

AMENDED CLASS ACTION SETTLEMENT AGREEMENT

This Amended Class Action Settlement Agreement (“Agreement”) is made by and between Plaintiff James Karl (“**Plaintiff**”), on the one hand, and Defendants Zimmer US, Inc., Biomet U.S. Reconstruction, LLC, and Biomet Biologics, LLC (“**Defendants**”), on the other hand (Plaintiff and Defendants are collectively referred to as the “**Parties**”).

I. DEFINITIONS

In addition to other terms defined in this Agreement, the terms below have the following meaning in this Agreement:

- A. “Action” means the civil action entitled *James Karl v. Zimmer Biomet Holdings, Inc. et al.*, Case No. 2:18-cv-04176-WHA, currently pending in the United States District Court, Northern District of California, San Francisco Division. “Action” refers to this case and, in particular the resolution of this Action by means of this settlement agreement.
- B. “Benefit Form” means the form provided to each Class Member identifying the number of Work Periods used to calculate the Class Member’s Settlement Share, substantially in the form attached as Exhibit A.
- C. “Claims Administrator” means the CPT Group or any other third-party class action settlement claims administrator mutually agreed upon by the Parties and approved by the Court for the purposes of administering this settlement. The Parties each represent that they do not have any financial interest in the Claims Administrator or otherwise have a relationship with the Claims Administrator that could create a conflict of interest.
- D. “Claims Administration Costs” means the costs payable from the Maximum Settlement Amount to the Claims Administrator for administering this Settlement, including, but not limited to, printing, distributing, and tracking documents for this Settlement, calculating estimated settlement amounts per Class Member, performing the required tax reporting on the settlement payments, issuance of applicable IRS Form(s) 1099, distributing the Class Notice Packet, calculating and distributing the Net Settlement Amount and Class Counsels’ Fees and Expenses, providing necessary reports and declarations, and other duties and responsibilities set forth herein to process this Settlement, and as requested by the Parties. The Claims Administration Costs shall be paid from the Maximum Settlement Amount, including, if necessary, any such costs in excess of the amount represented by the Claims Administrator as being the maximum costs necessary to administer the settlement. The Claims Administration Costs are currently estimated to be approximately \$12,810.21. To the extent actual Claims Administrations Costs are greater than \$12,810.21, such excess amount shall be paid from the Maximum Settlement Amount.

- E. “Class” or “Class Members” mean any person who, during the period commencing June 24, 2015 through the date on which preliminary approval of the class settlement is granted by the District Court, was hired or otherwise engaged as an independent contractor for the purposes of solicitation or sales of Zimmer Biomet products and/or services in California by Zimmer US, Inc., Biomet U.S. Reconstruction, LLC, and Biomet Biologics, LLC, or any one of them.
- F. “Class Counsel” means Jason Lohr and Roberto Ripamonti of Lohr, Ripamonti & Segarich LLP, and Denis Kenny and John Lough of Scherer, Smith & Kenny LLP.
- G. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts awarded to Class Counsel and any other associated counsel by the District Court to compensate them for, respectively, their attorneys’ fees and litigation expenses incurred in connection with the Action, including their pre-filing investigation, their filing of the Action and all related litigation activities, this Settlement, and all post-Settlement compliance and approval procedures. Class Counsel shall request attorneys’ fees not in excess of twenty-eight (28%) of the Maximum Settlement Amount, or \$2,066,534.99, subject to Court approval. Class Counsel Litigation Expenses shall mean and include the additional reimbursement of any costs and expenses associated with Class Counsel’s litigation and settlement of the Action, up to \$25,645, subject to Court approval. Any portion of the Class Counsel Fees and Litigation Expenses Payment not awarded to Class Counsel by the District Court shall be added to the Net Settlement Amount.
- H. “Class Data” means, for each individual Class Member, the Class Member’s name; last-known mailing address, telephone number, and email address; last four digits of the Class Member’s applicable Tax Identification Number; and the Work Periods for each Class Member (as determined by Defendants’ available records). The Class Data shall be provided to the Claims Administrator in an Excel spreadsheet format.
- I. “Class Notice” means the Notice of Settlement provided to Class Members, substantially in the form attached as Exhibit B, subject to approval by the District Court.
- J. “Class Notice Packet” means the Class Notice and the Benefit Form, templates of which will be submitted by Plaintiff along with the Motion for Preliminary Approval for approval by the Court.
- K. “Defendants Counsel” means Eric Meckley and Joseph Lewis of Morgan, Lewis & Bockius LLP.
- L. “District Court” means the U.S. District Court for the Northern District of California, San Francisco Division.
- M. “Effective Date” means the latter of: (a) if any timely objections are filed, the 31st day after the Court enters an order granting final approval of the Class Action Settlement Agreement, provided no appeals have been filed; (b) if any timely

