

1 GAINES & GAINES, APLC
Kenneth S. Gaines (SBN 049045)
2 ken@gaineslawfirm.com
Daniel P. Gaines (SBN 251488)
3 daniel@gaineslawfirm.com
Alex P. Katofsky (SBN 202754)
4 alex@gaineslawfirm.com
Sepideh Ardestani (SBN 274259)
5 sepideh@gaineslawfirm.com
27200 Agoura Road, Suite 101
6 Calabasas, California 91301
Telephone: (818) 703-8985
7 Facsimile: (818) 703-8984

8 Attorneys for Plaintiff DIANA GARCIA,
individually and on behalf of all "aggrieved employees"

9 SEYFARTH SHAW LLP
10 Aaron R. Lubeley (SBN 199837)
alubeley@seyfarth.com
11 Meagan Sue O'Dell (SBN 280086)
modell@seyfarth.com
12 601 South Figueroa Street, Suite 3300
Los Angeles, California 90017-5793
13 Telephone: (213) 270-9600
Facsimile: (213) 270-9601

14 Attorneys for Defendant
15 SOUTHERN CALIFORNIA ORTHOPEDIC INSTITUTE,
L.P.

17 SUPERIOR COURT OF THE STATE OF CALIFORNIA
18 COUNTY OF LOS ANGELES - NORTHWEST

20 DIANA GARCIA, on behalf of herself and all
21 "aggrieved employees" pursuant to Labor Code
§ 2698 *et seq.*
22 Plaintiff,
23
24 v.
25 SOUTHERN CALIFORNIA ORTHOPEDIC
INSTITUTE, L.P., a California limited
26 partnership, and DOES I through 10, inclusive,
27 Defendants.

Case No. 19VECV00112

**SETTLEMENT AND RELEASE
AGREEMENT**

Trial Date:

1 Plaintiff Diana Garcia (“Class Representative”), individually, and on behalf of all members of
2 the Settlement Class (as defined herein), and Defendant Southern California Orthopedic Institute
3 (“Defendant”), hereby enter into this Settlement and Release Agreement (“Settlement” or “Settlement
4 Agreement”) as follows:

5 **I. DEFINITIONS**

6 As used in this Settlement, the following terms shall have the following meanings:

- 7 1. “Action” refers to the lawsuit entitled *Diana Garcia, on behalf of herself and all*
8 *“aggrieved employees” pursuant to Labor Code 2698 et seq. v. Southern California Orthopedic*
9 *Institute, L.P., a California limited partnership, and DOES 1 through 10, inclusive*, filed in the Superior
10 Court of the State of California for the County of Los Angeles on January 24, 2019, Case No.
11 19VECV00112.
- 12 2. “Class Counsel” refers to Gaines & Gaines, APLC.
- 13 3. “Class Period” refers to the period from June 13, 2014 through September 20, 2019.
- 14 4. “Class Member” refers to all persons encompassed within the Settlement Class.
- 15 5. “Defense Counsel” refers to Seyfarth Shaw LLP.
- 16 6. “Effective Date” of the Settlement shall mean the date the Superior Court enters an order
17 granting final approval of the Settlement if no timely objections are filed to the Settlement. If objections
18 are filed and overruled, and no appeal is taken of the final approval order, then the Effective Date will be
19 sixty-five (65) days after the trial court enters final approval. If an appeal is taken from the Court’s
20 overruling of objections to the Settlement, then the Effective Date will be five (5) days after the appeal
21 is withdrawn or after an appellate decision affirming the final approval decision became final. If a
22 petition for review is filed, the date of denial of the petition or the date the Judgment is affirmed
23 pursuant to such petition shall be the Effective Date. If the California Labor & Workforce Development
24 Agency (“LWDA”) has commenced an investigation or issued a Citation prior to the date that the
25 Judgment approving the Settlement is no longer appealable, the date the LWDA concludes its
26 investigation or resolves the Citation (whichever is later), or if the LWDA objects to the Settlement, the
27 date when the LWDA’s objection to the Settlement is resolved and no longer appealable, shall be the
28 Effective Date.

1 7. “Participating Settlement Class Members” refers to all Settlement Class Members who do
2 not timely opt out of the Settlement.

3 8. “Parties” collectively refers to the Class Representative and Defendant.

4 9. “Released Parties” refers to Defendant and all of its former or present parents,
5 subsidiaries, successors, predecessors, agents, affiliates, partners, officers, directors, employees,
6 insurers, directors, executors, attorneys, shareholders, profit sharing, savings, health, and other employee
7 benefit plans of any nature, the successors of such plans, and those plans’ respective current or former
8 trustees and administrators, agents, employees, fiduciaries, and the predecessors and successors, assigns,
9 and legal representatives of all such entities and individuals.

10 10. “Settlement Class” and “Settlement Class Members” refer to all current and former non-
11 exempt or hourly employees who worked for Defendant in the State of California at any time during the
12 Class Period.

13 11. “Workweek(s)” is any workweek as defined by Defendant’s policies during which a
14 Class Member worked for Defendant at least one day in California during the Class Period.

15 **II. RECITALS**

16 A. On or about January 24, 2019, Diana Garcia filed a Labor Code Private Attorneys
17 General Act (“PAGA”) action in Los Angeles County Superior Court, Case No. 19VECV00112, naming
18 Southern California Orthopedic Institute, L.P. as the defendant (“Action”). The PAGA action alleged an
19 entitlement to civil penalties under PAGA stemming from Defendant’s alleged failure to provide meal
20 periods; failure to authorize and permit rest periods; failure to pay all wages due upon termination of
21 employment; failure to provide accurate wage statements; and for civil penalties under PAGA. Prior
22 thereto, the Parties entered into agreements to toll the statute of limitations on Plaintiff’s claims from
23 June 13, 2018.

24 B. Concurrently with the Motion for Preliminary Approval of the Settlement, Plaintiff will
25 seek to amend the Complaint to add corresponding class claims (“Amended Action”) in the form
26 attached hereto as Ex B.

27 C. On or about April 10, 2018, Class Representative submitted a letter to the LWDA
28 alleging certain violations of the Labor Code and the Wage Order.

1 D. The Parties engaged in mediation with Tripper Ortman on September 9, 2019. With the
2 assistance of the mediator, the Parties reached a settlement, which included the material terms contained
3 in this Settlement Agreement.

4 E. Based on their investigation and evaluation of this case, Class Counsel has concluded that
5 the settlement described in this Settlement Agreement is fair, reasonable, and adequate and is in the best
6 interest of the Class in light of all known facts and circumstances, defenses asserted by Defendant,
7 adverse findings regarding liability, and numerous potential appellate issues.

8 F. Neither this Settlement Agreement, nor any document referred to or contemplated herein,
9 nor any action taken to carry out the terms of this Settlement, is, may be construed as, or may be used as,
10 an admission, concession, or indication by or against Defendant of evidence of any unlawful conduct,
11 fault, wrongdoing or liability whatsoever.

12 G. The Parties now desire to fully, finally, and forever settle, compromise, and discharge the
13 claims released in this Settlement.

14 **NOW, THEREFORE**, in consideration of the mutual covenants, promises, and conditions set
15 forth, the parties agree as follows:

16 **III. NON-ADMISSION OF LIABILITY**

17 A. By entering into this Settlement, Defendant, on behalf of itself and all Released Parties,
18 denies any liability for any of the claims in the Action or Amended Action as well as any potential or
19 unknown claims based on wage and hour violations under state or federal law.

20 B. Defendant specifically denies that it or any of the Released Parties has engaged in any
21 unlawful or wrongful conduct against the Class Representative or the Class.

22 C. Defendant further contends that, for purposes other than settlement, the Action is not
23 appropriate for class action treatment.

24 **IV. STIPULATION TO CLASS AND CONDITIONAL CERTIFICATION SOLELY FOR**
25 **PURPOSES OF THE SETTLEMENT**

26 A. This Agreement is contingent upon approval of class certification under California Code
27 of Civil Procedure Section 382 by the Court of the Class for settlement purposes only. Defendant does
28 not waive, and instead expressly reserves, its right to challenge the propriety of class certification,

1 collective action certification, or representative treatment for any other purpose should the Court not
2 approve the Settlement.

3 B. The Parties stipulate to class and conditional certification for purposes of the Settlement
4 only. If the Court does not grant Preliminary and Final Approval of the Settlement, the Parties do not
5 stipulate to class and conditional certification, and the Parties will resume litigation as if no settlement
6 had been reached.

7 C. Evidence of this limited stipulation for settlement purposes only will not be deemed
8 admissible for any other purpose in this or any other proceeding.

9 D. Defendant's position is that, for any purpose other than settling this Action, this matter is
10 not appropriate for class or collective action treatment and that evidence of this limited stipulation for
11 settlement purposes only will not be deemed admissible for any purpose in this or any other proceeding.
12 Defendant's position is that if this matter were to be litigated, class and conditional certification would
13 be inappropriate, *inter alia*, because individual issues predominate as to each of the claims alleged in the
14 Action.

