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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

ROBIN JENNINGS, individually and on behalf of Aggrieved Employees pursuant to the California Private Attorneys General Act, Plaintiff, vs. MIZUHO ORTHOPEDIC SYSTEMS, INC. dba MIZUHO OSI, a Delaware Corporation; and DOES 1 through 25, inclusive, Defendants.	Case No.: 24CV070891 [*Assigned for all purposes to Hon. Victoria Kolakowski, Dept. 16*] **REPRESENTATIVE PAGA ACTION SETTLEMENT AGREEMENT** Complaint Filed: April 8, 2024 Trial Date: None Set

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This Representative PAGA Action Settlement Agreement ("Agreement") is made by and between Plaintiff Robin Jennings ("Plaintiff") and Mizuho Orthopedic Systems, Inc. dba Mizuho OSI ("Defendant") (Plaintiff and Defendant collectively, the "Parties" and individually as "Party") with regard to the lawsuit filed against Defendant in the case entitled *Robin Jennings v. Mizuho Orthopedic Systems, Inc. dba Mizuho OSI* in the Superior Court of the State of California in the County of Alameda, Case No. 24CV070891 (the "Civil Action").

I. THE SETTLEMENT AGREEMENT

1. Subject to the Court's approval pursuant to Section 2699 of the California Labor Code, Plaintiff and Defendant have agreed to settle the Civil Action upon the terms and conditions and for the consideration set forth in this Agreement. A summary of the terms of the settlement is as follows:

A. **Gross Settlement Amount**. Defendant shall pay a settlement amount of Five Hundred and Twenty Five Thousand Dollars and No Cents ($525,000.00), referred to herein as the Gross Settlement Amount, which shall be inclusive of the payment to the California Labor and Workforce Development Agency ("LWDA"), all PAGA Payment Shares, all attorneys' fees and expenses (including court costs) to be paid to PAGA Counsel, and Settlement Administration Costs. In no event shall Defendant be required to pay more than the Gross Settlement Amount under this Agreement, except pursuant to the Escalator Provision, as set forth herein. In no event shall any portion of the Gross Settlement Amount revert to Defendant. 100% of the payments to the PAGA Employees shall be allocated entirely as non-wage penalties and will be included on an IRS Form 1099, where required by law.

B. **"PAGA Employees" Definition**. The "PAGA Employees" definition includes all current and former hourly-paid and/or non-exempt employees who worked for Defendant in California during the PAGA Period (as defined below).

C. **Settlement Administration**. The Settlement Administrator shall be ILYM Group, Inc. From the Gross Settlement Amount, settlement administration costs in a reasonable amount shall be paid to the Settlement Administrator. Settlement Administration Costs are estimated to be approximately $6,000.00. If the actual costs of settlement administration are less than the amount approved by the Court, those funds shall be added to the Net PAGA Settlement Amount.

D. **Attorneys' Fees and Costs**. PAGA Counsel may seek attorneys' fees of up to thirty-five percent (35%) of the Gross Settlement Amount (i.e., $183,750 if the Gross Settlement Amount is $525,000), and actual litigation costs and expenses in the amount of Twenty-Five Thousand Dollars and Zero Cents ($25,000), to be paid out of the Gross Settlement Amount, which Defendant shall not oppose.

E. **Net PAGA Settlement Amount Allocation**. The amount of money remaining after Attorneys' Fees and Costs and Settlement Administration Costs are deducted from the Gross Settlement Amount, shall be allocated to penalties under the California Labor Code Private Attorneys General Act of 2004, California Labor Code Sections 2698, *et seq*. ("PAGA"), 75% of which shall be paid by the Settlement Administrator directly to the LWDA and the remaining 25% shall be distributed to the PAGA Employees on a pro rata basis as their PAGA Payment Shares.

F. **Unexpected Pay Periods/Escalator Provision**. Defendant represents that there are approximately 8,177 pay periods from January 31, 2023 through December 3, 2024. This is a material representation for Plaintiff to enter into the Agreement. Should the actual number of Qualifying PAGA Pay Periods during the PAGA Period increase beyond 10%, Defendant shall have the option of (a) increasing the Gross Settlement Amount by the percentage increase in the number of Qualifying PAGA Pay Periods worked by the PAGA Employees above 10% (e.g. if the number of Qualifying PAGA Pay Periods increases by 11%, the Gross Settlement Amount will increase by 1%); or (b) rolling back the PAGA Period to the date in which 8,994 Qualifying PAGA Pay Periods are met.

II. DEFINITIONS

Unless otherwise defined herein, capitalized terms used in this Agreement shall have the meanings set forth below:

2. **"Civil Action"** means the lawsuit filed against Defendant in the case styled *Robin*

Jennings v. Mizuho Orthopedic Systems, Inc. dba Mizuho OSI, in the Superior Court of the State of California in the County of Alameda, Case No. 24CV070891.

3. **"PAGA Counsel"** means Jonathan M. Genish, Karen I. Gold, Marissa A. Mayhood, Sara Pezeshkpour, Noam Y. Reiffman, and Alexandra Rose of Blackstone Law APC.

4. **"Complaint"** means the complaint filed on April 8, 2024 and the contemplated First Amended Complaint for Enforcement Action Under the Private Attorneys General Act, Cal. Labor Code §§ 2698 *Et Seq*., which shall be the operative Complaint. Plaintiff agrees to take any and all actions necessary to secure the filing of the First Amended Complaint in the Civil Action. The Parties agree that the First Amended Complaint shall be filed in advance of the motion for approval of Settlement.

5. **"Defendant's Counsel"** means Michele Haydel Gehrke, Lauren A. Ziegler and Brittany M. Hernandez of Reed Smith LLP.

6. **"Court"** means the Superior Court of the State of California in the County of Alameda.

