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14
15 SUPERIOR COURT OF CALIFORNIA, COUNTY OF KERN
16 METROPOLITAN DIVISION

17 ERIKA LAFLORA, individually, and on
18 behalf of other members of the general
19 public similarly situated and on behalf of
other aggrieved employees pursuant to the
California Private Attorneys General Act;

20 Plaintiff,

21 v.

22 TERRIO PHYSICAL THERAPY-FITNESS,
INC., a California corporation; and DOES 1
23 through 100, inclusive,

24 Defendants.

Case No. BCV-19-1029525 TSC

Assigned for All Purposes to the Honorable
Thomas S. Clark

**JOINT STIPULATION OF CLASS ACTION
SETTLEMENT**

Class Action Filed: October 15, 2019

EDWIN AIWAZIAN (SBN 232943)

edwin@lfjpc.com

LAWYERS *for* JUSTICE, PC

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Glendale, California 91203

Telephone: (818) 265-1020

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Attorneys for Plaintiff, ERIKA LAFLORA

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1 8. **“Class Notice”** means the Notice of Proposed Class Action Settlement and Hearing
2 Date for Court Approval, substantially in the form of **Exhibit 1** attached hereto, or as otherwise
3 approved by the Court, which is to be mailed to Class Members along with the Share Form.

4 9. **“Class Period”** means the period from October 15, 2015 through November 10,
5 2020.

6 10. **“Class Representative”** means Plaintiff Erika LaFlora.

7 11. **“Class Representative Service Award”** means the amount that the Court
8 authorizes to be paid to Plaintiff, Erika LaFlora, in addition to her Individual Settlement Payment,
9 in recognition of her efforts and risks in assisting with the prosecution of the Action and in
10 exchange for her executing a General Release of Defendant, paid from the Gross Settlement
11 Amount.

12 12. **“Compensable Workweeks”** means a seven-day work week during the Class
13 Period - between October 15, 2015 and November 10, 2020 - during which, based on Defendant’s
14 records, Class Members were actively employed by Defendant in a non-exempt position or paid
15 hourly wages in California. Defendant represents that Class Members worked a total of
16 approximately 38,787 workweeks during the Class Period.

17 13. **“Court”** means the Superior Court of the State of California, Kern County.

18 14. **“Defendant”** means Terrio Physical Therapy & Fitness, Inc.

19 15. **“Defense Counsel”** means Daniel K. Klingenberger of LeBeau Thelen, LLP and
20 all partners, attorneys, and all other current or former employees of that entity.

21 16. **“Effective Date”** means the date upon which the Court grants final approval of the
22 Settlement if (a) no Settlement Class Members file objections to the Settlement, or (b) any
23 Settlement Class Member files an objection but it is subsequently withdrawn. However, if an
24 objection is filed and an appeal or other appellate proceeding is initiated, the Effective Date shall
25 be sixty (60) days after the Court grants final approval of the Settlement or date of termination of
26 such appellate proceedings.

27 17. **“Gross Settlement Amount”** means Nine Hundred Thousand Dollars
28 (\$900,000.00) to be paid by Defendant pursuant to this Agreement, which is non-reversionary, and

1 is inclusive of Plaintiff's attorneys' fees and litigation expenses directly related to the lawsuit (*i.e.*,
2 "Class Counsel Attorneys' Fees and Expenses"), the Settlement Administrator's costs (*i.e.*,
3 "Settlement Administration Costs"), the enhancement payment to Plaintiff for her role as the class
4 representative (*i.e.*, "Class Representative Service Award"), the Private Attorneys General Act of
5 2004 penalties (*i.e.*, "PAGA Penalties") including 75% share payment to the Labor & Workforce
6 Development Agency, and payroll taxes.

7 18. **"Individual Settlement Payment"** means the amount payable from the Net
8 Settlement Amount to each Settlement Class Member.

9 19. **"Net Settlement Amount"** means the Gross Settlement Amount, less Class
10 Counsel Attorney's Fees and Expenses, Class Representative Service Award, Settlement
11 Administrator Costs, payment to Labor & Workforce Development Agency as part of the PAGA
12 Penalties, and payroll taxes. This is the amount from which Settlement Class Members (except
13 those who submit an opt-out/request for exclusion) will be paid.

14 20. **"Notice Packet"** means the Notice of Proposed Class Action Settlement and
15 Hearing Date for Court Approval, substantially in the form attached as **Exhibit 1**, along with the
16 Share Form, substantially in the form attached as **Exhibit 2**.

17 21. **"PAGA Penalties"** means the penalties pursuant to California Labor Code sections
18 2698 *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"), that the Parties
19 have agreed is a reasonable sum to be paid in settlement of the PAGA claims included in the
20 Action, which is \$60,000.00. The PAGA Penalties are to be approved by the Court pursuant to
21 Labor Code section 2699 and distributed as follows: seventy-five percent (75%) (*i.e.*, \$45,000.00)
22 to the California Labor and Workforce Development Agency ("LWDA") and twenty-five percent
23 (25%) (*i.e.*, \$15,000.00) to the Settlement Class Members. Class Counsel shall give timely notice
24 of the Settlement to the LWDA under Labor Code section 2699(1)(2).

25 22. **"Parties"** means Plaintiff and Defendant, collectively, and "Party" shall mean
26 either Plaintiff or Defendant, individually.

27 23 **"Payment Ratio"** means the respective Compensable Workweeks for each Class
28 Member divided by the total Compensable Workweeks for all Class Members.

1 24. **"Plaintiff"** means Plaintiff Erika LaFlora.

2 25. **"Plaintiff's Released Claims"** means that, in addition to the Settlement Class
3 Members' Released Claims, in exchange for the consideration recited in this Agreement, including
4 but not limited to the Class Representative Service Award, Plaintiff Erika LaFlora releases,
5 acquits, discharges, and covenants not to sue any of the Released Parties for any claim, whether
6 known or unknown, which she has ever had, or hereafter may claim to have, arising on or before
7 the date she signed this Agreement, including without limitation to, any claims relating to or arising
8 out of any aspect of her relationship with Defendant Terrio Physical Therapy & Fitness, Inc., along
9 with a General Release of Released Parties. The specific terms and details of which are set forth
10 in Paragraph 45.