15 **V. TERMS OF SETTLEMENT**

16 A. Gross Fund Value

17 1. Defendant shall pay a settlement payment in the total amount of \$925,000 (the
18 "Gross Fund Value"). The Gross Fund Value shall not exceed \$925,000 and shall include all payments
19 made to Participating Settlement Class Members for wages, penalties, interest, and liquidated damages;
20 attorneys' fees and costs to Class Counsel; costs of settlement administration; the Service Payment
21 Award to Plaintiff; and the PAGA Payment. In no event will Defendant be required to pay more than
22 the Gross Fund Value set forth in this paragraph, save for payment of the employer-side payroll taxes.
23 The Parties stipulate that beyond the Gross Fund Value and employer-side payroll taxes, Defendant shall
24 not owe any further monies to the Settlement Class or to the State of California based upon the claims
25 made in the Action or Amended Action.

26 B. PAGA Payment

27 1. Class Counsel shall request that the Court approve a PAGA Payment of an
28 amount equal to, and not to exceed, \$20,000.00 to cover any and all claims for civil penalties based on

1 the alleged violations in the Action and Amended Action and the alleged violations included in the letter
2 to the LWDA dated April 10, 2018. The PAGA Payment will be deducted from the Gross Fund Value.

3 2. Seventy-five percent (75%) (\$15,000.00) of the PAGA Payment shall be payable
4 to the LWDA as the LWDA's share of the settlement of civil penalties paid under this Settlement
5 pursuant to PAGA, and twenty-five percent (25%) of the PAGA Payment (\$5,000) will be allocated to
6 the Net Fund Value (as defined below) for distribution to the Participating Settlement Class Members.
7 Defendant will not oppose this request. This payment to the LWDA shall be paid out of the Gross Fund
8 Value.

9 3. If the Court approves only a lesser amount than that requested by Class Counsel
10 for the PAGA Payment, the other terms of the Settlement shall apply.

11 C. Class Counsel Payment of Attorneys' Fees and Costs

12 1. Class Counsel shall request that the Court approve an award of attorneys' fees in
13 an amount not to exceed \$308,333.33 and reimbursement of litigation costs in an amount not to exceed
14 \$25,000 subject to Court approval. Defendant will not oppose this request. Attorneys' fees and costs
15 shall be paid out of the Gross Fund Value.

16 2. The Court's approval of fees and costs requested by Class Counsel is not a
17 material term of the Settlement. If the Court does not approve or approves only a lesser amount than
18 that requested by Class Counsel for attorneys' fees or costs, the other terms of the Settlement shall still
19 apply. The Court's refusal to approve the attorneys' fees or costs award requested by Class Counsel
20 does not give Plaintiff or Class Counsel any basis to abrogate the Settlement.

21 D. Service Payment Award To Class Representative

22 1. Subject to Court approval, Defendant will not oppose the Class Representative's
23 request for the Service Payment Award in an amount not to exceed \$10,000.00 to be paid from the Gross
24 Fund Value, for her service as Class Representative, in addition to any payment she may otherwise be
25 entitled to receive as a Settlement Class Member ("Service Payment Award"). The Service Payment
26 Award shall be allocated as 1099 income, which shall not be subject to payroll taxes and withholdings
27 and will be reported on an IRS 1099 Form.

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1 2. Class Representative will be responsible for correctly characterizing this
2 compensation for tax purposes and for paying any taxes owing on said amount.

3 E. Settlement Administration Fees And Costs

4 1. The Parties have selected CPT Group, Inc. ("CPT"), to be the third-party
5 Settlement Administrator to disseminate the Notice of Class Action Settlement ("Class Notice" a draft of
6 which is attached hereto as "Exhibit A"), and to do, among others things set forth in this Agreement, the
7 formatting and printing of the Class Notice and other documents to be mailed to the Settlement Class
8 (including Spanish translations thereof), handling the Class Data, updating Settlement Class Members'
9 mailing addresses before the initial mailing of the Class Notice, calculating estimated Individual
10 Settlement Payments, declarations regarding mailing, and as may be required by the Court, providing
11 weekly status reports, resolving disputed claims, issuing Individual Settlement Payment checks, tax
12 reporting, voiding uncashed checks, handling uncashed checks, etc. The administration of the
13 Settlement is estimated to not exceed \$15,000.00.

14 F. Employer's Portion of Payroll Taxes

15 The Parties agree that the Employer Portion of Payroll Taxes (e.g., FICA, FUTA, etc.) on that
16 portion of the Individual Settlement Payments allocated to wages shall be paid separate from the Gross
17 Fund Value.

18 G. Net Fund Value

19 After deducting the portion of the PAGA Payment paid to the LWDA, the Court-approved sums
20 for the Class Representative Service Payment, Class Counsel's attorneys' fees and costs, and the
21 settlement administrator's fees and expenses from the Gross Fund Value, the remaining balance ("Net
22 Fund Value") will be distributed to Participating Settlement Class Members on a proportionate basis as
23 described below.

24 **VI. CLAIMS RELEASED BY THIS SETTLEMENT**

25 A. Claims Released By the Class and the Class Representative

26 1. Upon the final approval by the Court of this Settlement, and except as to the right
27 to enforce the terms and conditions of this Settlement, all Settlement Class Members who do not timely
28 opt out of the Settlement shall fully release the Released Parties from any and all claims, debts,

1 liabilities, demands, obligations, penalties, interest, wages, compensation, premium pay, guarantees,
2 costs, expenses, attorney's fees, damages, actions or causes of action of whatever kind or nature,
3 whether known or unknown, contingent or accrued, under any legal theory, which arose during
4 employment by Defendant in an hourly or non-exempt position in California during the Class Period and
5 arise out of the facts or allegations in the operative complaint, Action, and Amended Action, including
6 claims for any alleged unpaid meal and/or rest period premiums, inaccurate or incomplete wage
7 statements, failure to timely pay wages due upon separation, damages and penalties under the California
8 Labor Code related to the claims above, claims for restitution under Business & Professions Code
9 (including Section 17200 *et seq.*) related to the claims above, and PAGA penalties related to the claims
10 above. ("Released Claims").

11 2. Upon the final approval by the Court of this Settlement, subject to the occurrence
12 of the Effective Date, and except as to the right to enforce the terms and conditions this Settlement, all
13 Class Members who have not submitted a timely and valid request for exclusion shall fully release the
14 Released Parties from the Released Claims.

15 B. Additional Claims Released By Class Representative

16 In addition to the Released Claims, upon the final approval by the Court of this Settlement,
17 subject to the occurrence of the Effective Date, the Class Representative will generally release any and
18 all claims against the Released Parties. This general release of all claims includes any and all claims
19 arising from the employment relationship with the Released Parties, or the termination thereof,
20 including, without limitation, claims for discrimination, harassment, or retaliation pursuant to Title VII
21 of the Civil Rights Act of 1964, 42 U.S.C. Section 2000 *et seq.*, the California Fair Employment and
22 Housing Act, Cal. Gov't Code Section 12900 *et seq.*, or any claims for violation of public policy. For
23 the purpose of implementing a full and complete release and discharge of the Released Parties, Class
24 Representative expressly acknowledges that the release in this Paragraph is intended to include in its
25 effect, without limitation, all claims she did not know or suspect at the time of execution hereof,
26 regardless of whether the knowledge of such claims, or the facts upon which they might be based, would
27 materially have affected the settlement of this matter, and that the consideration given under this
28 Settlement is also for the release of those claims and contemplates the extinguishment of any such

1 claims. In furtherance of this Settlement, Class Representative expressly waives all rights provided by
2 California Civil Code section 1542, or other similar statutes that Class Representative may have against
3 any of the Released Parties. Section 1542 states:

4 A general release does not extend to claims which the creditor or releasing
5 party does not know or suspect to exist in his or her favor at the time of
6 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.

7 This general release and waiver of rights under California Civil Code Section 1542 shall include
8 any and all claims based on conduct or omissions that occurred at any time prior to the final approval of
9 this Settlement.

10 **VII. NOTICE TO SETTLEMENT CLASS MEMBERS**

11 A. Within twenty (20) business days of preliminary approval, Defendant shall provide the
12 Settlement Administrator with a list containing the names, employee identification numbers, last known
13 addresses, Workweeks, as calculated by the inclusive dates of active employment by Defendant in
14 California during the Class Period, and social security numbers of the Class Members ("Settlement
15 Class Data"). This information is being provided confidentially to the Settlement Administrator only,
16 and the Settlement Administrator shall treat the information as private and confidential and take all
17 necessary precautions to maintain the confidentiality of contact information of the Settlement Class.
18 The Settlement Administrator shall not share the confidential Settlement Class Data with any other Party
19 or counsel for any of the Parties. This information is to be used only to carry out the Settlement
20 Administrator's duties as specified in this Settlement.