7. **"Effective Date"** means the date upon which the following have occurred:

a) the Court has approved the Agreement;

b) the Court has entered its Order and Judgment in accordance with the terms herein; and

c) this Agreement and Order and Judgment have been submitted to the LWDA.

8. **"Gross Settlement Amount"** means the maximum amount that Defendant shall be required to pay under this Agreement, subject to Section 1(F) above.

9. **"LWDA"** means the California Labor and Workforce Development Agency.

10. **"LWDA Payment"** means the 75% of the Net PAGA Settlement Amount, which shall be paid by the Settlement Administrator directly to the LWDA.

11. **"Net PAGA Settlement Amount"** means the amount of money remaining after Attorneys' Fees and Costs and Settlement Administration Costs are deducted from the Gross Settlement Amount, to be divided between the LWDA and the PAGA Employees as required by Labor Code Section 2699(i), with 75% for the LWDA Payment and the remaining 25% shall be distributed to the PAGA Employees on a pro rata basis as their Qualifying PAGA Pay Periods.

12. **"Notice of PAGA Settlement"** means the form attached hereto as **Exhibit 1** or whichever form is approved by the Court that shall be mailed to the PAGA Employees with their PAGA Payment Shares.

13. **"Order and Judgment"** means the order and judgment to be entered by the Court upon granting approval of the Settlement and this Agreement as binding upon the Parties, and the State of California with respect to the PAGA Employees.

14. **"PAGA Employees"** or **"PAGA Employee"** means all current and former hourly-paid and/or non-exempt employees who worked for Defendant in California during the PAGA Period (*i.e.*, January 31, 2023 through March 1, 2025).

15. **"PAGA Letters"** means, collectively, the notices of alleged Labor Code violations that Plaintiff caused to be sent to the LWDA pursuant to Labor Code Section 2699.3(l) on January 31, 2024 and the separate, amended letter submitted on February 23, 2024, which added claims under Cal-OSHA, under LWDA Case Number LWDA-CM-1008428-24.

16. **"PAGA Payment Rate"** means the result of the 25% of the Net PAGA Settlement Amount divided by the total number of Qualifying PAGA Pay Periods for all PAGA Employees.

17. **"PAGA Payment Share"** means the amount that shall be paid to each PAGA Employee, as described below in paragraph 47.

18. **"PAGA Period"** means January 31, 2023 through March 1, 2025 subject to Section 1(F) above.

19. **"PAGA Released Claims"** are defined in paragraphs 58-59 below.

20. **"Parties"** means Plaintiff and Defendant.

21. **"Qualifying PAGA Pay Periods"** means the total number of pay periods each PAGA Employee actually worked for Defendant in California during the PAGA Period.

22. **"Released Parties"** means Mizuho Orthopedic Systems, Inc. dba Mizuho OSI and Mizuho America, Inc., and each of their respective present and former parents, affiliates, divisions and subsidiaries, acquired companies, and each of their respective present and former directors, officers, shareholders, agents, representatives, employees, partners, attorneys, insurers, predecessors, successors, assigns, affiliated companies, customers, and entities and any individual or entity that

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could be jointly liable with any of the foregoing.

23. **"Settlement"** means the final and complete disposition of the Civil Action and all related claims effectuated by this Agreement.

24. **"Settlement Administrator"** means ILYM Group, Inc.

25. **"Settlement Administration Costs"** means the reasonable costs and fees of administration of the Settlement to be paid to the Settlement Administrator from the Gross Settlement Amount, including, but not limited to: (i) printing and mailing and re-mailing (if necessary) of Notices of PAGA Settlement to PAGA Employees; (ii) preparing and submitting to PAGA Employees, and government entities all appropriate tax filings and forms; (iii) computing the amount of and distributing the Gross Settlement Amount, including the LWDA Payment and PAGA Payment Shares, and Attorneys' Fees, and Costs; (iv) establishing a Qualified Settlement Fund, as defined by the Internal Revenue Code; and (v) preparing and submitting filings required by law in connection with the payments required by the Settlement.

III. BACKGROUND

26. On January 31, 2024, counsel for Plaintiff sent a notice of alleged Labor Code violations purportedly caused by Defendant to the LWDA pursuant to Labor Code Section 2699.3(l).

27. On February 23, 2024, Plaintiff submitted a second notice of alleged Labor Code violations purportedly caused by Defendant to the LWDA pursuant to Labor Code Section 2699.3(l).

28. On April 8, 2024, Plaintiff filed a representative action under PAGA in the Superior Court of the State of California for the County of Alameda against Defendant, entitled *Robin Jennings v. Mizuho Orthopedic Systems, Inc. dba Mizuho OSI*, Case No. 24CV070891. In the complaint, Plaintiff alleged claims for penalties under PAGA based on the following alleged violations: (1) Violation of California Labor Code sections 1194, 1197 and 1197.1 (Unpaid Minimum Wage); (2) Violation of California Labor Code sections 510 and 1198 (Unpaid Overtime); (3) Violation of California Labor Code sections 226.7 and 512(a) (Meal Break Violations); (4) Violation of California Labor Code section 226.7 (Rest Break Violations); (5) Violation of California Labor Code sections 204 and 210 (Wages Not Timely Paid During Employment); (6) Violation of California Labor Code section 226(a) (Wage Statement Violations); (7) Violation of California Labor Code sections 201, 202

and 203 (Untimely Final Wages); (8) Violation of California Labor Code section 1174(d) (Failure to Keep Requisite Payroll Records); and (9) Violation of California Labor Code sections 2800 and 2802 (Failure to Reimburse Necessary Business Expenses).

29. On December 3, 2024, Plaintiff and Defendant engaged in mediation before Ms. Monique Ngo-Bonnici, Esq., an experienced mediator in this area of law. The mediation was successful following a mediator's proposal and a global settlement in principle was reached.

