's identity. The Administrator's determination of authenticity shall be final and not appealable or otherwise susceptible to challenge.

8.5.3 Every Class Member who does not submit a timely and valid Request for Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all benefits and bound by all terms and conditions of the Settlement, including the release under Paragraph 6.2 of this Agreement, regardless of whether the Participating Class Member actually receives the Class Notice or objects to the Settlement.

8.5.4 Every Class Member who submits a valid and timely Request for Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment or have the right to object to the class action components of the Settlement. Because PAGA claims are subject to claim preclusion upon entry of the Judgment, Non-Participating Class Members who are Aggrieved Employees are deemed to release the claims identified in Paragraph 6.3 of this Agreement and are eligible for an Individual PAGA Payment regardless of their decision to opt-out of the class portion of the Settlement.

8.6 Challenges to Calculation of Workweeks. Each Class Member shall have 45 calendar days after the Administrator mails the Class Notice (plus an additional 14 calendar days for Class Members whose Class Notice is re-mailed) to challenge the number of Class Workweeks and PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice. The Class Member may challenge the allocation by communicating with the Administrator via fax, email or mail. The Administrator must encourage the challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Workweeks contained in the Class Notice are correct so long as they are consistent with the Class Data. The Administrator's determination of each Class Member's allocation of Workweeks and/or Pay Periods shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall promptly provide copies of all challenges to calculation of Workweeks and/or Pay Periods to Defense Counsel and Class Counsel and the Administrator's determination the challenges.

8.7 Objections to Settlement.

8.7.1 Only Participating Class Members may object to the class action components of the Settlement and/or this Agreement, including contesting the fairness of the Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Class Representative Service Payment.

8.7.2 Participating Class Members may send written objections to the Administrator, by fax, email, or mail. In the alternative, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A Participating Class Member who elects to send a written objection to the Administrator must do so not later than 45 calendar days after the Administrator's mailing of the Class Notice (plus

an additional 14 calendar days for Class Members whose Class Notice was re-mailed).

8.7.3 Non-Participating Class Members have no right to object to any of the class action components of the Settlement.

8.7.4 Aggrieved Employee shall not have the right to object to the PAGA claims, and all Aggrieved Employees, including Non-Participating Class Members, shall be entitled to an Individual PAGA Payment.

8.8 Administrator Duties. The Administrator has a duty to perform or observe all tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

8.8.1 Website, Email Address and Toll-Free Number. The Administrator will establish and maintain and use an internet website to post information of interest to Class Members including the date, time and location for the Final Approval Hearing and copies of the Settlement Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Class Notice, the Motion for Final Approval, and the Final Approval and the Judgment. The Administrator will also maintain and monitor an email address and a toll-free telephone number to receive Class Member calls, faxes and emails.

8.8.2 Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not later than 5 court days after the expiration of the deadline for submitting Requests for Exclusion, the Administrator shall email a list to Class Counsel and Defense Counsel containing (a) the names and other identifying information of Class Members who have timely submitted valid Requests for Exclusion ("Exclusion List"); (b) the names and other identifying information of Class Members who have submitted invalid Requests for Exclusion; (c) copies of all Requests for Exclusion from Settlement submitted (whether valid or invalid).

8.8.3 Weekly Reports. The Administrator must, on a weekly basis, provide written reports to Class Counsel and Defense Counsel that, among other things, tally the number of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for Exclusion (whether valid or invalid) received, objections received, challenges to Workweeks and/or Pay Periods received and/or resolved, and checks mailed for Individual Class Payments and Individual PAGA Payments ("Weekly Report"). The Weekly Reports must include and provide the Administrator's assessment of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and objections received.

8.8.4 Workweek and/or Pay Period Challenges. The Administrator has the authority to address and make final decisions consistent with the terms of this

Agreement on all Class Member challenges over the calculation of Workweeks and/or Pay Periods. The Administrator's decision shall be final and not appealable or otherwise susceptible to challenge.