11 26. **"Released Parties"** means Defendant Terrio Physical Therapy & Fitness, Inc., and
12 Defendant's former and present parents, subsidiaries, affiliates, and other officers, directors,
13 employees, partners, shareholders and agents, and any other successors, assigns, or legal
14 representatives.

15 27. **"Response Deadline"** means the date forty-five (45) days after the Settlement
16 Administrator first mails Notice Packets to Class Members and is the last date on which Class
17 Members may submit a opt-out/request for exclusion, object, and/or challenge an Individual
18 Settlement Payment calculation.

19 28. **"Settlement"** means the disposition of the Action pursuant to this Agreement and
20 subject to approval by the Court.

21 29. **"Settlement Administrator"** means the third-party, CPT Group, Inc., who will be
22 responsible for administration of the Settlement and related matters.

23 30. **"Settlement Administration Costs"** means the amount to be paid to the Settlement
24 Administrator from the Gross Settlement Amount for administration of this Settlement.

25 31. **"Settlement Class Members"** means each Class Member who has not submitted a
26 timely and valid opt-out/request for exclusion as provided in this Agreement.

27 32. **"Settlement Class Members' Released Claims"** means all claims, rights,
28 demands, liabilities, and causes of action of every nature and description whether pled or could

1 have been pled based on the factual allegations in the Action against Defendant, during the Class
2 Period, for: (1) unpaid wages, (2) unpaid minimum wages; (3) unpaid overtime; (4) failure to
3 provide meal periods; (5) failure to provide rest breaks; (6) failure to pay wages timely during
4 employment; (7) failure to pay final wages timely; (8) failure to give accurate itemized wage
5 statements; (9) failure to maintain payroll records; (10) unreimbursed business expenses; (11)
6 violation of unfair competition law; and (12) violation of the Private Attorneys General Act of
7 2004, California Labor Code § 2698 et seq., or any penalties arising under the Labor Code or Wage
8 Order based on the alleged failures set forth in (1) through (12) above; any right or claim for unfair
9 business practices in violation of California Business & Professions Code § 17200 et seq. based
10 on the alleged failures set forth in (1) through (10) above; and any violation of the California
11 Labor Code arising from or related to the conduct alleged in Action, including, without limitation,
12 violation of Sections 201, 202, 203, 204, 226, 226.7, 510, 512, 558, 1174, 1194, 1194.2, 1197,
13 1197.1, 1198, 2800-2802, 2698 et seq., or any other state statute, rule and/or regulation (Wage
14 Order), or similar causes of action which any Class Member has or might have, known or
15 unknown, of any kind whatsoever, that was alleged or could reasonably have alleged out of the
16 factual allegations in the complaint. Class Members also acknowledge and agree that California
17 Labor Code Section 206.5 is not applicable to the Individual Settlement Payments. The specific
18 terms and details of which are set forth in Paragraph 43 and 44.

19 33. **"Settlement Class Members' Taxes"** means that amount to be paid to individual
20 Settlement Class Members that is to be reported on IRS Form 1099s and IRS Form W-2s where
21 required by law. Of the amounts paid to individual Settlement Class Members, eighty percent
22 (80%) shall be designated as penalties and interest for which an IRS Form 1099 shall issue and
23 twenty (20%) shall be designated as wages for which an IRS Form W-2 shall issue.

24 34. **"Share Form"** means the Share Form substantially in the form as attached at
25 **Exhibit 2** hereto, or as otherwise approved by the Court, which is to be mailed to Class Members
26 along with the Class Notice.

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RECITALS

35. **Class Certification.** The Parties stipulate and agree to the certification of the Class and claims in this Action for purposes of this Settlement only. Should the Settlement not become final and effective as herein provided, class certification will have no force or effect and will be immediately revoked. The Parties further agree that class certification for purposes of the Settlement is in no way an admission that class certification is proper under the more stringent standards applied for litigation purposes and that this Settlement will not be admissible in this or any other proceeding as evidence that (i) any class should be certified as Plaintiff proposed, or (ii) Defendant is liable to Plaintiff or the Class as Plaintiff alleged.

36. **Procedural History.** On October 15, 2019, Plaintiff filed a putative class action complaint against her former employer, Defendant Terrio Physical Therapy & Fitness, Inc., alleging claims for: (a) failure to pay all minimum and overtime wages for all hours worked including, but not limited to, those resulting from automated rounding and off-the-clock work (Labor Code §§ 510, 1194, 1194.3, 1197, 1197.1, and 1198); (b) failure to provide timely and compliant duty-free meal periods and pay premiums owed thereon (Labor Code §§ 226.7 and 512); (c) failure to provide timely and compliant duty-free rest breaks and pay premiums owed thereon (Labor Code § 226.7); (d) failure to reimburse all necessary business expenses incurred (Labor Code §§ 2800, 2802); (e) failure to maintain and furnish accurate itemized wage statements (Labor Code §§ 226, 1174(d)); (f) failure to timely pay wages during employment and all final wages owed upon separation (Labor Code §§ 201-203, 204); (g) violation of California's Private Attorneys' General Act of 2004 ("PAGA") (Labor Code § 2699); and (h) engaging in unfair and unlawful business practices (Business & Professions Code § 17200 *et seq.*). Defendant answered on November 18, 2019, asserting a general denial and forty-two (42) affirmative defenses.

37. **Formal Discovery.** The Parties also engaged in extensive discovery and investigation prior to participating in mediation. For example, Plaintiff propounded an initial round of written discovery (including multiple sets of requests for production of documents, special interrogatories and form interrogatories), along with three person(s) most qualified deposition notices. Some of the discovery was hotly contested and resulted in objections. Thereafter, counsel

1 for the Parties undertook the meet and confer process, exchanged multiple letters, and had several
2 telephone calls to narrow their disputes. In the interim, however, it was decided that exploring the
3 potential for early resolution would be most pragmatic. As a result, formal discovery was held in
4 abeyance in order to pursue informal discovery for mediation purposes.

5 38. **Informal Discovery and Investigation.** In advance of mediation, the Parties
6 agreed to an informal exchange of data. For example, Class Counsel requested production of key
7 information such as the number of putative class members and aggrieved employees, relevant
8 wage and hour policies, time and payroll records, among other things. Having enlisted the
9 assistance of a consultant, Class Counsel also analyzed a random sampling of time and payroll
10 records of employees (consisting of almost 10,000 shifts) in order to determine violation rate(s)
11 across the Class, along with other relevant data counts.