30. The Parties agree that Plaintiff will file a first amended complaint (i.e., the Complaint), which purports to add an additional claim for penalties under PAGA discussed at mediation based on alleged violations of the California Occupational Safety and Health Act of 1973 (Cal/OSHA).

31. Defendant denies each of the allegations of the Complaint and the PAGA Letters, denies that Defendant has any liability for the claims of Plaintiff or any allegedly aggrieved employee, and denies that Plaintiff or any allegedly aggrieved employee are entitled to any relief. Defendant denies that any penalties or any relief of any kind should be awarded for the claims alleged in the Civil Action, including for the PAGA Released Claims, and further denies that the Civil Action is appropriate for representative treatment for any purpose other than settling this Civil Action.

32. This Agreement is made in compromise of and embraces all claims against any of the Released Parties as enumerated in paragraphs 58-59 below, including, but not limited to, all claims that were alleged or could have been alleged in the PAGA Letters.

33. Because the settled matter is a PAGA representative action, this Agreement must receive approval by the Court. Accordingly, Plaintiff and Defendant enter into this Agreement on a conditional basis. Should the Court, or any other court taking jurisdiction of this matter, decline to approve all material aspects of the Agreement or make any ruling substantially altering the material terms of the Settlement, the Agreement shall be voidable and unenforceable as to Plaintiff and Defendant, at the option of any Party. In the event that the Effective Date, as defined herein, does not occur, this Agreement shall be deemed null and void *ab initio* and shall be of no force or effect whatsoever, and shall not be referred to or utilized for any purpose. Defendant denies all of Plaintiff's and all representative claims as to liability and damages. Defendant expressly reserves all rights to challenge any and all such claims and allegations upon all procedural and factual grounds, including

the assertion of all defenses, if the Effective Date of the Agreement does not occur. Likewise, Plaintiff expressly reserves all rights to pursue, amend, dismiss or otherwise dispose of the claims covered under the Settlement, including but not limited to seeking damages, restitution, fees, expenses, interest and/or any other monetary amount for the claims included in the Civil Action or for any other claims Plaintiff may have against Defendant, in the event the Effective Date of the Agreement does not occur. In the event the Agreement is terminated, Defendant shall have no obligation to make any payments to any Party, PAGA Employee, or attorney, except that the terminating Party shall pay the Settlement Administrator for services rendered up to the date the Settlement Administrator is notified that the Settlement has been terminated.

34. Plaintiff and PAGA Counsel have concluded, after taking into account the sharply disputed factual and legal issues involved in the Civil Action, the risks attending further prosecution, and the substantial benefits to be received pursuant to settlement as set forth in this Agreement, that settlement on the terms set forth herein is in the best interest of Plaintiff and the PAGA Employees, and is fair and reasonable.

35. Similarly, Defendant has concluded, after taking into account the sharply disputed factual and legal issues involved in the Civil Action, the risks and expense attending further litigation, and its desire to put the controversy to rest, that settlement on the terms set forth herein is in its best interest and is fair and reasonable.

36. Based on their own independent investigations and evaluations, the Parties and their counsel are of the opinion that settlement for the consideration and on the terms set forth in this Agreement is fair, reasonable, adequate, and is in the best interests of Plaintiff, the PAGA Employees, and Defendant in light of all known facts and circumstances and the risks inherent in litigation.

37. The purpose of this Agreement is to settle and compromise the Civil Action, and all PAGA Released Claims that Plaintiff, the PAGA Employees, and the State of California may have against the Released Parties.

38. This Settlement contemplates entry of an Order and Judgment approving of the Settlement. The Court shall retain jurisdiction over the Civil Action and Parties for purposes of enforcing the Settlement and resolving any disputes relating to the Settlement pursuant to Cal. Code

of Civ. Proc. § 664.6.

IV. SETTLEMENT APPROVAL AND IMPLEMENTATION PROCEDURE

A. Approval of Settlement

39. As soon as practicable, PAGA Counsel shall submit this Agreement to the Court for its settlement approval. The submission shall also include admissible evidence as may be required for the Court to determine that the Settlement is fair, adequate, and reasonable. The submission shall also include the Notice of PAGA Settlement in the form attached hereto as **Exhibit 1** and a proposed order granting approval of Settlement. PAGA Counsel shall provide their motion for approval of settlement and all supporting papers to Defendant's Counsel for review at least seven (7) days prior to filing. PAGA Counsel shall submit a copy of this Agreement to the LWDA prior to or at the same time that it is submitted to the Court for approval, in accordance with California Labor Code section 2699(l)(2).

40. The Parties agree to cooperate with each other to accomplish the terms of the Settlement, including, but not limited to, the timely execution of such documents and such other acts as may be reasonably necessary to implement the terms of the Settlement. The Parties to the Settlement shall use their best efforts, including all efforts contemplated by this Agreement and any other efforts that may become necessary by Court order, or otherwise, to effectuate the Settlement and the terms set forth herein.

B. No Right to Opt Out

41. Because the Settlement resolves claims and actions brought pursuant to PAGA by Plaintiff acting as a proxy and as a Private Attorney General of, and for, the State of California and the LWDA, the Parties agree that no PAGA Employee has the right to exclude themself or opt out from the Settlement. All PAGA Employees will be issued a PAGA Payment Share check and will be bound to the Settlement regardless of whether a PAGA Employee cashes a payment from the Settlement.

C. No Right to Objection to Settlement

42. Because the Settlement resolves claims and actions brought pursuant to PAGA by Plaintiff acting as a proxy and as a Private Attorney General of, and for, the State of California and

the LWDA, the Parties agree that no PAGA Employee has the right to object to the terms of the Settlement in their capacity as a PAGA Employee.

D. Sufficient Notice

43. The Parties agree that compliance with the procedures described in this Agreement constitutes due and sufficient notice to PAGA Employees of the Settlement and satisfies the requirements of due process, and that nothing else shall be required of Plaintiff, PAGA Counsel, Defendant, Defendant's Counsel, or the Settlement Administrator to provide notice to PAGA Employees of the Settlement.