8.8.5 Administrator's Declaration. In advance of the filing of Plaintiff's Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its due diligence and compliance with all of its obligations under this Agreement, including, but not limited to, its mailing of Class Notice, the Class Notices returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the total number of Requests for Exclusion from Settlement it received (both valid or invalid), the number of written objections and attach the Exclusion List. The Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator's declaration(s) in Court.

8.8.6 Final Report by Settlement Administrator. Within 10 court days after the Administrator disburses all funds in the Gross Settlement Amount, the Administrator will provide Class Counsel and Defense Counsel with a final report detailing its disbursements by employee identification number only of all payments made under this Agreement. At least 15 court days before any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all payments required under this Agreement. Class Counsel is responsible for filing the Administrator's declaration in Court.

9. **ASI'S RIGHT TO WITHDRAW.** If the number of valid Requests for Exclusion identified in the Exclusion List exceeds five percent (5%) of the total of all Class Members, ASI may, but is not obligated, elect to withdraw from the Settlement. The Parties agree that, if ASI withdraws, the Settlement shall be void ab initio, have no force or effect whatsoever, and that neither Party will have any further obligation to perform under this Agreement; provided, however, ASI will remain responsible for paying all Settlement Administration Expenses incurred to that point. ASI must notify Class Counsel and the Court of its election to withdraw not later than seven calendar days after the Administrator sends the final Exclusion List to Defense Counsel; late elections will have no effect.
10. **MOTION FOR FINAL APPROVAL.** Not later than 16 court days before the calendared Final Approval Hearing, Plaintiff will file in Court a motion for final approval of the Settlement that includes a request for approval of the PAGA settlement under Labor Code section 2699, subd. (l), a Proposed Final Approval Order and a proposed Judgment (collectively "Motion for Final Approval"). Plaintiff shall provide drafts of these documents to Defense Counsel not later than seven days prior to filing the Motion for Final Approval for their review and comment. Class Counsel and Defense Counsel will expeditiously meet and confer in person or by telephone, and in good faith, to resolve any disagreements concerning the Motion for Final Approval.

- 10.1 Response to Objections. Each Party retains the right to respond to any objection raised by a Participating Class Member, including the right to file responsive documents in Court no later than five court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.
- 10.2 Duty to Cooperate. If the Court does not grant Final Approval or conditions Final Approval on any material change to the Settlement (including, but not limited to, the scope of release to be granted by Class Members), the Parties will expeditiously work together in good faith to address the Court's concerns by revising the Agreement as necessary to obtain Final Approval. The Court's decision to award less than the amounts requested for the Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Administrator Expenses Payment shall not constitute a material modification to the Agreement within the meaning of this paragraph.
- 10.3 Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.
- 10.4 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment reflected set forth in this Settlement, the Parties, their respective counsel, and all Participating Class Members who did not object to the Settlement as provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.
- 10.5 Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material modification of this Agreement (including, but not limited to, the scope of release to be granted by Class Members), this Agreement shall be null and void. The Parties shall nevertheless expeditiously work together in good faith to address the appellate court's concerns and to obtain Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administration Expenses reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify the Court's award of the Class Representative Service Payment or any payments to Class Counsel shall not constitute a material modification of the Judgment within the meaning of this paragraph, as long as the Gross Settlement Amount remains unchanged.

11. AMENDED JUDGMENT. If any amended judgment is required under Code of Civil Procedure section 384, the Parties will work together in good faith to jointly submit a proposed amended judgment.

12. ADDITIONAL PROVISIONS.

12.1 No Admission of Liability, Class Certification or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by ASI that any of the allegations in the Operative Complaint have merit or that ASI has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that ASI's defenses in the Action have merit. The Parties agree that class certification and representative treatment is for purposes of this Settlement only. If, for any reason the Court does not grant Preliminary Approval, Final Approval or enter Judgment, ASI reserves all available defenses to the claims in the Action, and Plaintiff reserves the right to contest ASI's defenses. The Settlement, this Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

12.2 Non-Waiver of Arbitration Agreements. In the event that the Court does not grant Preliminary Approval or Final Approval, nothing in this Agreement shall serve as a waiver of ASI's right to enforce any arbitration agreement it has with Aggrieved Employees or Class Members, specifically including Plaintiff.