12 39. **Mediation.** On September 11, 2020, after having performed extensive
13 investigation and analysis of the legal and factual issues and risks, the Parties participated in
14 mediation before Jeffrey Krivis, Esq. of First Mediation Corp., a highly-respected neutral in
15 California who specializes in wage and hour class actions mediations, in an attempt to resolve all
16 disputes related to the Action. The settlement discussions were conducted at arm's-length. With
17 mediator Krivis' assistance, the Parties came to agreement on all material terms for this Settlement.

18 40. **Benefits of Settlement to Class Members.** Plaintiff and Class Counsel recognize
19 the expense and length of continued proceedings necessary to litigate their disputes through trial
20 and through any possible appeals. Plaintiff has also taken into account the uncertainty and risks of
21 the outcome of further litigation, and the difficulties and delays inherent in such litigation. Plaintiff
22 and Class Counsel are also aware of the burdens of proof necessary to establish liability for the
23 claims asserted in the Action, both generally and in response to Defendant's defenses thereto, and
24 the difficulties in establishing damages for the Settlement Class Members. Plaintiff and Class
25 Counsel have also taken into account the extensive settlement negotiations conducted. Based on
26 the foregoing, Plaintiff and Class Counsel have determined that the Settlement set forth in this
27 Agreement is a fair, adequate and reasonable settlement, and is in the best interests of the
28 Settlement Class Members.

41. **Defendant's Reasons for Settlement and Non-Admission.** Defendant has concluded that any further defense of this litigation would be protracted and expensive for all Parties. Substantial amounts of time and resources of Defendant have and, unless this Settlement is made, will continue to be devoted to the defense of the claims asserted by Plaintiff and Settlement Class Members. Defendant has also taken into account the risks of further litigation in reaching its decision to enter into this Settlement. Despite continuing to contend that it is not liable for any of the claims set forth by Plaintiff, Defendant has, nonetheless, agreed to settle in the manner and upon the terms set forth in this Agreement to put to rest the claims as set forth in the Action. Defendant has claimed and continues to claim that the Released Claims have no merit and do not give rise to liability. This Agreement is a compromise of disputed claims. Nothing contained in this Agreement and no documents referred to herein and no action taken to carry out this Agreement may be construed or used as an admission by or against Defendant as to the merits or lack thereof of the claims asserted. The monies being paid as part of the settlement are genuinely disputed and the Parties agree that the provisions of Labor Code section 206.5 are not applicable to this Settlement.

42. **Settlement Class Members' Reasons for Settlement and Non-Admission.**

Settlement Class Members have claimed and continue to claim that the Released Claims have merit and give rise to liability on the part of Defendant. This Agreement is a compromise of disputed claims. Nothing contained in this Agreement and no documents referred to herein and no action taken to carry out this Agreement may be construed or used as an admission by or against the Settlement Class Members or Class Counsel as to the merits or lack thereof of the claims asserted.

TERMS OF AGREEMENT

43. **Release as to Plaintiff and All Settlement Class Members.** As of the Effective Date, Plaintiff and the Settlement Class Members who did not opt-out of the Settlement, for and in consideration of the Gross Settlement Amount, along with the terms and undertakings herein, the sufficiency and fairness of which are acknowledged, release and forever discharge Terrio Physical Therapy & Fitness, Inc., and each of its former and present parents, subsidiaries, affiliates, and other officers, directors, employees, partners, shareholders and agents, and any other

1 successors, assigns, or legal representatives (the "Released Parties"), from any and all claims,
2 rights, demands, liabilities, and causes of action of every nature and description whether pled or
3 could have been pled based on the factual allegations in the Action against Defendant, during the
4 Class Period, for: (1) unpaid wages, (2) unpaid minimum wages; (3) unpaid overtime; (4) failure
5 to provide meal periods; (5) failure to provide rest breaks; (6) failure to pay wages timely during
6 employment; (7) failure to pay final wages timely; (8) failure to give accurate itemized wage
7 statements; (9) failure to maintain payroll records; (10) unreimbursed business expenses; (11)
8 violation of unfair competition law; and (12) violation of the Private Attorneys General Act of
9 2004, California Labor Code § 2698 et seq., or any penalties arising under the Labor Code or Wage
10 Order based on the alleged failures set forth in (1) through (12) above; any right or claim for unfair
11 business practices in violation of California Business & Professions Code § 17200 et seq. based
12 on the alleged failures set forth in (1) through (10) above; and any violation of the California
13 Labor Code arising from or related to the conduct alleged in Action, including, without limitation,
14 violation of Sections 201, 202, 203, 204, 226, 226.7, 510, 512, 558, 1174, 1194, 1194.2, 1197,
15 1197.1, 1198, 2800-2802, 2698 et seq., or any other state statute, rule and/or regulation (Wage
16 Order), or similar causes of action which any Class Member has or might have, known or
17 unknown, of any kind whatsoever, that was alleged or could reasonably have alleged out of the
18 factual allegations in the complaint. (the "Settlement Class Members' Released Claims").

19 44. **Non-application of Labor Code Section 206.5.** Settlement Class Members will be
20 deemed to have acknowledged and agreed that their claims for wages and/or penalties in the Action
21 are disputed, and that the Individual Settlement Payments constitute payment of all sums allegedly
22 due to them. Settlement Class Members will be deemed to have acknowledged and agreed that
23 California Labor Code Section 206.5 is not applicable to the Individual Settlement Payments. That
24 section provides in pertinent part as follows:

25 "An employer shall not require the execution of a release of a claim or right on
26 account of wages due, or to become due, or made as an advance on wages to be
27 earned, unless payment of those wages has been made."
28