appeals are filed, the resolution of any such appeals in a way that does not alter the terms of the Settlement; or (c) if no timely objections are filed, the date upon which the Court enters an order granting final approval of the Class Action Settlement Agreement and dismissing the Action with prejudice.

- N. “Final Approval Hearing” means the hearing to be conducted by the District Court to determine whether to approve finally and implement the terms of this Agreement.
- O. “Maximum Settlement Amount” means the maximum settlement amount of Seven Million, Three Hundred Eighty Thousand, Four Hundred Eighty-Two Dollars and Ten Cents (\$7,380,482.10), which is the total amount that Defendants could be required to pay pursuant to the terms of the Agreement and which includes all monetary payments to Participating Class Members, Claims Administration Costs to the Claims Administrator, the Labor and Workforce Development Agency Payment, and the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment approved by the District Court. In no event will Defendants be liable to pay more than the Maximum Settlement Amount.
- P. “Judgment” means the Order of Final Judgment and Dismissal with Prejudice entered by the District Court. Plaintiff will draft and submit a proposed Judgment to the Court along with his Motion for Final Approval.
- Q. “Net Settlement Amount” means the Maximum Settlement Amount to be paid by Defendants pursuant to this Settlement minus (i) the amount of the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment approved by the District Court; (ii) the portion of the PAGA Payment that is paid to the LWDA; (iii) the Claims Administration Costs; and (iv) any other fees or expenses (other than attorneys’ fees and expenses) incurred in implementing the terms and conditions of this Agreement and securing dismissal of the Action as approved by the District Court. The Net Settlement Amount shall be allocated between the Class Members using a *pro rata* formula based upon each Settlement Class Member’s respective number of Work Periods.
- R. “Non-Participating Class Member” means a Class Member who submits a valid and timely written opt out request.
- S. “Notice of Objection” means a Class Member’s valid and timely written objection to the Settlement Agreement. For the Notice of Objection to be valid, it must include: (a) the objector’s full name, signature, address, and telephone number, (b) a written statement of all grounds for the objection, accompanied by any factual and/or legal support for such objection; (c) copies of any documents, papers, or information upon which the objection is based; and (d) a statement whether the objector intends to appear at the Fairness Hearing. Any Class Member who does not file a valid and timely written objection to the Settlement, or who fails otherwise to comply with the specific requirements of this section, shall be foreclosed from objecting to the Settlement and seeking any adjudication or review of the Settlement, by appeal or otherwise.