E. Notice of PAGA Settlement by Mail

44. Defendant shall provide the full names, last known addresses, social security numbers, all to the extent available, and Qualifying PAGA Pay Periods for each PAGA Employee ("PAGA Data") to the Settlement Administrator within fourteen (14) calendar days after the Court enters and Defendant receives the Order and Judgment. PAGA Data shall only be used by the Settlement Administrator for the purpose of calculating PAGA Payment Shares and notifying PAGA Employees of the Settlement. PAGA Data shall not be disclosed to PAGA Counsel, Plaintiff, or any other PAGA Employee without the written consent of Defendant or by order of the Court. The Settlement Administrator shall be responsible for following all privacy laws and taking appropriate steps to ensure that PAGA Employees' personal information is safeguarded and protected from improper disclosure or use. The Settlement Administrator shall run the PAGA Data list through the National Change of Address database, and shall use the most recent address for each PAGA Employee – either from Defendant's records or the National Change of Address database – before mailing the PAGA Payment Shares. The Settlement Administrator shall also take reasonable steps to locate any PAGA Employee whose PAGA Payment Share is thereafter returned as undeliverable. PAGA Data shall be provided in a secure format to be determined by the Settlement Administrator and Defendant.

45. The Settlement Administrator shall, within fourteen (14) calendar days of the full funding of the Gross Settlement Amount, mail by First-Class United States mail the PAGA Payment Shares with a Notice of PAGA Settlement to each PAGA Employee, using the most recent address

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available to the Settlement Administrator for mail delivery. The Settlement Administrator shall perform a reasonable search for a new address for any returned mail without a forwarding address.

46. Any PAGA Payment Share returned to the Settlement Administrator as non-delivered within thirty (30) calendar days of the void date shall be re-mailed to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator shall promptly attempt to determine a correct address by the use of skip-tracing, or other type of automated search, using the name, address and/or Social Security Number of the PAGA Employee involved, and shall then perform a re-mailing to the PAGA Employee whose PAGA Payment Share was returned as non-delivered, assuming another mailing address is identified by the Settlement Administrator.

F. <u>PAGA Payment Procedures</u>

47. Payments under this Agreement shall be made by the Settlement Administrator as follows:

(i) PAGA Employees shall be paid exclusively from the Net PAGA Settlement Amount. Plaintiff and Defendant agree that the formula for allocating PAGA Payment Shares to PAGA Employees provided herein is reasonable and that the PAGA Payment Shares are designed to provide a fair settlement, despite the uncertainties of the amounts alleged to be owed to PAGA Employees and the calculation of them. Distribution amongst PAGA Employees based on Qualifying PAGA Pay Periods applicable to that PAGA Employee is fair and reasonable here. Plaintiff and Defendant have agreed that the distribution to each PAGA Employee shall be determined as set forth below. The PAGA Payment Share to each PAGA Employee shall be determined based on the number of Qualifying PAGA Pay Periods applicable to each PAGA Employee. 25% of the Net PAGA Settlement Amount shall be divided by the total number of Qualifying PAGA Pay Periods for all PAGA Employees. The result of this division shall yield the PAGA Payment Rate. The amount of each PAGA Employee's PAGA Payment Share shall be calculated by multiplying the number of Qualifying PAGA Pay Periods applicable to that PAGA Employee by the PAGA Payment Rate. Since this payment is exclusively for statutory and civil penalties, there will be no government required employee tax withholdings and employer payroll taxes deducted from each PAGA Payment Share.

(ii) Within thirty (30) calendar days after the Effective Date, Defendant shall transmit the Gross

Settlement Amount to the Settlement Administrator. Within fourteen (14) calendar days after the Settlement Administrator receives the Gross Settlement Amount, the Settlement Administrator shall transmit to PAGA Counsel the Attorneys' Fees and Costs approved by the Court, the LWDA Payment pursuant to PAGA, PAGA Payment Shares to each PAGA Employee, and the Settlement Administration Costs to itself.

48. It is expressly understood and agreed that the receipt of a PAGA Payment Share shall not entitle any PAGA Employee to compensation or benefits under any company bonus, contest, or other compensation or benefit plan or agreement in place during the applicable PAGA Period, nor shall it entitle any PAGA Employee to any increased retirement, 401(k) or matching benefits, or deferred compensation benefits. The Parties agree that any PAGA Payment Shares made to PAGA Employees under the terms of this Agreement shall not represent any modification of previously credited length of service or other eligibility criteria under any bonus plan, employee pension benefit plan, or employee welfare plan sponsored by any of the Released Parties, or to which any of the Released Parties are required to make contributions. Further, any PAGA Payment Shares made under this Agreement shall not be considered compensation in any year for purposes of determining eligibility for, or benefit accrual within, any employee pension benefit plan or employee welfare benefit plan sponsored by any of the Released Parties or to which any of the Released Parties are required to make contributions. It is the Parties' intent that the PAGA Payment Shares provided for in the Settlement are the sole payments to be made by Defendant to the PAGA Employees, and that the PAGA Employees are not entitled to any new or additional compensation or benefits as a result of having received the PAGA Payment Shares, notwithstanding any contrary terms in any agreement, contract, benefit or compensation plan document that might have been in effect during the applicable PAGA Period.

49. Any PAGA Payment Share that remains uncashed after one hundred and eighty (180) days of disbursement shall be void. The entire amount of each PAGA Employee's uncashed settlement check(s) shall be turned over to the California State Controller's Office Unclaimed Property Division in the name of the individual PAGA Employee(s) at issue and in the amount of their respective PAGA Payment Share. The Parties acknowledge that California Civil Procedure Code section 384 and the Doctrine of Cy Pres are not applicable to the Settlement because the terms of the Settlement expressly

provide for the disposition of the PAGA Payment Shares, whether claimed or unclaimed. None of the settlement funds will revert back to Defendant. Defendant shall not be liable for any additional amount due to this subsequent distribution.