1 45. **General Release as to Plaintiff.** As of the Effective Date, in addition to the
2 Settlement Class Members' Released Claims and in exchange for and in consideration of the Gross
3 Settlement Amount and Class Representative Service Award, along with the terms and
4 undertakings herein, the sufficiency and fairness of which are acknowledged, Plaintiff Erika
5 LaFlora, individually, releases, acquits, discharges, and covenants not to sue Terrio Physical
6 Therapy & Fitness, Inc. and any of the Released Parties for any claim, whether known or unknown,
7 which she has ever had, or hereafter may claim to have, arising on or before the date she signed
8 this Agreement including without limitation to, any claims relating to or arising out of any aspect
9 of her relationship with Terrio Physical Therapy & Fitness, Inc., along with a General Release of
10 Released Parties. The release by Plaintiff includes a waiver of her individual rights under Section
11 1542 of the Civil Code of the State of California states as follows:

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

16 Thus, subject to and in accordance with this Agreement, even if Plaintiff may hereafter discover
17 facts in addition to or different from those she now knows or believes to be true, Plaintiff, is
18 deemed to have fully, finally, and forever settled and released any and all claims against the
19 Released Parties that were alleged or could have been alleged in the Action, as well as any other
20 claims, whether known or unknown, suspected or unsuspected, contingent or non-contingent, that
21 now exist, upon any theory of law or equity, including without limitation, conduct which is
22 negligent, intentional, with or without malice, or a breach of any duty, law, or rule, without regard
23 to the subsequent discovery or existence of such different or additional facts (the "Plaintiff's
24 Released Claims").

25 46. **Tax Liability.** The Parties make no representations as to the tax treatment or legal
26 effect of the payments called for hereunder, and Settlement Class Members are not relying on any
27 statement or representation by the Parties in this regard. Settlement Class Members understand
28 and agree that they will be responsible for the payment of any employee taxes and penalties

1 assessed on the payments described herein and will hold the Parties free and harmless from and
2 against any claims, liabilities, costs and expenses, including attorney's fees, resulting in any way
3 from personal tax treatment of the payments made pursuant to this Agreement, including the
4 treatment of such payments as not subject to withholding or deduction for payroll and employment
5 taxes. However, Defendant's share of employer payroll taxes and other required employer
6 withholdings, including but not limited to Defendant's FICA and FUTA contributions, shall be
7 paid as part of the Gross Settlement Amount.

8 47. **Settlement Administrator Duties.** The Settlement Administrator will be
9 responsible for mailing the Class Notice and Share Form (**Exhibits 1 and 2**) (collectively,
10 "Notice Packets") to Class Members, handling inquiries from Class Members concerning the
11 Class Notice/Share Form, determination of Individual Settlement Payments, maintaining the
12 settlement funds in an appropriate interest bearing account, preparing, administering and
13 distributing Individual Settlement Payments to Settlement Class Members, issuing a final
14 report and performing such other duties as the Parties may direct.

15 48. **Weekly Reports.** On a weekly basis, the Settlement Administrator will provide
16 reports to Class Counsel and Defense Counsel summary information updating them as to the
17 number of validated and timely objections and Opt-Outs/requests for exclusion. The
18 Settlement Administrator will serve on Class Counsel and Defense Counsel via e-mail date-
19 stamped copies of the original Opt-Outs/requests for exclusion and objections no later than
20 seven (7) calendar days after their receipt. The Settlement Administrator will provide Class
21 Counsel with proof of mailing of the Class Notice, without listing individual Class Member
22 names which the Settlement Administrator will file with the Court at the time Class Counsel
23 files its motion in support of the Final Approval and Fairness Hearing. No later than twenty
24 eight (28) calendar days prior to the Final Approval and Fairness Hearing, the Settlement
25 Administrator will provide a declaration summarizing its efforts to contact Class Members,
26 the number of Settlement Class Members to receive payments from the Settlement, and the
27 final number of Opt-Outs/requests for exclusion and objections.

1 49. **Disputes Regarding Administration of Settlement.** Any disputes not resolved
2 by the Settlement Administrator concerning the administration of the Settlement will be resolved
3 by the Court under the laws of the State of California. Prior to any such involvement of the Court,
4 counsel for the Parties will confer in good faith to resolve the disputes without the necessity of
5 involving the Court.

6 50. **Settlement Administration Costs.** Settlement administration costs are not
7 anticipated to exceed \$15,000.00. Prior to the calculation and distribution of the Individual
8 Settlement Payments, the Settlement Administrator shall calculate the total Settlement
9 Administration Costs through the conclusion of its services and such actual amounts will be
10 deducted from the Gross Settlement Amount pursuant to the first and second installment
11 distribution schedules set forth in Paragraph 62.

12 51. **Providing the Class Information.** Within ten (10) calendar days after the Court
13 grants preliminary approval of this Class Settlement, Defendant shall provide the Settlement
14 Administrator with Class Information for purposes of mailing Notice Packets to Class Members.
15 Defendant will in good faith compile from its records and provide to the Settlement Administrator,
16 as a Microsoft Excel formatted spreadsheet, a list of Class Members with the following
17 information: each Class Member's full name; last known address; last known telephone number(s);
18 social security number; start date of employment; end date of employment; number of
19 Compensable Workweeks; and the total Compensable Workweeks for all Class Members during
20 the Class Period. The Settlement Administrator will keep the list confidential and use it only for
21 the purposes described herein. The Class Information shall not be disclosed to Class Counsel, the
22 Class Representative, or any other Class Member without the written consent of Defendant or
23 order of the Court. The Settlement Administrator shall ensure that the Class Notice and any other
24 communications to Class Members shall not include the Class Members' Social Security Number,
25 except for the last four digits.

26 52. **Notice By First-Class U.S. Mail.** Upon receipt of the Class Information, the
27 Settlement Administrator will perform a search based on the National Change of Address database
28 ("NCOA") to update and correct any known or identifiable address changes. Within ten (10)

1 calendar days after receiving the Class Information from Defendant as provided herein, the
2 Settlement Administrator shall mail copies of the Notice Packet, containing the Class Notice and
3 the individualized populated Share Form, to all Class Members via regular First-Class U.S. Mail.
4 The Settlement Administrator shall exercise its best judgment to determine the current mailing
5 address for each Class Member. The address identified by the Settlement Administrator as the
6 current mailing address shall be presumed to be the best mailing address for each Class Member.