12.3 Confidentiality Prior to Preliminary Approval. Plaintiff, Class Counsel, ASI, and Defense Counsel separately agree that, until the Motion for Preliminary Approval of Settlement is filed, they and each of them will not disclose, disseminate and/or publicize, or cause or permit another person to disclose, disseminate or publicize, any of the terms of the Agreement directly or indirectly, specifically or generally, to any person, corporation, association, government agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses, all of whom will be instructed to keep this Agreement confidential; (2) counsel in a related matter; (3) to the extent necessary to report income to appropriate taxing authorities; (4) in response to a court order or subpoena; or (5) in response to an inquiry or subpoena issued by a state or federal government agency. Each Party agrees to immediately notify each other Party of any judicial or agency order, inquiry, or subpoena seeking such information. Plaintiff, Class Counsel, ASI and Defense Counsel separately agree not to, directly or indirectly, initiate any conversation or other communication, before the filing of the Motion for Preliminary Approval, with any third party regarding this Agreement or the matters giving rise to this Agreement except to respond only that "the matter was resolved," or words to that effect. This paragraph does not restrict Class Counsel's communications with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.

12.4 No Solicitation. The Parties' respective counsel and Plaintiff agree that they will not solicit any Class Member to opt out of or object to the Settlement, or appeal from the

Judgment. Furthermore, ASI agrees to direct its managers and supervisors to not solicit any Class Members to opt out of or object to the Settlement, or appeal from the Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel's ability to communicate with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.

- 12.5 Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.
- 12.6 Attorney Authorization. Class Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiff and ASI, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.
- 12.7 Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of the mediator and/or the Court for resolution.
- 12.8 No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.
- 12.9 No Tax Advice. Neither Plaintiff, Class Counsel, ASI nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.
- 12.10 Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.
- 12.11 Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.

- 12.12 Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.
- 12.13 Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
- 12.14 Confidentiality. To the extent permitted by law, all agreements made, and orders entered during the Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.
- 12.15 Use and Return of Class Data. Information provided to Class Counsel pursuant to Cal. Evid. Code § 1152, and all copies and summaries of the Class Data provided to Class Counsel by ASI in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Following the date when the Court discharges the Administrator's obligation to provide a Declaration confirming the final pay out of all Settlement funds, and within 14 calendar days of written request by Defendant, Plaintiff shall destroy, all paper and electronic versions of Class Data received from ASI.
- 12.16 Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
- 12.17 Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.
- 12.18 Notice. All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

To Plaintiff:

Nicholas J. Ferraro (State Bar No. 306528)
Lauren N. Vega (State Bar No. 306525)
FERRARO VEGA EMPLOYMENT LAWYERS, INC.
3333 Camino del Rio South, Suite 300
San Diego, California 92108
Telephone: (619) 693-7727
Facsimile: (619) 350-6855
Email: nick@ferrarovega.com / lauren@ferrarovega.com

To ASI:

Jason W. Kearnaghan, Esq.
Tyler J. Johnson, Esq.
Dimiana Saad, Esq.
SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
333 South Hope Street, 43rd Floor
Los Angeles, CA 90071-1422
Telephone: (213) 620-1780
Facsimile: (213) 620-1398
jkearnaghan@sheppardmullin.com
tjohnson@sheppardmullin.com
dsaad@sheppardmullin.com

12.19 Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

12.20 Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.

On Behalf of Plaintiff:

Dated: 4/24/24, 2024



CAITLIN RAYMOND, Plaintiff

On Behalf of Defendant Alphatec Spine, Inc.

Dated: April 23.00, 2024



Name: Tyson E. Marshall
Title: General Counsel