- T. “PAGA Payment” means the amount that shall be paid in connection with resolution of claims under the Labor Code Private Attorneys General Act of 2004 (Cal. Lab. Code §§ 2698, *et seq.*, “PAGA”). The Parties have agreed that \$110,707.23 (i.e., 1.5% of the Maximum Settlement Amount) shall be allocated to the PAGA payment. Pursuant to the PAGA, 75% of the PAGA Settlement Amount shall be paid to the California Labor and Workforce Development Agency (i.e., “LWDA Payment”), and 25% of the PAGA Payment shall be included in the Net Settlement Amount to be distributed to Participating Class Members.
- U. “Participating Class Member” means a Class Member who does not submit a valid and timely written opt out request.
- V. “Preliminary Approval of the Settlement” means the District Court’s preliminary approval of the Settlement without material change.
- W. “Released Claims” means that upon Final Approval, Participating Class Members shall be deemed to have fully, finally, and forever released the Defendants and the Released Parties from all claims certified for class treatment, alleged on a representative action basis, or which reasonably arise from, the factual and/or legal allegations set forth in the operative complaint, including specifically (a) all claims of any kind related to the alleged failure to provide accurate, itemized wage statements or to furnish records of hours worked including claims under Labor Code sections 226, 226.3, 1174, 1174.5, 558 and 1198, and IWC Wage Order 4-2001, (b) all claims of any kind related to the alleged failure to reimburse business expenses including claims under Labor Code sections 558, 1198 and 2802, and IWC Wage Order 4-2001; (c) all claims of any kind related to the alleged willful misclassification of Settlement Class Members including claims under Labor Code sections 226.8, 558 and 1198 and IWC Wage Order 4-2001, (d) all claims of any kind related to alleged unfair, unlawful and/or fraudulent business practices or acts under Business & Professions Code sections 17200, *et seq.*, premised upon the alleged misclassification of Settlement Class Members as independent contractors, including but not limited to violations of Labor Code sections 201, 202, 203, 226, 226.3, 226.8, 558, 1174, 1174.5, 1198, and 2802, and the California Healthy Workplaces, Healthy Families Act of 2014, Labor Code sections 245 *et seq.*, the California Workers Compensation Act, Cal. Lab. Code sections 3200 *et seq.*; the California Unemployment Insurance Code sections 100 *et seq.*, the Patient Protection and Affordable Care Act, 42 U.S.C. sections 18001 *et seq.*, the Employee Retirement Income Security Act, 29 U.S.C. sections 1001 *et seq.*, and the Medicare Anti-Kickback Statute, 42 U.S.C. sections 1320a-7(b), *et seq.*, (e) all claims for alleged breach of contract, breach of the covenant of good faith and fair dealing and/or promissory estoppel based on the failure to provide any employment-related perquisites and benefits, including but not limited to health/medical insurance, disability insurance, retirement benefits, 401(k) benefits, paid sick leave, vacation/PTO benefits, holiday leave, etc., (f) any and all claims for statutory and civil penalties (including but not limited to penalties under the California Private Attorneys General Act (“PAGA”) based on the alleged violation of the following Labor Code sections: 201, 202, 203, 226, 226.3, 226.8, 245 *et seq.*,

558, 1174, 1174.5, 1198, and 2802, 3200 *et seq.*), and (g) all claims for liquidated damages, punitive damages, interest, attorneys' fees (including but not limited to those arising under Labor Code sections 218.5 and 1021.5), litigation costs, restitution and equitable relief, or other additional damages that arise from or relate to the claims described in (a) through (f) above under any applicable law or legal theory.