7 53. **Undeliverable Notices.** Any Notice Packets returned to the Settlement
8 Administrator as non-delivered on or before the Response Deadline shall be re-mailed to the
9 forwarding address affixed thereto. If no forwarding address is provided, the Settlement
10 Administrator shall promptly attempt to determine a correct address by use of skip-tracing, or other
11 search using the name, address, and/or social security number of the Class Members involved, and
12 shall then promptly perform a re-mailing, if another mailing address is identified by the Settlement
13 Administrator. It shall be conclusively presumed that those Class Members whose re-mailed
14 Notice Packet is not returned as undeliverable within twenty (20) calendar days after remailing
15 have received the Notice Packet.

16 54. **Website.** The Settlement Administrator will also maintain a website for purposes
17 of providing copies of significant pleadings and relevant documents and dates in the administration
18 of the Settlement in this Action.

19 55. **Opt-Out Procedure.** Class Members who do not timely opt-out of - also known
20 as requesting exclusion from - the Class Settlement ("Opt-Out"), will be deemed to participate in
21 the Settlement and shall become a Settlement Class Member without having to submit a claim
22 form or take any other action. In order to Opt-Out of the Settlement, the Class Member must
23 submit a letter to the Settlement Administrator postmarked no later than forty-five (45) calendar
24 days after being mailed the Notice Packet by the Settlement Administrator, which is the defined
25 Response Deadline. Each Class Member who elects to Opt-Out of the Settlement must send, by
26 first-class U.S. mail, a written notice containing: the name, address, telephone number, and
27 signature of the person requesting exclusion. The Opt-Out request should state to the effect of: "I
28 WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE LAFLORA V.

1 TERRIO PHYSICAL THERAPY & FITNESS, INC. LAWSUIT. I UNDERSTAND THAT IF I
2 ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT RECEIVE ANY
3 MONEY FROM THE CLASS SETTLEMENT OF THIS LAWSUIT AND WILL NOT BE
4 RELEASING ANY CLAIMS I MIGHT HAVE.”

5 56. **Opt-Out Deficiencies.** Any Opt-Out request that is not postmarked by the
6 Response Deadline, does not contain the required statement, is not signed by the Class Member,
7 or does not contain the name and address of the Class Member will be invalid. If the Settlement
8 Administrator determines that an Opt-Out request returned by a Class Member before the
9 Response Deadline is deficient, then the Settlement Administrator shall mail a deficiency letter to
10 that Class Member identifying the problem. If a Class Member submits both a dispute and an Opt-
11 Out request, the Settlement Administrator shall make reasonable attempts to clarify as if the Opt-
12 Out request were deficient. If the Class Member fails to cure the deficiency, the Opt-Out request
13 shall be disregarded and the claim will be paid, and the Class Member will become bound by the
14 judgment. Those Class Members who do not timely Opt-Out will be bound by the release of
15 Settlement Class Members’ Released Claims set forth in Paragraph 43 of this Agreement.

16 57. **Defendant’s Right To Cancel.** If ten percent (10%) or more of the Class Members
17 submit a timely and valid Opt-Out, Defendant shall have the sole and absolute discretion to
18 withdraw from this Agreement within ten (10) calendar days after the Response Deadline by
19 providing written notice of such withdrawal to Class Counsel. In the event that Defendant elects
20 to withdraw as set forth in this provision, the withdrawal shall have the same effect as a termination
21 of this Agreement for failure to satisfy a condition of Settlement and the Agreement shall become
22 null and void and have no further force or effect. If Defendant chooses to terminate this Agreement
23 under this provision, it shall be responsible to pay the Settlement Administration Costs incurred
24 by the Settlement Administrator.

25 58. **Disputes Regarding Individual Settlement Payments.** Settlement Class
26 Members may dispute their weeks worked if they believe they worked more weeks in the Class
27 Period than Defendant’s records show by submitting information to the Settlement Administrator
28 postmarked no later than forty-five (45) days after being mailed the Notice Packet by the

1 Settlement Administrator, which is the defined Response Deadline. The Settlement Administrator
2 will jointly work with Plaintiff and Defendant to resolve the dispute in good faith. If Plaintiff and
3 Defendant cannot agree over the work weeks to be credited, the Settlement Administrator shall
4 make the final decision based on the information presented by the Settlement Class Member and
5 Defendant.

6 59. **Objections.** The Class Notice shall inform the Class Members of their right to
7 object to the Settlement. Any Settlement Class Member who wishes to object to the Settlement
8 must submit a written objection to the Settlement Administrator postmarked no later than forty-
9 five (45) calendar days after being mailed the Notice Packet by the Settlement Administrator,
10 which is the defined Response Deadline. The objection must contain: the name, address, telephone
11 number, and dates of employment as an hourly or non-exempt employee in California with
12 Defendant of the objector, along with the case name and number and must set forth, in clear and
13 concise terms, a statement of the reasons why the objector believes that the Court should find that
14 the proposed Settlement is not in the best interest of the Settlement Class and the reasons why the
15 Settlement should not be approved, including the legal and factual arguments supporting the
16 objection. The objection must also indicate whether or not the objector intends to appear at the
17 hearing on the motion for final approval of the Settlement. The Settlement Administrator will
18 promptly serve copies of any objection or notice of intention to appear on Class Counsel and
19 Defense Counsel. Settlement Class Members who have properly and timely submitted objections
20 may appear at the hearing on final approval, either in person or through a lawyer retained at their
21 own expense.

22 60. **Waiver Of Objections.** Absent good cause found by the Court, Settlement Class
23 Members who do not timely submit a written objection in accordance with the procedures set forth
24 in this Agreement and the Class Notice shall be deemed to have waived any objections to the
25 Settlement and shall forever be foreclosed from making any objection (whether by appeal or
26 otherwise) to the Settlement, or any aspect of the Settlement, or any award of Class Counsel's
27 Attorneys' Fees and Expenses, Class Representative Service Award, PAGA Penalties, and/or the
28 Settlement Administration Costs.

61. **Allocation Of The Gross Settlement Amount.** This is a non-reversionary Settlement in which Defendant is required to pay the Nine Hundred Thousand Dollars (\$900,000.00) Gross Settlement Amount, which will be allocated as follows:

a. Class Counsel Attorneys' Fees and Expenses not to exceed thirty-five percent of the Gross Settlement Amount (*i.e.*, up to \$315,000.00) in fees and expenses not to exceed \$25,000.00;

b. Class Representative Service Award, not to exceed \$7,500.00;

c. Settlement Administration Costs, not to exceed \$15,000.00;

d. PAGA Penalties of \$60,000.00, of which \$45,000.00 shall be paid to the LWDA; and

e. Defendant's share of payroll taxes and other required withholdings.