21 B. The Settlement Administrator will send a Class Notice to each Settlement Class Member
22 by First Class U.S. Mail within ten (10) calendar days of receipt of the Settlement Class Data.

23 C. No claim form is required to receive a proportionate share of the Net Fund Value. The
24 Administrator will calculate and mail an Individual Settlement Payment to each Participating Settlement
25 Class Member.

26 D. To provide the best notice practicable, any Class Notice returned to the Settlement
27 Administrator as non-deliverable with an updated mailing address affixed shall be sent by First Class
28 U.S. Mail to the forwarding address affixed thereto. If a Class Notice is returned as undeliverable

1 without a forwarding address affixed thereto, the Settlement Administrator shall attempt to locate a
2 current mailing address for the Settlement Class Member by skip tracing and will mail the Class Notice
3 to the updated address identified. If no current address can be located, the Class Notice for that
4 individual will be deemed undeliverable.

5 E. On the remailing of Class Notices by the Settlement Administrator to an updated mailing
6 address found through skip-tracing, provided by Class Counsel or as provided by the Settlement Class
7 Member, the Settlement Administrator shall keep a record of the postmark mailing dates for such re-
8 mailed Class Notices, and record all undelivered Class Notices.

9 **VIII. COMPUTATION AND DISTRIBUTION OF NET FUND VALUE AND CLASS**

10 **COUNSEL PAYMENT**

11 **A. Deposit of Gross Fund Value**

12 1. The Settlement Administrator shall establish a Qualified Settlement Fund
13 pursuant to Section 468B(g) of the Internal Revenue Code for purposes of administering the Settlement.
14 The Settlement Administrator shall furnish the Qualified Settlement Fund with its own Employer ID
15 Number and calculate all settlement checks and payroll deductions and withholdings required under law
16 based on information that will be confidentially furnished by Defendant.

17 2. Within fourteen (14) calendar days after the Effective Date, Defendant shall
18 deposit the Gross Fund Value and all employer-side payroll taxes into the Qualified Settlement Fund.

19 **B. Formula For Calculating Individual Settlement Payments**

20 The portion of the Net Fund Value available to pay Individual Settlement Payments to
21 Participating Settlement Class Member shall be determined as follows:

22 1. The payment to each Participating Settlement Class Member will be based on the
23 number of Workweeks each Participating Settlement Class Member actually worked during the
24 Settlement Class Period based on their time records. Defendant's employment records shall be assumed
25 correct for purposes of calculating the number of Workweeks that each Participating Settlement Class
26 Member worked for Defendant and any payments under the Settlement absent evidence to the contrary.

27 2. In consideration for their release of claims arising under California Labor Code
28 sections 201 to 203, the Participating Settlement Class Members who are separated from employment

1 with Defendant as of the last day of the Class Period ("Terminated Participating Settlement Class
2 Members") will have their Workweeks increased by four (4) Workweeks.

3 3. The aggregate sum of the number of Workweeks by all Participating Settlement
4 Class Members will be referred to as "Total Workweeks."

5 4. Defendant's payroll records with respect to the hiring dates and termination dates
6 for each Settlement Class Member shall be determinative for purposes of calculating the Total
7 Workweeks and each Participating Settlement Class Member's share of the Net Fund Value absent proof
8 to the contrary.

9 5. The amount to be paid per Workweek by a Participating Settlement Class
10 Member will be calculated by dividing the value of the Net Fund Value by the Total Workweeks and
11 then multiplying that number by the individual Workweeks for each Participating Class Member.

12 C. Distribution of Net Fund Value to Participating Settlement Class Members

13 1. The settlement administrator shall distribute the Individual Settlement Payment
14 checks within twenty-five (25) calendar days after the Effective Date.

15 2. If any Individual Settlement Payment check remains uncashed after one hundred
16 twenty (120) days of mailing by the Settlement Administrator to the Class Member, such check(s) will
17 be voided by the Settlement Administrator. Thereafter, the funds represented by any uncashed or
18 undeliverable checks shall be distributed, subject to approval by the Court, to the California State
19 Controller's Unclaimed Property Fund.

20 3. The Settlement Administrator shall furnish its own Employer Identification
21 Number (or that of the QSF) and calculate all Individual Settlement Payment checks and payroll
22 deductions based on information that will be confidentially furnished by Defendant. The Settlement
23 Administrator will prepare all necessary tax reporting and documentation with respect to payments made
24 pursuant to this Agreement. The Settlement Administrator will provide the requisite IRS Forms 1099
25 and W2 to Participating Settlement Class Members together with the Individual Settlement Payment.
26 The tax documents shall reflect payment for the year in which payment is made pursuant to this
27 Settlement.

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1 4. Thirty percent (30%) of each Individual Settlement Payment shall be allocated to
2 wages under the California Labor Code, and subject to applicable payroll taxes and withholdings
3 required under federal or state law and will be reported on an IRS Form W-2. Seventy percent (70%) of
4 each Individual Settlement Payment (which includes the portion of the PAGA Payment that will be
5 distributed to Participating Settlement Class Members), shall be allocated to penalties (35%) and interest
6 (35%) and will be reported on an IRS Form 1099.

7 5. For the portion of the Individual Settlement Payment allocated to wages, the
8 Settlement Administrator shall be responsible for calculating and submitting the appropriate amount of
9 the employees' and employer's share of payroll taxes and withholdings to the appropriate state and
10 federal tax authorities.

11 6. None of the payments made pursuant to this Settlement will be considered for
12 purposes of determining eligibility for, vesting or participation in, calculation of, or contributions to any
13 welfare or benefit plans, including, without limitation, all plans, subject to ERISA. The Parties agree
14 that these payments do not represent any modification of any employee's previously-credited hours of
15 service or other eligibility criteria under any employee pension benefit plan, employee welfare benefit
16 plan, or other program or policy. These payments also will not be considered wages, compensation, or
17 annual earnings for benefits in any year for purposes of determining eligibility for, or benefit accrual
18 within, any employee pension benefit plan, employee welfare benefit plan, or other program or policy.

19 D. Class Counsel Payment and Service Payment Award

20 The Class Counsel Payment and Service Payment Award shall be distributed within twenty-five
21 (25) calendar days after the Effective Date.

22 E. Settlement Administration Payment

23 Within twenty-five (25) calendar days after the Effective Date, the Settlement Administrator
24 shall pay itself the Court-approved sum for payment of its fee for administering the Settlement pursuant
25 to its terms.

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1 **IX. OBJECTIONS AND OPTING OUT OF THE SETTLEMENT**

2 A. Objections To The Settlement

3 1. Participating Settlement Class Members desiring to object to the Settlement
4 should submit written objections to the Settlement using the procedures set forth in the Notice of Class
5 Action Settlement ("Class Notice") postmarked to the Settlement Administrator no later than 45
6 calendar days after the Class Notice of Settlement is first mailed.

7 2. Participating Settlement Class Members may also appear at the Final Fairness
8 Hearing to present any objections.

9 B. Requests To Be Excluded From The Settlement

10 1. Settlement Class Members who wish to exclude themselves from the Settlement
11 ("opt-out") may use the procedure set forth in the Class Notice. A request to opt-out of the Settlement
12 will be deemed to be timely if postmarked to the Settlement Administrator no later than 45 calendar
13 days after the Class Notice of Settlement is first mailed.

14 2. Class Members who timely submit a request for exclusion from the Settlement
15 may not also submit an objection to the Settlement as the Settlement no longer affects them.

16 C. Defendant's Right To Revoke Based On Opt-Out Rate

17 Notwithstanding any other provision of this Memorandum, Defendant shall retain the right, in
18 the exercise of its sole discretion, to nullify the Settlement by written notice to Class Counsel within ten
19 (10) calendar days after the 45- day deadline for Class Members to timely request exclusion if five (5)
20 percent or more of the Settlement Class Members timely opt out of this Settlement.

21 D. Plaintiff's Right to Revoke Based on Class Size Representation

22 Defendant represents and warrants that the Settlement Class includes no more than 935
23 members. Should the final Settlement Class include more than 935 members, Class Representative shall
24 retain the right, in the exercise of her sole discretion, to nullify the Settlement by written notice to
25 counsel for Defendant within ten (10) calendar days after she is first notified that the Settlement Class
26 includes more than 935 members.

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1 **X. SCHEDULE FOR SEEKING COURT APPROVAL AND FAIRNESS HEARING**

2 The following procedures for obtaining the Court's approval shall be implemented with respect
3 to the Settlement, notifying the Settlement Class, and processing all benefits provided under this
4 Settlement:

5 A. Stay Of All Litigation

6 Pending preliminary and final approval of the Settlement, the Parties agree that there will be a
7 stay of all litigation activity not reasonably necessary to submit this Settlement to the Court and seek
8 approval of the terms therein.