- X. "Released Claims Period" means the period from June 24, 2015 through and including the date of final approval of the settlement by the District Court.
- Y. "Released Parties" means Defendants Zimmer US, Inc., Biomet U.S. Reconstruction, LLC, and Biomet Biologics, LLC and all affiliated and related entities (including all former and present parents, subsidiaries, brother/sister corporations, and affiliates, including but not limited to Zimmer Biomet Holdings, Inc. and Biomet US, Inc.), predecessors, owners, members, successors, shareholders, divisions, and each of these parties' and entities' respective past and present officers, directors, employees, partners, members, shareholders, insurers, agents, attorneys, and any other successors, assigns, or legal representatives.
- Z. "Response Deadline" means the last day by which Class Members must postmark to the Claims Administrator: any dispute regarding the number of Work Periods identified on the Benefit Form; any written opt out requests; or any Notices of Objection (which must also be filed with the Court and served on the Parties). The Response Deadline shall be seventy-five (75) calendar days from the initial mailing of the Class Notice by the Claims Administrator, unless the 75th day falls on a Sunday or Federal holiday, in which case the Response Deadline will be extended to the next day on which the U.S. Postal Service is open. The Response Deadline shall be extended fourteen (14) calendar days for any Class Member who is re-mailed a Class Notice by the Claims Administrator in accordance with the Notice Procedure, unless the 14th day falls on a Sunday or Federal holiday, in which case the Response Deadline will be extended to the next day on which the U.S. Postal Service is open. The Response Deadline also may be extended by express written agreement between Class Counsel and Defendants. Under no circumstances, however, shall the Claims Administrator have the authority to extend the deadline for Class Members to submit an opt out request or a Notice of Objection to the settlement.
- AA. "Settlement" means the disposition of the Action and all related claims effectuated by this Agreement.
- BB. "Settlement Share" means each Class Member's respective share of the Net Settlement Amount as provided by this Agreement.
- CC. "Work Periods" means the total number of bi-weekly pay periods during which a Class Member has contracted to provide services to Defendants as an independent contractor sales representative in a direct territory in California during the period

from June 24, 2015 through the date of preliminary approval of the Settlement, which shall be calculated using Defendants' available records.

II. RECITALS

- A. In this case Plaintiff alleged the following claims against Defendants: (1) violation of Fair Labor Standards Act ("FLSA"); (2) Failure to Pay Overtime Wages (Cal. Lab. Code §§ 200-204, 215, 216, 226, 226.6, 510(a), 558, 1194, 1198, and 1199 510, IWC Wage Order 4-2001); (3) Failure to Provide Meal Periods (Cal. Lab. Code §§ 226.7, 512, 516, IWC Wage Order 4-2001); (4) Failure to Provide Rest Periods (Cal. Lab. Code §§ 226.7, 516, IWC Wage Order 4-2001); (5) Failure to Provide Itemized Wage Statements (Cal. Lab. Code §§ 226, 226.3, IWC Wage Order 4-2001); (6) Failure to Reimburse Business Expenses (Cal. Lab. Code § 2802); (7) Unfair Business Practices (Cal. Bus. & Prof. Code §17200 *et seq.*) with predicate unlawful violations of 29 U.S.C. § 201 *et seq.*, Cal. Lab. Code §§ 226, 226.7, 226.8, 510, 512, 1182.12, 1194, 1197, 1197.1, 1198, and 2802, the Healthy Workplaces, Healthy Families Act of 2014, Cal. Lab. Code § 245 *et seq.* the Worker's Compensation Act, Cal. Lab. Code § 3200 *et seq.*; the Unemployment Insurance Code, Cal. Unemp. Ins. Code § 100 *et seq.*, the Patient Protection and Affordable Care Act, 42 U.S.C. § 18001 *et seq.*, and the Employee Retirement Income Security Act, 29 U.S.C. § 1001 *et seq.*; (8) California Private Attorney General Act (Cal. Lab. Code §§ 200-204, 215, 218.5, 218.6, 225.5, 226, 226.3, 226.6, 226.7, 510, 512, 516, 558, 1174, 1194, 1194.2, 1197, 1197.1, 2698, 2802, and 2804.)
- B. Defendants deny all material allegations in the operative complaint and have asserted numerous affirmative and other defenses. Notwithstanding, in the interest of avoiding the time, expense and operational distraction of further litigation, Defendants desire to fully and finally settle all actual or potential claims alleged by the Class Members arising out of the operative complaint in the Action.
- C. Plaintiff sought to certify a class action and prosecute a PAGA representative action. On or about July 28, 2020, the District Court certified a class comprised of any person who, during the period commencing June 24, 2015 and continuing, was hired or otherwise engaged as an independent contractor for the purposes of solicitation or sales of Zimmer Biomet products and/or services in California by Zimmer US, Inc., Biomet U.S. Reconstruction, LLC, and Biomet Biologics, LLC, or any one of them.
- D. In connection with the Action, Defendants produced a voluminous amount of documents and data, including but not limited to, earnings data and tenure for Class Members during the Class Period. Class Counsel engaged in extensive review and analysis of these records. Defendants deposed the named Plaintiff and several of Plaintiff's putative class member declarants in connection with litigating Plaintiff's motion for class certification. Plaintiff deposed Defendants via Rule 30(b)(6) and also deposed Defendants' Area Vice President, Sales.