For purposes of calculating the estimated Individual Settlement Payments, the Settlement Administrator shall calculate the estimated Net Settlement Amount based on the estimated values in Paragraph 61 (a-e) prior to sending Class Notice and Share Form to the Class Members. Prior to actual distribution, the Settlement Administrator shall calculate the final Net Settlement Amount based on the actual values of Paragraph 61 (a-e). No amount of the Gross Settlement Amount will revert to Defendant.

62. **Funding and Distribution of the Gross Settlement Amount.** Defendant will deposit the Gross Settlement Amount in an escrow account, the Qualified Settlement Fund ("QSF") established by the Settlement Administrator, which shall be funded and distributed in two (2) separate and equal installment payments according to the schedule:

a. **First Installment:** Within thirty (30) calendar days after the Effective Date, Defendant shall pay \$450,000.00 to the Settlement Administrator to be deposited into the QSF to fund, subject to approval and award by the Court, the following payments:

i) 100% of the LWDA's share of the PAGA Penalties;

ii) 100% of the Class Representative Service Award;

iii) 50% of the Settlement Administrator's Costs;

iv) 50% of the Class Counsel Attorneys' Fees and Costs; and

- 1 v) 50% of the Settlement Class Members' Individual Settlement Payments,
2 along with the associated payroll taxes.

3 No later than ten (10) calendar days after receipt of the above First Installment payment into the
4 QSF, the Settlement Administrator shall make payments as outlined herein.

5 b. Second Installment. Within six (6) months of the First Installment, Defendant shall
6 pay \$450,000.00 to the Settlement Administrator to be deposited into the QSF to fund, subject to
7 approval and award by the Court, the following payments:

- 8 i) 50% of the Settlement Administrator's Costs;
9 ii) 50% of the Class Counsel Attorneys' Fees and Costs; and
10 iii) 50% of the Settlement Class Members' Individual Settlement Payments,
11 inclusive of payroll taxes.

12 No later than ten (10) calendar days after receipt of the above Second Installment payment into the
13 QSF, the Settlement Administrator shall make payments as outlined herein.

14 63. Individual Settlement Payments. Individual Settlement Payments will be paid
15 from the Net Settlement Amount and shall be paid pursuant to the settlement formula set forth
16 herein. Individual Settlement Payments shall be mailed by regular First-Class U.S. Mail to
17 Settlement Class Members' last known mailing address within ten (10) calendar days after
18 Defendant provides funds to the Settlement Administrator in accord with the First Installment and
19 Second Installment distribution payment schedule in this Agreement. Individual Settlement
20 Payments will be allocated for tax purposes as follows: twenty percent (20%) as wages for which
21 an IRS Form W-2 shall issue; eighty percent (80%) as interest and penalties for which an IRS
22 Form 1099 shall issue ("Settlement Class Members' Taxes"). The Settlement Administrator shall
23 calculate and remit to applicable taxing authorities' sufficient amounts for the employer and
24 employee taxes and issue appropriate tax forms to each Settlement Class Member consistent with
25 the breakdown set forth herein.

26 64. Uncashed Settlement Checks. Any checks issued to Settlement Class Members
27 shall remain valid and negotiable for one hundred and eighty (180) days from the date of their
28 issuance. After that time, any such uncashed checks will be cancelled, and the funds associated

1 with such cancelled checks will be transmitted to CASA of Kern County in conformity with the
2 requirements of California Code of Civil Procedure 384. The Parties agree that Code of Civil
3 Procedure 384 is not applicable to any portion of the Gross Settlement Amount (including but not
4 limited to any portion of the Net Settlement Amount), except for the residual described in this
5 Paragraph.

6 65. **Calculation of Individual Settlement Payments.** As part of the Class Information
7 supplied to the Settlement Administrator after preliminary approval is granted, Defendant will
8 provide the individual and aggregate total Compensable Workweeks for all Class Members. The
9 respective Compensable Workweeks for each Class Member will be divided by the total
10 Compensable Workweeks for all Class Members, resulting in the Payment Ratio for each Class
11 Member. Each Class Member's Payment Ratio is then multiplied by the Net Settlement Amount
12 to determine his or her estimated Individual Settlement Payment. This will be each Class
13 Member's estimated Individual Settlement Payment and will be denoted on his or individualized
14 Share Form. After the Response Deadline, the Settlement Administrator shall calculate the final
15 Individual Settlement Payments to be paid to each Settlement Class Member who did not opt-out
16 and, upon final approval and after the Effective Date, distribute those payments according to the
17 distribution schedule in Paragraph 62. Each Individual Settlement Payment will be reduced by any
18 legally mandated tax withholdings (e.g., employee payroll taxes, etc.) for each Settlement Class
19 Member.

20 66. **Class Representative Service Award.** Defendant agrees not to oppose or object
21 to any application or motion by Plaintiff for a Class Representative Service Award of up to Seven
22 Thousand Five Hundred (\$7,500.00) from the Gross Settlement Amount in exchange for Plaintiff's
23 Released Claims, including execution of a General Release of Defendant, and for her time and
24 effort in bringing and prosecuting this Action. The Class Representative Service Award shall be
25 paid to Plaintiff from the Gross Settlement Fund after Defendant provides funds to the Settlement
26 Administrator for disbursement under the terms and schedule set forth in Paragraph 62. Any
27 portion of the requested Class Representative Service Award that is not awarded to Plaintiff shall
28 be part of the Net Settlement Amount and shall be distributed to Settlement Class Members as

1 provided in this Agreement. The Settlement Administrator shall issue an IRS Form 1099 – MISC
2 to Plaintiff for her Class Representative Service Award. Plaintiff shall be solely and legally
3 responsible to pay any and all applicable taxes on her respective Class Representative Service
4 Award and shall hold harmless Defendant from any claim or liability for taxes, penalties, or interest
5 arising as a result of the Class Representative Service Award. The Class Representative Service
6 Award shall be in addition to the Plaintiff's respective Individual Settlement Payment as a
7 participating Settlement Class Member. If the Court approves and awards a service award payable
8 to Plaintiff in an amount less than the \$7,500.00 as set forth above, Plaintiff shall not have the right
9 to revoke this Settlement and it shall remain binding.