9 B. Request For Court Approval

10 Class Counsel will prepare and file a motion for preliminary approval, and share a draft of this
11 motion and the motion for final approval with Defense Counsel sufficiently prior to filing so that
12 Defense Counsel has time to provide Class Counsel with comments. Class Counsel shall seriously
13 consider in good faith Defense Counsel's comments prior to filing either motion.

14 C. Duties of the Parties Following Final Court Approval

15 At or before the motion for final approval of the Settlement, Class Counsel will submit a
16 [proposed] Final Order and Judgment that is mutually agreeable to the Parties approving the Settlement,
17 adjudicating the terms thereof to be fair, reasonable and adequate, directing consummation of all terms
18 and provisions in this Settlement and without affecting the finality of the Order Granting Final Approval
19 and Judgment, allowing the Court to retain jurisdiction of all matters relating to the interpretation,
20 administration, implementation, effectuation and enforcement of the Final Approval Order and the
21 Settlement Agreement.

22 **XI. MISCELLANEOUS PROVISIONS**

23 A. Tax Treatment And Tax Indemnification

24 Defendant, Class Counsel and Defense Counsel are not giving any tax advice in connection with
25 the Settlement or any payments to be made pursuant to this Settlement. Class Representative and
26 Participating Class Members will be responsible for correctly characterizing the Individual Settlement
27 Payments for tax purposes and paying taxes due, if any.

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B. Mutual Full Cooperation

1. Class Representative, Defendant, Class Counsel and Defense Counsel agree to fully cooperate with each other to accomplish the terms of this Settlement, including, but not limited to, execution of such documents and to take such other action as may reasonably be necessary to implement the terms herein. The Parties agree to use their best efforts and any other efforts that may become necessary by Order of the Court, or otherwise, to effectuate the terms of this Settlement.

C. Parties' Authority

The signatories hereto represent that they are fully authorized to enter into this Settlement and are fully authorized to bind the Class Representative, Settlement Class, and Defendant to all terms stated herein.

D. Binding Nature of the Settlement

1. This Settlement shall be binding upon, and inure to the benefit of, the successors or assigns of the Released Parties. Class Representative represents, covenants, and warrants that she has not directly or indirectly, assigned, transferred, or encumbered, any of the Released Claims.

2. This Settlement shall be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding the mediation confidentiality provisions that otherwise might apply under federal or state law. Notwithstanding the foregoing, this Settlement may not be admitted into evidence or used in any proceeding except an action, motion or proceeding to approve, interpret or enforce the terms of this Settlement.

3. Material amendments to this Settlement may be made only by a written instrument signed by Class Counsel, the Class Representative, Defense Counsel and Defendant. Class Representative and Defendant authorize their respective counsel to make any immaterial amendments or modifications to this agreement, including but not limited to formatting changes, typographic corrections and any amendments to the draft Class Notice documents attached hereto, by way of written instrument signed by Class Counsel and Defense Counsel on their respective client's behalf. No rights under this Settlement may be waived except in writing.

1 E. Joint Drafting of Settlement Documents

2 1. Class Counsel and Defense Counsel have arrived at this Settlement as a result of a
3 series of informed and arm's-length negotiations, taking into account all relevant factors, present and
4 potential.

5 2. This Settlement has been drafted jointly by Class Counsel and Defense Counsel
6 and, therefore, in any construction or interpretation of this Settlement, the same shall not be construed
7 against any of the Parties.

8 3. The Class Representative and Class Counsel agree that none of the documents
9 provided to them by Defendant shall be used for any purpose other than the prosecution and Settlement
10 of this Action.

11 F. Execution of the Settlement

12 This Settlement may be executed in one or more counterparts and by facsimile. All executed
13 copies of this Settlement and photocopies thereof shall have the same force and effect and shall be as
14 legally binding and enforceable as the original.

15 G. Continuing Jurisdiction

16 The Court shall retain jurisdiction over the implementation of this Settlement as well as any and
17 all matters arising out of, or related to, the implementation of this Settlement. The Court shall not have
18 jurisdiction to modify the terms of the Settlement without the consent of all of the Parties.

19 H. No Undue Publicity

20 Neither the Class Representative, Defendant, nor their respective counsel shall publicize, or
21 cause to be publicized, directly or indirectly, the discussions resulting in or the existence of this
22 Settlement or its terms, in any type of mass media, including, but not limited to, speeches, press
23 conferences, press releases, interviews, television or radio broadcasts, newspapers, messages on the
24 Internet, Facebook, Twitter or any other social media, or any website. Breach of this provision shall
25 entitle the non-breaching party, in the exercise of her or its sole discretion, to nullify the Settlement at
26 any time before final approval by the Court. Without limitation by the foregoing, the non-breaching
27 Party also may enforce this provision through an action for injunctive relief. The breaching party
28 waives any obligation by the non-breaching party to file a bond in connection with any such action.

1 Nothing herein precludes Class Representative or Class Counsel from communicating with Class
2 Members, the Court, or the LWDA about the terms of this Settlement or their rights and options with
3 respect thereto.

4 I. Disputes

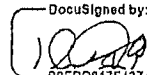
5 Any disputes arising out of or relating to this settlement that cannot be resolved by the parties
6 will be submitted to Tripper Ortman for resolution, including potential further mediation. If the Parties
7 cannot reach agreement, the Parties agree that Tripper Ortman is authorized to make a final and binding
8 decision to resolve the dispute. The Parties will split the costs of the mediator and all Parties will bear
9 their own attorneys' fees and other costs incurred. Nothing in this provision shall limit Class Counsel's
10 ability to seek any such attorneys' fees and other costs incurred as part of the Gross Fund Value herein.

11 J. Severability

12 Should any provision of this Settlement Agreement be determined by any court of competent
13 jurisdiction to be illegal, invalid, unenforceable, or fail to gain approval for any reason, Defendant or
14 Class Representative shall, in its/her sole discretion, have the option to declare the Settlement void in its
15 entirety upon notice to counsel for the adverse party.

16 Dated: February 5, 2020, 2020

**CLASS REPRESENTATIVE, on behalf of
herself and the Class**

DocuSigned by:


80F09617F4374F8
Diana Garcia

20 Dated: _____, 2020

**SOUTHERN CALIFORNIA ORTHOPEDIC
INSTITUTE, L.P.**

23 _____
24 By: _____

25 Its: _____

1 Nothing herein precludes Class Representative or Class Counsel from communicating with Class
2 Members, the Court, or the LWDA about the terms of this Settlement or their rights and options with
3 respect thereto.

4 I. Disputes

5 Any disputes arising out of or relating to this settlement that cannot be resolved by the parties
6 will be submitted to Tripper Ortman for resolution, including potential further mediation. If the Parties
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10 ability to seek any such attorneys' fees and other costs incurred as part of the Gross Fund Value herein.

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13 jurisdiction to be illegal, invalid, unenforceable, or fail to gain approval for any reason, Defendant or
14 Class Representative shall, in its/her sole discretion, have the option to declare the Settlement void in its
15 entirety upon notice to counsel for the adverse party.

16 Dated: _____, 2020

**CLASS REPRESENTATIVE, on behalf of
herself and the Class**


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Diana Garcia

20 Dated: February 5, 2020

**SOUTHERN CALIFORNIA ORTHOPEDIC
INSTITUTE, L.P.**

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By: Paul M. Simic, MD

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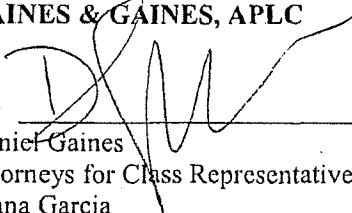
Its: Managing Director

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Dated: February 6, 2020

GAINES & GAINES, APLC

By: 
Daniel Gaines
Attorneys for Class Representative
Diana Garcia

Dated: February 10, 2020

SEYFARTH SHAW LLP

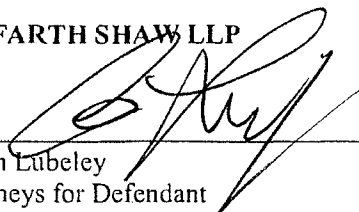
By: 
Aaron Lubeley
Attorneys for Defendant
Southern California Orthopedic Institute, L.P.

EXHIBIT A

SUPERIOR COURT OF THE STATE OF CALIFORNIA - COUNTY OF LOS ANGELES
Diana Garcia v. Southern California Orthopedic Institute, L.P.
Case No. 19VECV00112

NOTICE OF CLASS ACTION SETTLEMENT

«BarcodeString»
SIMID «SIMID»
ATTN: «FirstName» «LastName»
«Address1» «Address2»
«City» «Abbrev» «Zip»

PLEASE READ THIS NOTICE CAREFULLY: IT INFORMS YOU ABOUT YOUR LEGAL RIGHTS.