G. <u>The Settlement Administrator</u>

50. The Settlement Administrator shall administer the Settlement, including, but not limited to: (i) printing and mailing and re-mailing (if necessary) of Notices of PAGA Settlement to PAGA Employees; (ii) preparing and submitting to PAGA Employees, and government entities all appropriate tax filings and forms; (iii) computing the amount of and distributing Gross Settlement Amount, including payment to LWDA and PAGA Payment Shares, and PAGA Counsel Attorneys' Fees and Costs; (iv) establishing a Qualified Settlement Fund, as defined by the Internal Revenue Code; and (v) preparing and submitting filings required by law in connection with the payments required by the Settlement.

51. Settlement Administration Costs in a reasonable amount shall be paid to the Settlement Administrator from the Gross Settlement Amount. Settlement Administration Costs are estimated to be approximately $6,000.00. If the actual costs of settlement administration is less than the amount approved by the Court, those funds shall be added to the Net PAGA Settlement Amount. All costs associated with settlement administration shall come out of the Gross Settlement Amount.

H. <u>Payment of PAGA Counsel Attorneys' Fees and Costs</u>

52. PAGA Counsel shall apply to the Court at the Settlement Approval Hearing for an award of attorneys' fees and costs not to exceed the amount of One Hundred Eighty-Three Thousand Seven Hundred Fifty Dollars and Zero Cents ($183,750), which is thirty-seven percent (35%), which shall be paid out of the Gross Settlement Amount. PAGA Counsel and Defendant agree that such awards of attorneys' fees and costs are reasonable under the circumstances. Nothing in this Agreement shall restrict Plaintiff's or PAGA Counsel's ability to appeal any decision by the Court to award less than the requested attorneys' fees and costs. Any order relating to the award of attorney's fees, costs, or any appeal from any order relating thereto or reversal or modification thereof, will not operate to terminate or cancel this Agreement. If the amount of the attorneys' fees, and/or costs awarded by the Court is less than the requested amounts, the difference shall serve to increase the Net PAGA Amount

to be distributed to PAGA Employees and the LWDA. Nothing in this Agreement will require Defendant to pay more than the Gross Settlement Amount under any circumstances, except pursuant to the Escalator Provision, as set forth herein.

I. Taxes and Withholding and Indemnification

53. The Settlement Administrator shall be responsible for ensuring that all tax obligations associated with the Settlement are timely paid to the appropriate governmental taxing authorities.

54. PAGA Payment Shares will be allocated entirely as non-wage penalties and will be included on an IRS Form 1099, when required by law.

55. Defendant and the other Released Parties shall not be required to provide any additional form of compensation to any PAGA Employee as a result of this allocation of PAGA Payment Shares. Each PAGA Employee and Plaintiff shall be responsible for remitting to state and/or federal taxing authorities any applicable taxes which may be owed on the portion of any PAGA Payment Share received pursuant to the Settlement, except as provided by this Settlement.

56. Each Party to this Agreement acknowledges and agrees that:

(i) No provision of this Agreement and no written communication or disclosure between or among the Parties or their attorneys and other advisers is or was intended to be, nor shall any such communication or disclosure constitute or be construed or be relied upon as, tax advice within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended);

(ii) Each Party (a) has relied exclusively upon their own independent legal and tax advisers for advice (including tax advice) in connection with this Agreement, (b) has not entered into this Agreement based upon the recommendation of any other Party or any attorney or advisor to any other Party, and (c) is not entitled to rely upon any communication or disclosure by any attorney or adviser to any other Party to avoid any tax penalty that may be imposed on them or it; and

(iii) No attorney or adviser to any other Party has imposed any limitation that protects the confidentiality of any such attorney's or adviser's tax strategies (regardless of whether such limitation is legally binding) upon disclosure by them of the tax treatment or tax structure of any transaction, including any transaction contemplated by this Agreement.

57. Each PAGA Employee, PAGA Counsel, and Plaintiff shall be responsible for remitting to state and/or federal taxing authorities any applicable taxes which may be owed on the portion of any payment received pursuant to this Agreement. The Settlement Administrator will be responsible for issuing to Plaintiff, PAGA Employees, and PAGA Counsel any 1099 or other tax forms as may be required by law for all amounts paid pursuant to the Settlement. The Settlement Administrator will also be responsible for forwarding all penalties to the appropriate government authorities.

V. PAGA RELEASED CLAIMS

58. Upon the Effective Date and full funding of the Gross Settlement Amount, Plaintiff and the State of California (including the LWDA) shall fully and finally release and discharge the Released Parties, and each of them, from the PAGA Released Claims. The release provided by the State of California (including the LWDA) to the Released Parties shall be binding on the PAGA Employees and preclude their initiating any PAGA action based on the claims released by the State of California through the Settlement.