10 67. **Class Counsel Attorneys' Fees And Expenses.** Defendant agrees not to oppose
11 or object to any application or motion by Class Counsel for attorneys' fees not to exceed up to
12 thirty-five percent (35%), or Three Hundred And Fifteen Thousand Dollars (\$315,000.00), from
13 the Gross Settlement Amount, plus actual litigation expenses not to exceed Fifteen Thousand
14 Dollars (\$25,000.00). The Class Counsel Attorneys' Fees and Expenses shall be paid to Class
15 Counsel from the Gross Settlement Amount after Defendant provides funds to the Settlement
16 Administrator for disbursement under the terms and schedule set forth in Paragraph 62. Any
17 portion of the requested Class Counsel Award that is not awarded to Class Counsel shall be part
18 of the Net Settlement Amount and shall be distributed to Settlement Class Members as provided
19 in this Agreement. Class Counsel shall be solely and legally responsible to pay all applicable taxes
20 on the payment made pursuant to this paragraph. The Settlement Administrator shall issue an IRS
21 Form 1099 – MISC to Class Counsel for the payments made as part of Class Counsel Attorneys'
22 Fees And Expenses. This Settlement is not contingent upon the Court awarding Class Counsel any
23 particular amount in attorneys' fees and expenses and if the Court awards less than the \$315,000.00
24 in attorneys' fees and \$25,000.00 in expenses, Class Counsel shall not have the right to revoke this
25 Settlement and it shall remain binding.

26 68. **Settlement Administration Costs.** The Settlement Administrator shall be paid for
27 the costs of administration of the Settlement from the Gross Settlement Amount. The estimate of
28 such costs of administration for the disbursement of the Gross Settlement Amount is \$15,000.00.

1 No fewer than twenty eight (28) calendar days prior to the Final Approval and Fairness Hearing,
2 the Settlement Administrator shall provide the Parties with a statement detailing the costs of
3 administration (incurred and expected until completion) of this Settlement. The Settlement
4 Administration Costs shall be paid to the Settlement Administrator from the Gross Settlement
5 Amount after Defendant provides funds to the Settlement Administrator for disbursement under
6 the terms and schedule set forth in Paragraph 62. The Settlement Administrator, on Defendant's
7 behalf, shall have the authority and obligation to make payments, credits, and disbursements,
8 including payments and credits in the manner set forth herein, to Settlement Class Members
9 calculated in accordance with the methodology set out in this Agreement and orders of the Court.

10 69. **PAGA Penalties and LWDA Payment.** An amount of Forty-Five Thousand
11 Dollars (\$45,000.00) shall be paid from the Gross Settlement Amount to the State of California
12 LWDA. This amount is 75% of the Sixty Thousand Dollars (\$60,000.00) that the Parties have
13 agreed is to be paid in settlement of all claims for civil penalties under the Labor Code Private
14 Attorneys General Act of 2004, Labor Code sections 2698, *et seq.* ("PAGA").

15 70. **Pro-Rata Increase of Gross Settlement Amount.** Defendant represents that its
16 best estimate of the Class size is 38,787 workweeks during the Class Period. If the actual Class
17 size is more than ten percent (10%) than this estimate, the Gross Settlement Amount shall be
18 increased by the same number of percentage points above 10% by which the actual number of
19 workweeks exceeds 38,787. For example, if the actual number of workweeks is determined to be
20 12% higher than 38,787, the Gross Settlement Amount shall be increased by 2%. However, the
21 Gross Settlement Amount will not be reduced based on Defendant's estimated Class size.

22 71. **Non-Retaliation.** Defendant understands and acknowledges that it has a legal
23 obligation not to retaliate against any Settlement Class Member who elects to participate in the
24 Class Settlement or elects to Opt-Out of the Settlement. Defendant will refer any inquiries
25 regarding this Class Settlement to the Settlement Administrator or Class Counsel and will not
26 discourage Settlement Class Members, directly or indirectly, from participating in, opting out, or
27 objecting to the Class Settlement.

1 72. **Final Settlement Approval Hearing and Entry of Final Judgment.** Upon
2 expiration of the Response Deadline, with the Court's permission, a Final Approval and Fairness
3 Hearing shall be conducted to determine final approval of the Settlement along with the amount
4 properly payable for: (i) the Class Counsel Attorneys' Fees And Expenses; (ii) the Class
5 Representative Service Award; (iii) the Settlement Administration Costs; (iv) the payment to the
6 LWDA for its share of PAGA Penalties; (v) payments for payroll taxes; and (v) the Individual
7 Settlement Payments. Pursuant to California Rule of Court 3.769(h), after granting Final Approval,
8 the Court shall retain jurisdiction over the Parties to enforce the terms of the judgment.

9 73. **Nullification of Settlement Agreement.** In the event: (i) the Court does not grant
10 preliminary approval; (ii) the Court does not grant final approval; (iii) the Court does not enter a
11 final judgment as provided herein; or (iv) the Settlement does not become final for any other
12 reason, this Settlement Agreement shall be null and void and any order or judgment entered by the
13 Court in furtherance of this Settlement shall be treated as void from the beginning. In such a case,
14 the Parties and any funds to be awarded under this Settlement shall be returned to their respective
15 statuses as of the date and time immediately prior to the execution of this Agreement, and the
16 Parties shall proceed in all respects as if this Agreement had not been executed, except that any
17 costs already incurred by the Settlement Administrator shall be paid by Defendant. In the event
18 an appeal is filed from the Court's final judgment, or any other appellate review is sought,
19 administration of the Settlement shall be stayed pending final resolution of the appeal or other
20 appellate review, but any fees incurred by the Settlement Administrator prior to it being notified
21 of the filing of an appeal from the Court's Final Judgment, or any other appellate review, shall be
22 paid to the Settlement Administrator within thirty (30) days of said notification.

23 74. **No Effect on Employee Benefits.** Amounts paid to Plaintiff or other Settlement
24 Class Members pursuant to this Agreement shall be deemed not to be pensionable earnings and
25 shall not have any effect on the eligibility for, or calculation of, any of the employee benefits (e.g.,
26 vacations, holiday pay, retirement plans, etc.) of the Plaintiff or Settlement Class Members.