TO: ALL CURRENT AND FORMER NON-EXEMPT OR HOURLY EMPLOYEES WHO WORKED FOR SOUTHERN CALIFORNIA ORTHOPEDIC INSTITUTE, L.P. IN THE STATE OF CALIFORNIA AT ANY TIME DURING THE PERIOD FROM JUNE 13, 2014 TO SEPTEMBER 20, 2019 (“CLASS MEMBERS” OR “CLASS”).

1. Why Have I Received This Notice?

This Notice of Class Action Settlement (“Notice”) was sent to you to inform you that the Superior Court of the State of California - County of Los Angeles has preliminarily approved the terms of a class action settlement in a lawsuit filed against Southern California Orthopedic Institute, L.P. (“SCOI” or “Defendant”) by a former employee named Diana Garcia (“Plaintiff”), alleging denial of meal and rest periods, inaccurate wage statements, and failure to timely pay wages due upon separation, and seeking additional penalties and interest, including penalties pursuant to the California Labor Code’s Private Attorneys General Act of 2004 (“PAGA”) and restitution under the Business & Professions Code. Plaintiff’s lawsuit was brought on behalf of all current and former hourly-paid or non-exempt individuals employed by SCOI within the State of California at any time between June 13, 2014 and September 20, 2019. SCOI’s records indicate that you may be a Class Member. The settlement will resolve all Class Members’ Released Claims (described in Section 8, below) for the time period from June 13, 2014 through September 20, 2019.

A Preliminary Approval Hearing was held on _____, 2020, at _____, in the Los Angeles County Superior Court. On _____, the Court preliminarily approved the class action settlement reached by the Plaintiff and SCOI (the “Parties”) and directed that you and the other Class Members receive this Notice. The Court also preliminarily appointed Plaintiff as the representative of the Class (“Class Representative”).

The Court will hold a Final Approval Hearing concerning the proposed settlement on _____, 2020 at _____m., in Department T of the Los Angeles County Superior Court, the Hon. Shirley K. Watkins presiding, located at 6230 Slymar Avenue, Van Nuys, California, 91401.

2. What Is This Case About?

On January 24, 2019, Plaintiff Diana Garcia filed a lawsuit against Defendant, on behalf of herself and all “aggrieved employees” (the “Action”). On _____, 2020, Plaintiff filed a First Amended Complaint in the Action.

Plaintiff alleges in the Action that SCOI failed to provide meal and rest periods, provided employees with inaccurate wage statements, failed to timely pay final wages, and engaged in unfair business practices. Plaintiff claims that SCOI owed alleged unpaid meal and rest period premiums, as well as penalties and interest. Plaintiff also claims that SCOI owed civil penalties pursuant to PAGA, California Labor Code § 2698, *et seq.*

SCOI denies all of the allegations made by Plaintiff in the Action and denies that it is liable or owes damages or other compensation or remedies to anyone with respect to the alleged facts or causes of action asserted in the Action.

3. *Am I a Class Member?*

You are a Class Member if you worked as a non-exempt or hourly employee for SCOI in California at any time from June 13, 2014 to September 20, 2019.

4. *How Does This Class Action Settlement Work?*

In this lawsuit, Plaintiff sues on behalf of other hourly employees who allegedly have similar claims. For purposes of this settlement, Plaintiff and these other employees are deemed to comprise a "Class" and are "Class Members." The settlement of this lawsuit resolves the wage and hour claims of all Class Members, except for those who exclude themselves from the Class. Class Members who do not exclude themselves will be deemed "Settlement Class Members," and will be eligible to receive a payment under the settlement based on their number of Workweeks (as defined in Section 7 below) from June 13, 2014 through September 20, 2019 ("Settlement Share").

Persons who choose to exclude themselves from the Class will not receive a Settlement Share in this lawsuit, but they will preserve any claims they might have against SCOI that were asserted or that could have been asserted based on the allegations in the original and amended complaints in the Action.

The Court has not decided the Action in favor of Plaintiff or SCOI, or made any determination on the merits of the Action. Instead, both sides agreed to resolve the Action with no decision or admission of who is right or wrong. By agreeing to resolve the Action, all parties avoid the risks and cost of a trial, and the people affected will receive compensation quickly. Plaintiff and her attorneys think the settlement is in the best interests of the Class. SCOI denies the allegations of wrongdoing and violations of law alleged and further denies any liability whatsoever to Plaintiff or the Class. SCOI is settling the Action as a compromise.

The Court file has the Settlement Agreement and Release of Claims ("Settlement Agreement") and other papers in this case, which are available for your review during the Court's normal hours of operation.

The Court must review the terms of the settlement and make a final determination as to whether it is fair, adequate and reasonable. A hearing will be held ("Final Approval Hearing"), at which time the Court will decide these issues. See Section 13 below for more information.

5. *What Are My Options?*

The purpose of this Notice is to inform you of the proposed settlement and of your options. Each option has its consequences, which you should understand before making your decision. Your rights regarding each option, and the steps you must take to select each option, are explained below.

STAY IN THE CLASS: **If you do not request to be excluded from the Settlement Class, you will remain a member of the Settlement Class, and if the Court grants final approval of the settlement, you will receive a Settlement Share based on the number of weeks you worked for SCOI as a non-exempt or hourly-paid employee within the State of California during the time period from June 13, 2014 through September 20, 2019 ("Workweeks").** In exchange, you give up the right to sue SCOI for the Released Claims, which are defined in Section 8, below. To ensure you receive your Settlement Share, all you need to do is keep the Settlement Administrator informed of your current mailing address. If the Court grants final approval of the Settlement, the Administrator will mail your check to the address on file for you.

ASK TO BE EXCLUDED: **If you ask to be excluded or "opt out" of the Settlement Class, if the Court grants final approval of the settlement, you will not receive payment under the settlement, but you will retain any rights you might have to sue SCOI for the claims resolved through this settlement. YOU CANNOT ASK TO BE EXCLUDED AND STILL RECEIVE A SETTLEMENT SHARE.**

OBJECT: **You may object to the proposed settlement.** Only Class Members who do not request to be excluded from the settlement (*i.e.*, Settlement Class Members) may

object to the settlement. If your objection is overruled by the Court, you will still receive a Settlement Share, and you will be bound by the terms of this settlement.

6. What Does the Settlement Provide?

Under the proposed settlement, SCOI will pay \$925,000.00 to fully and finally resolve all claims in the Action (the "Gross Fund Value"). The amount to be distributed to Class Members who do not exclude themselves from the settlement (the "Net Fund Value") will be the Gross Fund Value, minus the following amounts:

(a) Settlement Administration Costs, which shall not exceed \$15,000.00; (b) enhancement payment to Plaintiff Diana Garcia not to exceed \$10,000.00 for her work and efforts in prosecuting this case; (c) Class Counsel's attorney's fees not to exceed \$308,333.33; (d) reimbursement of Class Counsel's actual litigation costs and expenses in an amount not to exceed \$25,000.00; and (e) payment of \$15,000.00 to the Labor and Workforce Development Agency for its share of the penalties under the PAGA ("LWDA Payment"). **The attorneys' fees, litigation costs and expenses, enhancement payment, Settlement Administration Costs, and LWDA Payment are all subject to Court approval.**

7. How Much Will My Settlement Share Be?

Each Class Member's Settlement Share shall be calculated based upon his or her "Workweeks," or the total number of weeks he or she worked at least one day in a non-exempt or hourly position for SCOI in California at any time from June 13, 2014, through September 20, 2019. In consideration for their release of claims arising under California Labor Code sections 201 to 203, the Class Members who were separated from employment with Defendant through September 20, 2019, will have their Workweeks increased by four (4) Workweeks.

To determine each Participating Class Member's Individual Settlement Payment, the Settlement Administrator shall divide the Net Fund Value by the total number of Workweeks for all Participating Class Members resulting in a value for each week worked by the Participating Class Members during the Class Period ("Workweek Value"). The Settlement Administrator shall then take the number of Workweeks for each Participating Class Member and multiply it by the Workweek Value. This calculation yields the amount of the Participating Class Member's "Individual Settlement Award."

Each Settlement Share will be allocated as follows for tax purposes: 30% as wages, to be reported on an IRS W-2, and which will be reduced for the Class Member's share of taxes and withholdings; and 70% as interest and penalties, which portion shall be reported on an IRS Form 1099, and which will not be subject to reduction for taxes and withholdings.

Based on Defendant's records, you are credited with [] Workweeks between June 13, 2014 and September 20, 2019, and your Settlement Share based on these Workweeks is approximately \$____. This amount is subject to change based on the final order of the Court. To challenge your Workweeks, you must send a letter to the Settlement Administrator, postmarked no later than [Response Deadline], at the following address: [Administrator's Address]. It is recommended that you provide documentation to support your challenge.