59. The PAGA Released Claims with respect to the State of California and the LWDA, by and through Plaintiff as an agent and proxy of the LWDA, shall include any and all claims for civil penalties under PAGA based on the Labor Code violations expressly alleged in the Civil Action, or that could have been alleged against any of the Released Parties that arise from the facts alleged in the Civil Action and the underlying PAGA Letters. This includes, but may not be limited to, claims for penalties based upon failure to pay wages, including, but not limited to, overtime and minimum wages, failure to provide meal periods or to pay premiums in lieu thereof, failure to provide rest periods or to pay premiums in lieu thereof, failure to timely pay wages upon separation from employment, failure to timely pay wages during employment, failure to provide timely and accurate itemized wage statements, failure to maintain or provide records, failure to reimburse business expenses, claims for attorneys' fees, costs, and penalties, including but not limited to, claims for penalties based on alleged violations of Labor Code Sections 201-203, 204, 210, 218.5, 226, 226.3, 226.7, 510, 511, 512, 558, 1174(d), 1174.5, 1194, 1194.2, 1197-1198.5, 2800, 2802, 6400, 6401, 6402, and 6403, and any related

provisions, California Code of Regulations, Title 8, section 11000 *et seq.*, and/or the applicable IWC Wage Orders including *inter alia* Wage Orders 4-2001, 5-2001, and 9-2001, violations of the California Occupational Safety and Health Act of 1973 (Cal/OSHA), as well as all facts, theories, or claims for civil penalties that arise from the facts alleged in the PAGA Letters that would be considered administratively exhausted under applicable law by the PAGA Letters that Plaintiff sent to the LWDA. This release shall extend to all such claims accrued during the PAGA Period. No PAGA Employee may pursue the same representative PAGA claims released herein in any other action.

VI. LIMITATIONS ON USE OF THIS SETTLEMENT

A. No Admission

60. Neither the acceptance nor the performance by Defendant of the terms of this Agreement nor any of the related negotiations or proceedings are or shall be claimed to be, construed as, or deemed a precedent or an admission by Defendant or any of the Released Parties of the truth of any allegations in the Complaint or the PAGA Letters.

B. Non-Evidentiary Use

61. Defendant denies that it has failed to comply with the law in any respect, or has any liability to anyone based on the claims asserted in the Civil Action. Plaintiff expressly acknowledges that this Agreement is entered into for the purpose of compromising highly disputed claims and that nothing herein is an admission of liability, wrongdoing, or the propriety of class or representative treatment by Defendant or any of the Released Parties. Neither the Settlement nor any document prepared in connection with the Settlement may be admitted in any proceeding as an admission by Defendant or any of the Released Parties. Notwithstanding this paragraph, any and all provisions of this Agreement may be admitted in evidence and used in any proceeding to enforce the terms of this Agreement, or in defense of any claims released or barred by this Agreement.

C. Nullification

62. If the Court for any reason does not approve the Settlement, this Agreement shall be considered null and void and the Parties to this Agreement shall stand in the same position, without prejudice, as if the Settlement had been neither entered into nor filed with the Court.

63. Invalidation of any material portion of this Agreement shall invalidate this Agreement

in its entirety unless the Parties agree in writing that the remaining provisions shall remain in full force and effect.

VII. MISCELLANEOUS PROVISIONS

A. No Inducements

64. Plaintiff and Defendant acknowledge that they are entering into the Settlement as a free and voluntary act without duress or undue pressure or influence of any kind or nature whatsoever, and that neither Plaintiff nor Defendant have relied on any promises, representations or warranties regarding the subject matter hereof other than as set forth in this Agreement.

B. No Prior Assignment

65. The Parties represent, covenant, and warrant that they have not directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or rights herein released and discharged except as set forth herein.

C. Construction

66. The Parties agree that the terms and conditions of this Agreement are the result of lengthy, intensive arm's-length negotiations between the Parties and their counsel, and this Agreement shall not be construed in favor of or against any Party by reason of the extent to which any Party or her or its counsel participated in the drafting of this Agreement.

D. California Law

67. All terms of this Agreement and its exhibits shall be governed and interpreted by and according to the laws of the State of California, without giving effect to any conflict of law principles or choice of law principles.

E. Captions and Interpretations

68. Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Agreement or any provision hereof.

F. Incorporation of Exhibits

69. All exhibits to this Agreement are incorporated by reference and are a material part of

this Agreement. Any notice, order, judgment, or other exhibit that requires approval of the Court must be approved without material alteration from its current form in order for this Agreement to be enforceable.

G. Modification

70. This Agreement may not be changed, altered, or modified, except in a writing signed by the Parties, and approved by the Court. This Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by the Parties.

H. Reasonableness of Settlement

71. Plaintiff represents that this is a fair, reasonable, and adequate settlement and have arrived at this settlement through arms-length negotiations, taking into account all relevant factors, present and potential.

I. Integration Clause

72. This Agreement contains the entire agreement between the Parties relating to the Settlement and transaction contemplated hereby, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a party or such party's legal counsel, are merged herein. No rights hereunder may be waived except in writing.

J. Binding On Assigns

73. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, trustees, executors, administrators, successors and assigns.

K. No Prevailing Party

74. No Party shall be considered a prevailing party for any purpose, except in actions or proceedings brought to enforce this Agreement or any of its terms. In any action or proceeding brought to enforce this Agreement or any of its terms, the prevailing Party shall be entitled to recovery of its reasonable attorney fees and costs.

L. Counterparts

75. This Agreement, and any amendments hereto, may be executed in any number of counterparts, each of which when executed and delivered shall be deemed to be an original and all of

which taken together shall constitute but one and the same instrument. Fax and pdf signatures shall be as valid as original signatures.

M. Administration Costs if Settlement Fails

76. If the Settlement is not approved by the Court, voided or rescinded, any costs incurred by the Settlement Administrator shall be paid equally by the Parties (half by Plaintiff and/or PAGA Counsel and half by Defendant). In the event the Settlement Agreement is terminated by one Party, then that Party shall solely pay the Settlement Administrator for services rendered up to the date the Settlement Administrator is notified that the Settlement has been terminated.

N. Order and Judgment

77. Upon approval of the Settlement, an Order and Judgment shall be entered by the Court which shall, among other things:

(i) Grant approval to the Settlement, and order the Parties to carry out the provisions of this Agreement.

(ii) Adjudge that the LWDA with respect to the PAGA Employees are conclusively deemed to have released the PAGA Released Claims, as more specifically set forth above;

(iii) Prohibit and permanently enjoin each PAGA Employee and the LWDA from pursuing in any fashion against any of the Released Parties any and all of the PAGA Released Claims, as applicable; and

(iii) Reserve continuing jurisdiction as provided herein.