- E. Following numerous years of litigation and extensive motion practice and discovery, the Parties engaged in extensive settlement discussions, including three separate settlement conferences before Magistrate Judge Donna M. Ryu. Judge Ryu's supervision of the settlement conferences was critical in managing the expectations of the Parties and providing a useful and neutral analysis of the issues and risks to both sides. The settlement discussions during and after the settlement conference were adversarial, non-collusive and conducted at arm's-length. Counsel on both sides recognized the substantial risk of an adverse result in the Action and agreed to settle the Action and all other matters covered by this Agreement pursuant to the terms and conditions of this Agreement. This Agreement replaces any other agreements, understandings, or representations between the Parties, and is fully admissible to prove the terms and conditions of the Settlement.
- F. Class Counsel has conducted a thorough investigation into the facts of the Action. Based on the foregoing discovery and the confirmatory measures detailed in this agreement, and their own independent investigation and evaluation, Class Counsel are of the opinion that the Agreement is fair, reasonable, and adequate and is in the best interest of the Class Members in light of all known facts and circumstances, including the risk of significant delay, defenses asserted by Defendants, and potential appellate issues.
- G. It is the mutual desire of the Parties to fully, finally, and forever settle, compromise, and discharge all disputes and claims raised in connection with the Action. Plaintiff and each Class Member acknowledge that this Settlement is intended to include and resolve all claims arising from or related to the Action as defined in the Released Claims in this Agreement.
- H. The Parties expressly acknowledge that this Settlement is entered into solely for the purpose of compromising significantly disputed claims and that nothing herein is, or may be, construed or interpreted as an admission of liability or wrongdoing by Defendants, or an admission that the claims in the Action have any merit. If, for any reason, the Settlement Agreement is not approved pursuant to the terms agreed upon by the Parties, it will be of no force or effect, and the Parties shall be returned to their original respective positions.
- I. The Parties previously had agreed to settle this matter on a class action basis for the total amount of \$7,000,000.00. Following such agreement and submission of settlement documents to the Court for preliminary approval, the Parties engaged in further discussions regarding the potential adverse consequences for class members of converting from independent contractor status to employee status during a calendar year. Some of the potential consequences identified by Defendants included, for example, (1) the transition of health and welfare benefits mid-year and the potential requirement to paid a new deductible amount and loss of credit for prior amounts paid toward a deductible and /or the potential to lose access to certain health care providers or coverage levels, (2) the potential complexity of closing out a class member's corporation or LLC, (3) the potential complexity of two separate tax filings based on contractor status and employee status in a single

tax year, including issues surrounding claimed deductions for business expenses and “write offs” and depreciation of assets, and (4) the potential that class members will have reached the maximum of their SEP-IRA, which would limit their contributions by changing status mid-tax year.

- J. As a result of the Parties’ further discussions, the Parties engaged in negotiations directed at (1) extending the timing for the conversion of class members to employee status to align as closely as possible with the calendar and tax year, (2) extending the Released Claims Period correspondingly to align with class members conversion to employee status, (3) ensuring that the Final Approval hearing occurs in early 2022, and (4) increasing the monetary consideration paid by Defendants to reflect the extension of the Release Claims Period.
- K. As a result of the Parties’ negotiations, the Parties agreed that Defendants would pay an additional \$380,482.10 in consideration, expressly conditioned upon and subject to the Court approving the timing and processing of the settlement so that the Released Claims Period coincides with the Final Approval date and conversion of class members to employee status, such that the additional \$380,482.10 in consideration would be added to the settlement only if the Court approved a Release of Claims end date of no earlier than January 1, 2022.
- L. The terms and conditions agreed upon by the Parties have resulted in their executing this Amended Class Action Settlement Agreement.