None of the Parties or attorneys makes any representations concerning the tax consequences of this Settlement or your participation in it. Class Members should consult with their own tax advisors concerning the tax consequences of the Settlement. Class Counsel is unable to offer advice concerning the state or federal tax consequences of payments to any Class Member. Settlement checks will remain valid for 120 days from issuance. If a settlement check remains uncashed after 120 days, the value of the uncashed check will be distributed to the California State Controller's Unclaimed Property Fund. In such event, the Class Member will remain bound by the terms of the Settlement and all Court orders.

8. How Does This Settlement Affect My Rights?

If you do not exclude yourself from ("opt out of") the settlement, and the settlement is approved by the Court, you will release the claims resolved by the settlement. This means you will not be able to sue, continue to sue,

or be part of any other lawsuit against SCOI that involves the same legal claims as those resolved through this settlement. Specifically, you will be giving up or “releasing” the “Released Claims” described below:

Released Claims: Upon the final approval by the Court of this Settlement, and except as to the right to enforce the terms and conditions of this Settlement, all Settlement Class Members who do not timely opt out of the Settlement shall fully release the Released Parties (defined as Defendant and all of its former or present parents, subsidiaries, successors, predecessors, agents, affiliates, partners, officers, directors, employees, insurers, directors, executors, attorneys, shareholders, profit sharing, savings, health, and other employee benefit plans of any nature, the successors of such plans, and those plans’ respective current or former trustees and administrators, agents, employees, fiduciaries, and the predecessors and successors, assigns, and legal representatives of all such entities and individuals) from any and all claims, debts, liabilities, demands, obligations, penalties, interest, wages, compensation, premium pay, guarantees, costs, expenses, attorney’s fees, damages, actions or causes of action of whatever kind or nature, whether known or unknown, contingent or accrued, under any legal theory, which arose during employment by Defendant in an hourly or non-exempt position in California during the Class Period (June 13, 2014 through September 20, 2019) and arise out of the facts or allegations in the operative complaint, Action, and Amended Action, including claims for any alleged unpaid meal and/or rest period premiums, inaccurate or incomplete wage statements, failure to timely pay wages due upon separation, damages and penalties under the California Labor Code related to the claims above, claims for restitution under Business & Professions Code (including Section 17200 *et seq.*) related to the claims above, and PAGA penalties related to the claims above.

9. How Do I Opt Out or Exclude Myself From This Settlement?

To exclude yourself from the settlement, you must send a written request to be excluded from the settlement (“Opt Out”) to the Settlement Administrator, postmarked no later than [Response Deadline], at the following address: [Administrator’s Address].

To be valid, your Opt Out must include all of the following information: (1) your name, current address, phone number and last four digits of your Social Security number; (2) your signature, or the signature of a lawful representative; (3) the name of the case (the case name is *Diana Garcia v. Southern California Orthopedic Institute, L.P.*); and (4) a clear statement that you wish to be excluded from the settlement.

If you send an Opt Out to the Settlement Administrator which complies with the above requirements, you will not be a member of the Settlement Class, you will not participate in this settlement, and you will receive no benefit from this settlement. By opting out of the Settlement Class, you will retain whatever rights or claims you may have against SCOI, and you will be free to pursue them, at your own cost, if you choose to do so.

10. How Do I Object to The Settlement?

If you are a member of the Class who does not opt out of the Settlement Class, you may object to the settlement or any aspect of the settlement.

You can ask the Court to deny approval of the settlement by filing an objection. You cannot ask the Court to order a different settlement; the Court can only approve or reject the settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue. If that is what you want to happen, you must object.

Any objection to the proposed settlement must be in writing. If you file a timely written objection, you may, but are not required to, appear at the Final Approval Hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for hiring and paying that attorney. All written objections and supporting papers must: (a) contain your full name and current address; (b) clearly identify the case name and number (*Diana Garcia v. Southern California Orthopedic Institute, L.P.*, Case Number 19VECV00112), (c) contain a statement that you wish to object to the settlement and a clear statement of the grounds for your objection; (d) be submitted to the Court by filing them in person at the Los Angeles County Superior Court located at 6230 Sylmar Avenue, Van Nuys, California 91401, (e) be mailed to the Settlement Administrator at [Administrator’s Address], and (f) be filed or postmarked on or before [Response Deadline].

Additionally, if you wish to be heard at the time of the Final Approval Hearing, your objection must also clearly state the intention to appear at the Final Approval Hearing.

Objecting to the settlement will not remove you from the Settlement Class. A Settlement Class Member who submits an objection remains bound by the settlement. To remove yourself from the Settlement Class, you must opt out of the settlement by following the instructions in Section 9, above. If you opt out of the settlement, you may not object to the settlement.

11. Who Are the Attorneys Representing the Parties?

Attorneys for Plaintiff and the Settlement Class

GAINES & GAINES, APLC
Kenneth S. Gaines
Daniel P. Gaines
Alex P. Katofsky
Sepideh Ardestani
27200 Agoura Road., Suite 101
Calabasas, California 91301

Attorneys for SCOI

SEYFARTH SHAW LLP
Aaron R. Lubeley
Meagan S. O'Dell
601 South Figueroa Street, Suite 3300
Los Angeles, California 90017

The Court has appointed the law firm of Gaines & Gaines, APLC to represent the Settlement Class. This law firm is referred to as "Class Counsel."

You do not need to hire your own attorney because Class Counsel is working on your behalf. But, if you want your own attorney, you may hire one at your own cost.

12. How Will Class Counsel and the Class Representatives Be Paid?

Class Counsel will be paid from the Gross Fund Value. Class Counsel will ask for up to \$308,333.33 of the Gross Fund Value as attorneys' fees and for reimbursement of actual litigation costs and expenses in an amount not to exceed \$25,000.00. The actual amounts awarded shall be determined by the Court.

Class Counsel will also request that the Court approve an enhancement payment to the Class Representative of up to \$10,000.00 to be paid from the Gross Fund Value, for her service on behalf of the Class.

13. Notice of Hearing on Final Approval and Objections to Class Action Settlement

You are hereby notified that a Final Approval Hearing will be held on _____, 2020 at _____.m., in Department T of the Los Angeles County Superior Court, the Hon. Shirley K. Watkins presiding, located at 6230 Slymar Avenue, Van Nuys, California, 91401, to determine whether the proposed Settlement is fair, reasonable, and adequate, and should be finally approved by the Court. The Court may change the date and time of the Final Approval Hearing without further notice to the Class Members. Class Members are advised to check the Court's Online Case Access site to confirm that the date has not been changed.

If final approval is granted by the Court, the Court will enter judgment pursuant to the Settlement, and all Class Members who have not requested exclusion from the Settlement Class will be deemed to have waived and released the Released Claims against the Released Parties, as defined in Section 8, above.

14. How Do I Get More Information?

This Notice summarizes the Action and the basic terms of the Settlement. More details are in the Settlement Agreement. You may request a copy of the Settlement Agreement from Class Counsel, at the address and telephone number listed above. If you have questions regarding the Settlement, you may contact the Settlement Administrator at XXX-XXXX.

PLEASE DO NOT TELEPHONE THE COURT OR CLERK'S OFFICE FOR INFORMATION ABOUT THIS SETTLEMENT.

EXHIBIT B

1 KENNETH S. GAINES, ESQ. SBN 049045
ken@gaineslawfirm.com
2 DANIEL F. GAINES, ESQ. SBN 251488
daniel@gaineslawfirm.com
3 ALEX P. KATOFSKY, ESQ. SBN 202754
alex@gaineslawfirm.com
4 EVAN S. GAINES, ESQ. SBN 287668
evan@gaineslawfirm.com
5 **GAINES & GAINES, APLC**
27200 Agoura Rd., Suite 101
6 Calabasas, CA 91301
Telephone: (818) 703-8985
7 Facsimile: (818) 703-8984

8 Attorneys for Plaintiff Diana Garcia,
individually and on behalf of all similarly situated individuals
9

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF LOS ANGELES**

12 DIANA GARCIA, on behalf of herself and all
13 "aggrieved employees" pursuant to Labor
Code § 2698 *et seq.*,

14 Plaintiffs,

15 v.