78. PAGA counsel shall submit a copy of the Court's Order and Judgment to the LWDA within ten (10) calendar days after entry of the Order and Judgment in accordance with the applicable provisions of PAGA. In the event that the Settlement is not approved by the Court, PAGA Counsel will make all required submissions to the LWDA in accordance with the applicable provision of PAGA. Plaintiff further agrees to submit to the LWDA a copy of the Court's Order and Judgment in the Civil Action and any other order in the Civil Action that either provides for or denies an award of civil penalties within ten (10) calendar days after entry of the judgment or order.

REED SMITH LLP
A limited liability partnership formed in the State of Delaware

O. Limitations on Disclosure

79. The Parties and their counsel agree that they will not issue any press releases, initiate any contact with the press, respond to any press inquiry, or have any communication with the press about the fact, amount, or terms of the Settlement. Unless they first obtain Defendant's express written consent, PAGA Counsel and Plaintiff shall not discuss, reveal, disclose, publicize, or promote the terms of the Settlement, or the negotiations leading to the Settlement, to any third party (including but not limited to the media, the legal community, or the public at large, including on PAGA Counsel's respective websites or otherwise). Nothing in this Agreement is intended to prevent Plaintiff or PAGA Counsel from disclosing or discussing the terms of the Settlement (i) with the Court, (ii) with the Settlement Administrator, or (iii) as otherwise required by law. Nothing herein will restrict PAGA Counsel from including publicly available information regarding the Settlement in future judicial submissions regarding PAGA Counsel's qualifications and experience. Furthermore, Plaintiff and PAGA Counsel will undertake any and all disclosures required to be made to the LWDA in conformity with PAGA.

80. This Agreement, the Settlement, and any proceedings or actions or negotiations in connection therewith shall be deemed settlement communications covered by California Evidence Code Sections 1115-1128, 1152-1154, Federal Rule of Evidence 408, and any other similar provisions or law, and shall not be construed as an admission of truth of any allegation or the validity of any cause of action or claim asserted or of any liability therein.

IN WITNESS WHEREOF, this Agreement is executed by the Parties and their duly authorized attorneys, as of the day and year herein set forth.

DATED: 07/11/2025

ROBIN JENNINGS

Signed by:
Steve Lamb
864B808DA33F437...

DATED: 7/21/2025 | 10:05:20 AM PDT

MIZUHO ORTHOPEDIC SYSTEMS, INC.

By: Steve Lamb

Title: President & COO

APPROVED AS TO FORM AND CONTENT:

Dated: 07/11/2025

BLACKSTONE LAW APC

By: ______________________

Jonathan M. Genish
Karen I. Gold
Sara Pezeshkpour
Noam Y. Reiffman
Marissa A. Mayhood
Alexandra Rose

Attorneys for Plaintiff

Dated: 07/22/2025

REED SMITH LLP

By: Michele Haydel Gehrke ____

Michele Haydel Gehrke
Brittany M. Hernandez
Attorneys for Defendant
MIZUHO ORTHOPEDIC SYSTEMS, INC.

EXHIBIT 1

[Mailing Date]

NOTICE OF PAGA SETTLEMENT

Re: ***Robin Jennings v. Mizuho Orthopedic Systems, Inc. dba Mizuho OSI***
Alameda County Superior Court Case No. 24CV070891

[Settlement Administrator's info]

Dear [Employee Name]

A court authorized this Notice. This is not a solicitation by a lawyer. You are not being sued.

You are receiving this Notice of PAGA Settlement ("Notice") because Mizuho Orthopedic Systems, Inc. dba Mizuho OSI's records indicate that you were an hourly-paid and/or non-exempt employee who worked in California during the time period from January 31, 2023 to March 1, 2025 ("PAGA Period").

A settlement (the "Settlement") has been reached between Plaintiff Robin Jennings ("Plaintiff") and Defendant Mizuho Orthopedic Systems, Inc. dba Mizuho OSI ("Defendant") in the representative action lawsuit entitled ***Robin Jennings v. Mizuho Orthopedic Systems, Inc. dba Mizuho OSI***, Alameda County Superior Court Case No. 24CV070891 (the "Civil Action"). The purpose of this Notice is to briefly describe the Civil Action, and to inform you of the payment you have received in connection with the Settlement.

On *****, the Court entered an order approving the Settlement and determined the Settlement is fair, adequate, and reasonable. The Settlement will resolve the PAGA Released Claims (described below), which includes all claims in the Civil Action.

The Court has approved the following "PAGA Employees" definition for settlement purposes only: All current and former hourly-paid and/or non-exempt employees who worked for Defendant in California during the PAGA Period (i.e., January 31, 2023 through March 1, 2025). PAGA Employees shall receive a payment under the Settlement. According to Defendant's records, you are a PAGA Employee.

What is this case about?

Plaintiff submitted letters to the LWDA and Defendant on January 31, 2024 and February 23, 2024 (together, the "PAGA Letters") providing notice of Defendant's alleged violations of the California Labor Code.

Plaintiff alleged a representative claim for penalties pursuant to the California Labor Code Private Attorney General Act of 2004, Labor Code Sections 2698, *et seq.* ("PAGA") against Defendant based on alleged violations for failure to pay minimum wages, failure to pay overtime wages, failure to provide meal periods, failure to provide rest periods, failure to timely pay wages during employment, failure to timely pay wages at termination, failure to provide accurate itemized wage statements, failure to keep requisite payroll records, failure to reimburse business expenses, and violations of the California Occupational Safety and Health Act of 1973 (Cal/OSHA). Plaintiff asserted these claims on behalf of the State of California and PAGA Employees. Plaintiff sought civil penalties, pre-and post-judgment interest, costs, and attorneys' fees.