Based on these Recitals, the Parties agree as follows:

III. SETTLEMENT TERMS AND CONDITIONS

- A. **Maximum Settlement Amount.** Subject to the terms and conditions of this Agreement, including specifically the Court approving the extension of the Released Claims Period through the date of Final Approval, the Court scheduling and conducting a Final Approval hearing no earlier than 2022, and the Court approving the deadline for conversion of class members to employee status no earlier than 2022, the Maximum Settlement Amount that Defendants will pay under this Settlement is Seven Million Dollars Three Hundred Eighty Thousand, Four Hundred Eighty-Two Dollars and Ten Cents (\$7,380,482.10). All of the Maximum Settlement Amount will be disbursed pursuant to this Agreement and will be disbursed only by the Claims Administrator, and none of it will revert to Defendants.
- B. **Payments from the Maximum Settlement Fund.** Subject to the terms and conditions of this Agreement, within twenty-one (21) calendar days following the Effective Date, the Settlement Administrator will make the following payments:
 - 1. **To Class Counsel:** Class Counsel will apply to the District Court for an award of not more than \$2,066,534.99 of the Maximum Settlement Amount as their Class Counsel Fees Payment and an additional amount not more than \$25,645 as their Class Counsel Litigation Expenses Payment, and

Defendants will not oppose their request. If the District Court approves a Class Counsel Fees Payment or a Class Counsel Litigation Expenses Payment of less than \$2,066,534.99 in fees or less than \$25,645 in expenses, respectively, the remainder will be retained in the Net Settlement Amount for distribution to Participating Class Members. The Claims Administrator shall issue one or more IRS Form(s) 1099 to Class Counsel, and any other associated counsel, with respect to those payments. In consideration of its awarded attorneys' fees and costs and expenses, Plaintiff's Counsel waives any and all claims to any further attorneys' fees and expenses in connection with or related to the Action. Class counsel, and any other associated counsel, agree to complete and return to Defendants applicable IRS W-9 forms as a condition precedent to receiving any payments under this Agreement.

2. **To the LWDA:** The Claims Administrator will pay the amount of \$110,707.23 out of the Maximum Settlement Amount to the LWDA.
3. **To the Claims Administrator:** The Claims Administrator will pay out of the Maximum Settlement to itself the Claims Administration Costs as approved by the District Court, which are currently estimated to be approximately \$12,810.21. The Parties will make reasonable efforts to minimize the Claims Administration Costs while ensuring proper notice and administration of the fund. The Parties hereby acknowledge that Claims Administration Costs may increase above the current estimate and that any such additional Claims Administration Costs shall be taken out of the Maximum Settlement Amount unless otherwise ordered by the District Court and based upon extremely unusual and extraordinary circumstances.
4. **Responsibility for Taxes.** Except as otherwise provided herein, the Parties are each separately responsible for paying any taxes resulting to them from the Settlement to the appropriate tax authorities.

- C. **Payments from the Net Settlement Fund:** Within twenty-one (21) days following the Effective Date, the Claims Administrator will pay each Participating Class Member his or her Settlement Share based upon his or her respective Work Periods. Settlement checks not cashed within 180 days will be voided and the funds will be sent to the California State Controller's Office's Unclaimed Property Division. There will be no designated *cy pres* recipient or reversion of funds to Defendants. Failure to cash any check within 180 days shall in no way affect the binding nature of the settlement or the binding nature of the Released Claims as to any Participating Class Member.