16 SOUTHERN CALIFORNIA ORTHOPEDIC
17 INSTITUTE, L.P. a California Limited
Partnership, and DOES 1 through 10,
18 inclusive,

19 Defendants.

CASE NO: 19VECV00112

*Assigned to the Hon. Shirley K. Watkins,
Department T*

CLASS ACTION

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT FOR:**

1. **FAILURE TO PROVIDE REST PERIODS OR COMPENSATION IN LIEU THEREOF (LABOR CODE § 226.7; IWC WAGE ORDER 4-2001)**
2. **FAILURE TO PROVIDE MEAL PERIODS OR COMPENSATION IN LIEU THEREOF (LABOR CODE §§ 226.7 AND 512; IWC WAGE ORDER 4-2001)**
3. **KNOWING AND INTENTIONAL FAILURE TO COMPLY WITH ITEMIZED EMPLOYEE WAGE STATEMENT PROVISIONS (LABOR CODE § 226(a), (e))**
4. **FAILURE TO PAY WAGES DUE AT SEPARATION OF EMPLOYMENT (LABOR CODE §§ 201-203)**
5. **VIOLATION OF BUSINESS AND PROFESSIONS CODE § 17200**

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**6. PENALTIES PURSUANT TO LABOR
CODE § 2699(f) FOR VIOLATIONS OF
LABOR CODE §§ 201-202, 226(a), 226.7,
AND 512**

DEMAND FOR JURY TRIAL

Complaint Filed: January 24, 2019

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Plaintiff DIANA GARCIA (“Plaintiff”), individually and on behalf of all similarly situated individuals (the “Class” or “Plaintiff Class”), on behalf of the general public, and as an “aggrieved employee” under the Labor Code Private Attorneys General Act of 2004, complains of SOUTHERN CALIFORNIA ORTHOPEDIC INSTITUTE, L.P., a California limited partnership, and/or any subsidiaries or affiliated companies (hereinafter referred to as “Defendants”), as follows

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I.

INTRODUCTION AND FACTUAL BACKGROUND

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1. This is a Class Action and Representative Action, pursuant to Code of Civil Procedure § 382 and Labor Code § 2698 *et seq.*, on behalf of Plaintiff and certain individuals who currently work or formerly worked for Defendants within the State of California.

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2. From the date at least four (4) years prior to the filing of this Action and continuing to the present (the “liability period”), Defendants have had a consistent policy of failing to provide legally compliant meal and rest periods or compensation in lieu thereof to Class Members (as defined below); failing to provide accurately itemized wage statements to Class Members; and failing to timely pay wages upon separation of employment to Class Members.

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3. Plaintiff, on behalf of himself and members of the Class, brings this action pursuant to Labor Code §§ 201-203, 226(a), 226.7, and 512, seeking compensation for all unpaid wages, civil and statutory penalties, injunctive and other equitable relief, and reasonable attorneys’ fees and costs.

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4. Plaintiff, on behalf of himself and members of the Class and pursuant to Business & Professions Code §§ 17200-17208, also seeks injunctive relief, restitution, and disgorgement of all benefits Defendants enjoyed from their failure to pay all wages to Class Members.

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1 therefore sues Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff is
2 informed and believes, and based thereon alleges, that each of the Defendants designated herein as a
3 DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will
4 seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants
5 designated hereinafter as DOES when such identities become known.

6 12. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted
7 in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme,
8 business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally
9 attributable to the other Defendants.

10 13. The Defendants named herein as DOE 1 through DOE 10 are and were persons acting
11 on behalf of, or acting jointly with, Defendants, who violated, or caused to be violated, one or more
12 provisions of the California Labor Code as alleged herein.

13 **IV.**

14 **CLASS ACTION ALLEGATIONS**

15 14. Plaintiff brings this action on behalf of himself and all others similarly situated as a
16 Class Action pursuant to § 382 of the Code of Civil Procedure. Plaintiff seeks to represent the
17 following class composed of and defined as follows (hereinafter, "Class Members"):

18 **THE CLASS**

19 All current and former non-exempt or hourly employees who worked
20 for Defendant Southern California Orthopedic Institute, L.P. in the
21 State of California at any time from June 13, 2014 and the earlier of the
22 date of preliminary approval or December 31, 2019 (the "Class
23 Period").

24 15. Plaintiff reserves the right under Rule 3.765, California Rules of Court, to amend or
25 modify these class descriptions with greater specificity or further division into subclasses or limitation
26 to particular issues.

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1 16. This action has been brought and may properly be maintained as a class action under
2 the provisions of § 382 of the Code of Civil Procedure because there is a well-defined community of
3 interest in the litigation and the proposed Class is easily ascertainable.

4 **A. Numerosity**

5 17. The potential members of the Class as defined are so numerous that joinder of all the
6 members the Class is impracticable. While the precise number of members of the Class has not been
7 ascertained at this time, Plaintiff is informed and believes, and based thereon alleges, that Defendants
8 currently employ, and during the relevant time periods employed, over 100 persons in the State of
9 California who fall within the Class definition.

10 18. Accounting for employee turnover during the relevant period necessarily increases this
11 number. Plaintiff alleges Defendants' employment records would provide information as to the
12 number and location of members of the Class. Joinder of members of the Class is not practicable.

13 **B. Commonality**

14 19. There are questions of law and fact common to the Class that predominate over any
15 questions affecting only individual Class Members. These common questions of law and fact include,
16 without limitation:

- 17 a. Whether Defendants failed to properly provide rest periods or compensation in
18 lieu thereof to Plaintiff and Class Members, in violation of Labor Code § 226.7,
19 and IWC Wage Order 4-2001;
- 20 b. Whether Defendants failed to properly provide meal periods or compensation
21 in lieu thereof to Plaintiff and Class Members, in violation of Labor Code §§
22 226.7 and 512 and IWC Wage Order 4-2001;
- 23 c. Whether Defendants failed to provide Plaintiff and Class Members with
24 accurately itemized wage statements, in accordance with Labor Code § 226(a)
25 and (e);
- 26 d. Whether Defendants failed to timely pay Plaintiff and members of the Class
27 all wages due and owing at the separation of their employment, in violation of
28 Labor Code §§ 201-203; and

1 e. Whether Plaintiff and Class Members are entitled to equitable relief pursuant
2 to Business & Professions Code § 17200 *et seq.*

3 **C. Typicality**

4 20. The claims of the named Plaintiff are typical of the claims of members of the Class.
5 Plaintiff and members of the Class sustained injuries and damages arising out of and caused by
6 Defendants' common course of conduct in violation of laws, regulations that have the force and effect
7 of law, and statutes as alleged herein.

8 **D. Adequacy of Representation**

9 21. Plaintiff will fairly and adequately represent and protect the interests of members of
10 the Class. Counsel who represents Plaintiff are competent and experienced in litigating large
11 employment class actions.

12 **E. Superiority of Class Action**

13 22. A class action is superior to other available means for the fair and efficient adjudication
14 of this controversy. Individual joinder of all proposed members of the Class is not practicable, and
15 questions of law and fact common to the proposed Class predominate over any questions affecting
16 only individual members of the proposed Class. Each member of the proposed Class has been
17 damaged and is entitled to recovery by reason of Defendant's illegal policies and/or practices.

18 23. Class action treatment will allow those similarly situated persons to litigate their
19 claims in the manner that is most efficient and economical for the parties and the judicial system.
20 Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this
21 action that would preclude its maintenance as a class action.

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28 **V.**

1 CAUSES OF ACTION

2 **FIRST CAUSE OF ACTION**

3 **PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS**

4 **FAILURE TO PROVIDE REST PERIODS OR COMPENSATION IN LIEU THEREOF**

5 **(LABOR CODE § 226.7 AND IWC WAGE ORDER 4-2001)**

6 24. Plaintiff incorporates paragraphs 1 through 23 of this Complaint as though fully set
7 forth herein.

8 25. Plaintiff and Class Members are entitled to one hour of pay for each day that Defendant
9 failed to properly provide one or more rest periods as set forth in Labor Code § 226.7 and IWC Wage
10 Order 4-2001.

11 26. Defendant failed to provide Plaintiff and Class Members proper rest periods, or
12 compensation in lieu thereof, in violation of Labor Code § 226.7 and IWC Wage Order 4-2001. Due
13 to the busy nature of their work schedule, they were unable to always take, and not authorized to take,
14 10-minute rest periods for every four hours of work or major fraction thereof. When they were able
15 to take a rest period, they were not permitted to leave the premises, thus resulting in an impermissible
16 on-duty rest period. When they worked ten or more hours in a workday, they were not permitted to
17 take a third rest period.

18 27. Pursuant to Labor Code § 226.7 and IWC Wage Order 4-2001, Plaintiff seeks the
19 payment of all rest period compensation which she and Class Members are owed for four years
20 preceding the filing of this Action, according to proof.

21 Wherefore, Plaintiff and the Class she seeks to represent request relief as described below.

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28 **VI.**

1 **SECOND CAUSE OF ACTION**

2 **PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS**

3 **FAILURE TO PROVIDE MEAL PERIODS OR COMPENSATION IN LIEU THEREOF**

4 **(LABOR CODE §§ 226.7 AND 512 AND IWC WAGE ORDER 4-2001)**

5 28. Plaintiff incorporates paragraphs 1 through 27 of this Complaint as though fully set
6 forth herein.

7 29. Plaintiff and Class Members are entitled to one hour of pay for each day that Defendant
8 failed to properly provide one or more meal periods as set forth in Labor Code §§ 226.7 and 512 and
9 IWC Wage Order 4-2001.