27 75. **Exhibits and Headings.** The terms of this Agreement include the terms set forth
28 in any attached **Exhibits 1-2**, which are incorporated by this reference as though fully set forth

1 herein. Any Exhibits to this Agreement are an integral part of the Settlement. The descriptive
2 headings of any paragraphs or sections of this Agreement are inserted for convenience of reference
3 only and do not constitute a part of this Agreement.

4 76. **Interim Stay of Proceedings.** The Parties agree to stay all proceedings in the
5 Action, except such proceedings necessary to implement and complete the Settlement, in abeyance
6 pending the Final Approval and Fairness Hearing to be conducted by the Court.

7 77. **Amendment or Modification.** This Agreement may be amended or modified only
8 by a written instrument signed by counsel for all Parties or their successors-in-interest.

9 78. **Entire Agreement.** This Agreement and any attached Exhibits constitute the entire
10 Agreement among these Parties, and no oral or written representations, warranties or inducements
11 have been made to any Party concerning this Agreement or its Exhibits other than the
12 representations, warranties and covenants contained and memorialized in the Agreement and its
13 Exhibits.

14 79. **Authorization to Enter into Settlement Agreement.** Counsel for all Parties
15 warrant and represent they are expressly authorized by the Parties whom they represent to negotiate
16 this Agreement and to take all appropriate actions required or permitted to be taken by such Parties
17 pursuant to this Agreement to effectuate its terms, and to execute any other documents required to
18 effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each
19 other and use their best efforts to effect the implementation of the Settlement. The persons signing
20 this Agreement on behalf of Defendant represent and warrant that they are authorized to sign this
21 Agreement on behalf of Defendant. Plaintiff authorizes Class Counsel to sign this Agreement and
22 further agrees not to request to be excluded from the Settlement. Plaintiff also represents and
23 warrants that she has not assigned any claim, or part of a claim, covered by this Settlement to a
24 third-party.

25 80. **Binding on Successors and Assigns.** This Agreement shall be binding upon, and
26 inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

1 81. **California Law Governs.** All terms of this Agreement and the Exhibits hereto and
2 any disputes arising hereunder shall be governed by and interpreted according to the laws of the
3 State of California.

4 82. **Counterparts.** This Agreement may be executed in one or more counterparts. All
5 executed counterparts and each of them shall be deemed to be one and the same instrument
6 provided that counsel for the Parties to this Agreement shall exchange among themselves copies
7 or originals of the signed counterparts.

8 83. **Notices.** Except for Class Member notices required to be made by the Settlement
9 Administrator, any and all notices or other communications required or permitted under this
10 Agreement shall be in writing and shall be sufficiently given if delivered in person to the party or
11 their counsel by U.S. certified mail, postage prepaid, e-mail, facsimile, or overnight delivery
12 addressed to the address of the party appearing in this Agreement.

13 84. **This Settlement Is Fair, Adequate and Reasonable.** The Parties believe this
14 Settlement is a fair, adequate and reasonable settlement of this Action and have arrived at this
15 Settlement after extensive arms-length negotiations, taking into account all relevant factors,
16 present and potential. In addition, the mediator may, at his discretion, execute a declaration
17 supporting the Settlement and the reasonableness of this Settlement, and the Court, may in its
18 discretion, contact the mediator to discuss the Settlement and whether or not the Settlement is fair
19 and reasonable.

20 85. **Jurisdiction of the Court.** In accordance with California Rule of Court 3.769(h),
21 the Parties agree that the Court shall retain jurisdiction with respect to the interpretation,
22 implementation and enforcement of the terms of this Agreement and all orders and judgments
23 entered in connection therewith, and the Parties and their counsel hereto submit to the jurisdiction
24 of the Court for purposes of interpreting, implementing and enforcing the settlement embodied in
25 this Agreement and all orders and judgments entered in connection therewith.

26 86. **Mutual Preparation.** The Parties have had a full opportunity to negotiate the
27 terms and conditions of this Agreement. Accordingly, this Agreement shall not be construed more
28 strictly against one Party than another merely by virtue of the fact that it may have been prepared

1 by counsel for one of the Parties, it being recognized that, because of the arms-length negotiations
2 between the Parties, all Parties have contributed to the preparation of this Agreement.

3 87. **Invalidity of Any Provision.** Before declaring any provision of this Agreement
4 invalid, the Court shall first attempt to construe the provisions valid to the fullest extent possible
5 consistent with applicable precedents so as to define all provisions of this Agreement valid and
6 enforceable.

7 88. **No Press.** The Plaintiff and Defendant, and their respective counsel, agree that
8 they will not issue any press releases, initiate any contact with the press or other media, respond
9 to any press or other media inquiry or have any communication with the press about this case
10 and/or the fact, amount or terms of the Settlement. Any communication about the Settlement to
11 Class Members prior to the Court-approved mailing will be limited to a statement that a Settlement
12 has been reached and the details will be communicated in a forthcoming Court-approved notice.

13 89. **Attorney Fees, Costs, and Expenses.** Except as otherwise specifically provided
14 for herein, each Party shall bear his or its own attorney fees, costs and expenses, taxable or
15 otherwise, incurred by them in or arising out of the Action and shall not seek reimbursement
16 thereof from any other party to this Settlement.

17
18 **IT IS SO AGREED:**

19
20 Dated: 12 / 18 / 2020, 2020

Erika Laflora
Plaintiff Erika LaFlora

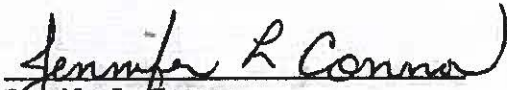
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23 Dated: 12-21, 2020

Ken Beerman
Name: Ken Beerman
Title: CEO
On Behalf of Defendant Terrio Physical Therapy &
Fitness, Inc.


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APPROVED AS TO FORM

Dated: 12-18-, 2020


Jennifer L. Connor
Anthony J. Orshansky
CounselOne, P.C.
Attorneys for Plaintiff Erika LaFlora

Dated: 12/18, 2020


Daniel K. Klingenger
LeBeau Thelen, LLP
Attorneys for Defendant Terrio Physical Therapy &
Fitness, Inc.