Defendant denies all liability in the Civil Action and is confident that it has strong legal and factual defenses to these claims, but it recognizes the risks, distractions, and costs associated with litigation. Defendant contends that its conduct is and has been lawful at all times relevant and that Plaintiff's claims do not have merit and do not meet the requirements to maintain a representative action.

The Settlement is a compromise reached after good faith, arm's length negotiations between Plaintiff and Defendant (collectively, the "Parties"), through their attorneys, and is not an admission of liability on the part of Defendant. Both sides agree that in light of the risks and expenses associated with continued litigation, the Settlement is fair, adequate and reasonable.

The Court has not ruled on the merits of Plaintiff's claims or Defendant's defenses.

Who are the attorneys representing the Parties?

The attorneys representing the Parties in the Civil Action are:

PAGA Counsel
Karen I. Gold
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REED SMITH LLP
515 South Flower St., Suite 4300
Los Angeles, California 90071

Your PAGA Payment Share

The total Gross Settlement Amount paid by Defendant was $525,000.00. The "Net PAGA Settlement Amount" is the remainder of the Gross Settlement Amount after deducting Attorneys' Fees and Costs and Settlement Administration Costs, which is allocated to civil penalties under PAGA, of which the California Labor and Workforce Development Agent ("LWDA") was paid 75% (i.e., $*****) ("LWDA Payment") and the remaining 25% (i.e., $*****) paid to PAGA Employees.

According to Defendant's records, you are a PAGA Employee. You are receiving a payment under the Settlement of your pro rata share of the Net PAGA Settlement Amount ("PAGA Payment Share") The enclosed check is for your PAGA Payment Share. The calculation of your PAGA Payment Share is based on the pro rata share of 25% of the Net PAGA Settlement Amount based on the total number of Qualifying PAGA Pay Periods that you worked for Defendant in California during the PAGA Period. The Settlement Administrator has divided the 25% of the Net Settlement Amount by the total number of Qualifying PAGA to produce a PAGA Payment Rate and then multiplied your number of Qualifying PAGA Pay Periods by the PAGA Payment Rate.

Taxes will not be deducted from each PAGA Payment Share. Nothing in this Notice or the Settlement is intended to be tax advice. You should consult your own tax advisor for such advice in connection with the PAGA Payment Share.

As a PAGA Employee, you are automatically included in the Settlement and issued your PAGA Payment Share check. This means you are bound by the terms of the Settlement and the Judgment entered by the Court, including the release of the PAGA Released Claims described below. You will not have the opportunity to object or seek exclusion from the Settlement. You may deposit or cash the check without any further action on your part, and there is no need for you to contact the Settlement Administrator, the Parties, or the Court. Your check is valid for 180 days from the date of issuance. If your PAGA Payment Share settlement check remains uncashed after 180 days from issuance, the Settlement Administrator will cancel those checks and shall pay the funds represented by such un-redeemed checks to the California State Controller's Office, as unclaimed property, in your name.

What claims are being released by the Settlement?

Upon [the Effective Date and date of full funding of the Gross Settlement Amount], Plaintiff and the State of California (including the LWDA) with respect to the PAGA Employees, fully and finally released and discharged the Released Parties, and each of them, from the PAGA Released Claims during the PAGA Period. The release provided by the State of California to the Released Parties shall be binding on the PAGA Employees and preclude their initiating any PAGA action based on claims released by the State of California through the Settlement.

The "PAGA Released Claims" with respect to the State of California and the LWDA, by and through Plaintiff as an agent and proxy of the LWDA, shall include any and all claims for civil penalties under PAGA based on the Labor Code violations expressly alleged in the Civil Action , or that could have been alleged against any of the Released Parties that arise from the facts alleged in the Civil Actions and the underlying PAGA Letters. This includes, but may not be limited to, claims for penalties based upon failure to pay wages, including, but not limited to, overtime and minimum wages, failure to provide meal periods or to pay premiums in lieu thereof, failure to provide rest periods or to pay premiums in lieu thereof, failure to timely pay wages upon separation from employment, failure to timely pay wages during employment, failure to provide timely and accurate itemized wage statements, failure to maintain or provide records, failure to reimburse business expenses, claims for attorneys' fees, costs, and penalties, including but not limited to, claims for penalties based on alleged violations of Labor Code Sections 201-203, 204, 210, 218.5, 226, 226.3, 226.7, 510, 511, 512, 558, 1174(d), 1174.5, 1194, 1194.2, 1197-1198.5, 2800, 2802, 6400, 6401, 6402, and 6403, and any related provisions, California Code of Regulations, Title 8, section 11000 *et seq.*, and/or the applicable IWC Wage Orders including *inter alia* Wage Orders 4-2001, 5-2001, and 9-2001, violations of the California Occupational Safety and Health Act of 1973 (Cal/OSHA), as well as all facts, theories, or claims for civil penalties that arise from the facts alleged in the PAGA Letters that would be considered administratively exhausted under applicable law by the PAGA Letters that Plaintiff sent to the LWDA. This release shall extend to all such claims accrued during the PAGA Period. No PAGA Employee may pursue the same PAGA claims in any representative capacity that are released herein in any other action.

The "Released Parties" are defined as follows: Mizuho Orthopedic Systems, Inc. dba Mizuho OSI and Mizuho America, Inc., and each of their respective present and former parents, affiliates, divisions and subsidiaries, acquired companies, and each of their respective present and former directors, officers, shareholders, agents, representatives, employees, partners, attorneys, insurers, predecessors, successors, assigns, affiliated companies, customers, and entities and any individual or entity that could be jointly liable with any of the foregoing.

How can I get additional information?

If you have questions regarding the Settlement, you may contact the Settlement Administrator, ILYM Group, Inc. at [add phone number].

PLEASE DO NOT CONTACT THE COURT REGARDING THIS NOTICE OR THE SETTLEMENT.