10 30. Defendant failed to provide Plaintiff and Class Members proper meal periods, or
11 compensation in lieu thereof, in violation of Labor Code §§ 226.7 and 512 and IWC Wage Order 4-
12 2001. Plaintiff and Class Members were routinely denied, and not authorized to take, an
13 uninterrupted, 30-minute meal period for every shift worked that exceeds five or more hours in
14 duration, but were not paid premium wages of one hour's pay for each missed meal period.
15 Furthermore, Defendants impermissibly required Plaintiff and Class Members to remain on
16 Defendants' premises during their meal breaks. This violates Labor Code §§ 226.7 and 512.

17 31. Pursuant to Labor Code §§ 226.7 and 512 and IWC Wage Order 4-2001, Plaintiff
18 seeks the payment of all meal period compensation which she and Class Members are owed for four
19 years preceding the filing of this Action, according to proof.

20 Wherefore, Plaintiff and the Class she seeks to represent request relief as described below.

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28 **VII.**

THIRD CAUSE OF ACTION
PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS
KNOWING AND INTENTIONAL FAILURE TO COMPLY WITH ITEMIZED
EMPLOYEE WAGE STATEMENT PROVISIONS
(LABOR CODE § 226(a), (e), (h))

32. Plaintiff incorporates paragraphs 1 through 31 of this Complaint as though fully set forth herein.

33. Section 226(a) of the California Labor Code requires Defendants to provide wage statements to employees. In those wage statements, Defendants must provide an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee..., (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer... and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Defendants have knowingly and intentionally failed to comply with Labor Code § 226(a).

34. As stated above, Plaintiff and Class Members were not paid all wages due. As such, certain wage statements issued by Defendants fail to accurately state all gross wages earned, in violation of Labor Code § 226(a)(1), the total hours worked, in violation of Labor Code § 226(a)(2), net wages earned, in violation of Labor Code § 226(a)(5), and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked, in violation of Labor Code § 226(a)(9).

35. As a consequence of Defendants' willful conduct in failing to provide Class Members with accurate itemized wage statements, Plaintiff and members of the Class have been injured because they have not been paid all wages due and/or were issued wage statements which do not reflect, and

1 fail to state, all information required by Labor Code § 226(a). The missing information cannot be
2 discerned at all from the face of the wage statements themselves. As a result, Plaintiff and members
3 of the Class are entitled to penalties pursuant to Labor Code § 226(e) to recover the greater of all
4 actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee
5 for each violation in a subsequent pay period, not exceeding an aggregate penalty of \$4,000 per
6 employee, and are entitled to an award of costs and reasonable attorneys' fees pursuant to Labor Code
7 § 226(h).

8 Wherefore, Plaintiff and the Class she seeks to represent request relief as described below.

9 **VIII.**

10 **FOURTH CAUSE OF ACTION**

11 **PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS**

12 **FAILURE TO TIMELY PAY WAGES UPON SEPARATION EMPLOYMENT**

13 **(LABOR CODE §§ 201-203)**

14 36. Plaintiff incorporates paragraphs 1 through 35 of this Complaint as though fully set
15 forth herein.

16 37. Labor Code § 201 and § 202 require Defendants to pay employees all wages due within
17 72 hours after resignation of employment or the day of termination of employment. Labor Code §
18 203 provides that if an employer willfully fails to timely pay such wages, the employer must, as a
19 penalty, continue to pay the subject employee's daily wages until the back wages are paid in full or
20 an action is commenced. The penalty cannot exceed 30 days of wages.

21 38. Defendants paid Plaintiffs and members of the Class their final wages beyond the time
22 frames set forth in Labor Code §§ 201 and 202, in violation of Labor Code § 203. Plaintiffs and
23 members of the Class were not paid all wages due, including all meal and rest period premium wages
24 due and owing throughout the course of their employment, as detailed herein. Consequently, at the
25 time of their separation from employment with Defendants, they were not paid all final wages due
26 and owing for the entirety of their employment.

27 39. More than 30 days have passed since Plaintiffs and certain Class Members have left
28 Defendants' employ.

1 unlawful conditions, and to protect law-abiding employers and its employees from competitors who
2 lower their costs by failing to comply with minimum labor standards.

3 46. Defendants have violated statutes and public policies. Through the conduct alleged
4 in this Complaint, Defendants, and each of them, have acted contrary to these public policies, have
5 violated specific provisions of the Labor Code, and have engaged in other unlawful and unfair
6 business practices in violation of Business & Professions Code § 17200 *et seq.* depriving Plaintiff,
7 and all persons similarly situated, and all interested persons of rights, benefits, and privileges
8 guaranteed to all employees under law.

9 47. Defendants' conduct, as alleged herein, constitutes unfair competition in violation of
10 §17200 *et seq.* of the Business & Professions Code.

11 48. Defendants, by engaging in the conduct herein alleged, either knew or in the exercise
12 of reasonable care should have known that the conduct was unlawful. As such, it is a violation of §
13 17200 *et seq.* of the Business & Professions Code.

14 49. As a proximate result of the above-mentioned acts of Defendants, Plaintiff and others
15 similarly situated have been damaged in a sum as may be proven.

16 50. Unless restrained by this Court, Defendants will continue to engage in the unlawful
17 conduct, as alleged above. Pursuant to Business & Professions Code § 17200 *et seq.*, this Court
18 should make such orders or judgments, including the appointment of a receiver, as may be necessary
19 to prevent the use or employment, by Defendants, its agents, or employees, of any unlawful or
20 deceptive practice prohibited by the Business & Professions Code, and/or, including but not limited
21 to, disgorgement of profits which may be necessary to restore Plaintiff and members of the Class to
22 the money Defendants have unlawfully failed to pay.

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28 X.

1 **SIXTH CAUSE OF ACTION**

2 **PLAINTIFF AND ALL AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS**
3 **PENALTIES PURSUANT TO LABOR CODE § 2699(f) FOR VIOLATIONS OF**
4 **LABOR CODE §§ 201-202, 226(a), 226.7, AND 512**

5 51. Plaintiff incorporates paragraphs 1 through 50 of this Complaint as though fully set
6 forth herein.

7 52. As a result of the acts alleged above, including the Labor Code violations set forth
8 herein, Plaintiff seeks penalties pursuant to Labor Code § 2698 *et seq.*

9 53. For each such violation, Plaintiff and all other aggrieved employees are entitled to
10 penalties in an amount to be shown at the time of trial subject to the following formula:

- 11 a. Pursuant to Labor Code § 2699(f) for violations of Labor Code §§ 201-202,
12 226(a), 226.7, and 512, \$100 for the initial violation per employee per pay
13 period and \$200 for each subsequent violation per employee per pay period.

14 54. Penalties recovered will be allocated 75% to the Labor and Workforce Development
15 Agency, and 25% to the affected employees.

16 55. On April 10, 2018, Plaintiff sent a letter, by online submission to the LWDA and by
17 certified mail, return receipt requested, to Defendant setting forth the facts and theories of the
18 violations alleged against Defendant, as prescribed by Labor Code § 2698 *et seq.* Pursuant to Labor
19 Code § 2699.3(a)(2)(A), no notice was received by Plaintiff from the LWDA within sixty-five (65)
20 calendar days of April 10, 2018. Plaintiff may therefore commence this action to seek civil penalties
21 pursuant to Labor Code § 2698 *et seq.*

22 Wherefore, Plaintiff and the aggrieved employees she seeks to represent request relief as
23 described below.

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28 **XI.**

1 **RELIEF REQUESTED**

2 WHEREFORE, Plaintiff prays for the following relief:

- 3 1. For compensatory damages in the amount of one hour of wages for each day on which
- 4 a meal and/or rest period was not properly provided to Plaintiff and Class Members pursuant to Labor
- 5 Code § 226.7;
- 6 2. For penalties pursuant to Labor Code § 226(e) for Plaintiff and members of the Class;
- 7 3. For penalties pursuant to Labor Code § 203 for Plaintiff and members of the Class
- 8 who are no longer employed by Defendants;
- 9 4. An award of prejudgment and post-judgment interest;
- 10 5. For restitution for unfair competition pursuant to Business & Professions Code §
- 11 17200 *et seq.* for Plaintiff and Class Members;
- 12 6. An award providing for payment of costs of suit;
- 13 7. An award of attorneys' fees; and
- 14 8. Such other and further relief as this Court may deem just and proper

15 Dated: February 14, 2020

Respectfully submitted,

16 GAINES & GAINES
17 A Professional Law Corporation

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19 By: _____
20 DANIEL F. GAINES
21 EVAN S. GAINES
22 Attorney for Plaintiff

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DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial of her claims by jury to the extent authorized by law.

1 Dated: February 14, 2020

Respectfully submitted,

2 GAINES & GAINES
3 A Professional Law Corporation

4 By: _____
5 DANIEL F. GAINES
6 EVAN S. GAINES
7 Attorney for Plaintiff

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