Calculation. The settlement payment for each Participating Class Member will be calculated using a *pro rata* formula that will be based upon the length of the Class Member's contractual relationship with Defendants. Specifically, using available records, Defendants will calculate the total number of bi-weekly pay periods during which a Class Member contracted to provide services to Defendants as an

independent contractor sales representative in a direct territory in California during the period from June 24, 2015 through the date of preliminary approval of this Settlement (“Work Periods”). Defendant will provide each Class Member’s Work Periods to the Claims Administrator. The Claims Administrator will add each Class Member’s Work Periods to arrive a total number of Work Periods for the entire Settlement Class. Each Class Member’s Settlement Share will be calculated by, first, multiplying the Net Settlement Amount by the Class Member’s Work Periods and, second, dividing that value by the total number of Work Periods for the entire Settlement Class.

1. **Non-Wage Payments.** The Parties recognize and agree that the amounts paid to Participating Class Members pursuant to the Settlement represent the compromise of claims for alleged business expenses, penalties, interest and other non-wage amounts, and as a result all such payments shall reported by the Claims Administrator on an IRS Form 1099.
2. **Effect of Non-Participating (Opt-out) Class Members.** Non-Participating Class Members are not entitled to and will receive no payments pursuant to this Agreement, and their election not to participate in the Settlement will reduce neither the Maximum Settlement Amount nor the Net Settlement Amount. The respective Settlement Shares of Non-Participating Class Members will be reallocated on a pro-rata basis to the Participating Class Members. If more than five percent (5%) of the Class Members opt out/elect not to participate in the Settlement, then the Defendants shall have the right in their sole discretion to rescind and void this Agreement within ten (10) non-holiday weekdays after the date on which the Claims Administrator provides the Parties with the final statement of the number of Class Members who have validly and timely opted out.
3. **Uncashed Settlement Share Checks.** A Participating Class Member must cash his or her Initial Settlement Distribution check within one hundred and eighty (180) days following the postmarked date from the Claims Administrator’s mailing of the check. If a check is returned to the Claims Administrator, then the Claims Administrator will make all reasonable efforts to re-mail it to the Participating Class Member at his or her correct/updated/current address. If the check is not cashed within ten (10) days after re-mailing to the Participating Class Member, the Claims Administrator will send the Participating Class Member a letter informing him or her that unless the check is cashed by the deadline specified herein, it will expire and become void and non-negotiable. If the check remains uncashed by the expiration of one hundred and eighty (180) days following the postmarked date from the Claims Administrator’s mailing of the check, then the amount of the uncashed check will be sent to the California State Controller’s Office’s Unclaimed Property Division. There will be no designated *cy pres* recipient or reversion of funds to Defendants.

4. **Responsibility for Taxes and Indemnification.** Participating Class Members shall be solely responsible for the payment of any federal, state, or local taxes arising out of the payment of monies paid under this Agreement. Participating Class Members agree to hold Defendants harmless from any and all claims, demands, rights, damages, costs or expenses resulting from any liability or claim of liability for any amount assessed by or due any federal, state, or local government or agency thereof, arising from their failure to pay taxes, including but not limited to, federal, state, and local withholding and income taxes and social security taxes, with respect to payments made by Defendants as set out in this Agreement. This clause is not intended nor does it purport to give Plaintiff or Class Members advice or counseling concerning federal, state, or local tax responsibilities or liabilities.

D. **Appointment of Settlement Administrator.** Class Counsel will ask the District Court to approve the CPT Group as a qualified administrator to serve as the Claims Administrator, which, as a condition of appointment, will agree to be bound by this Agreement with respect to the performance of its duties and its compensation. The Claims Administrator's duties will include preparing, printing, and mailing the Class Notice Packet to all Class Members by both U.S. mail and email; conducting a National Change of Address search on any Class Notice Packet returned by the U.S. Postal Service as non-deliverable, and re-mailing the Class Notice Packet to the Class Member's new address; receiving and reviewing for validity completed opt out request and Notices of Objection; providing the Parties with weekly status reports about the delivery of Class Notice Packets and receipt of any disputes to the Work Periods identified in Class Member's Benefit Forms, receipt of any written opt outs and receipt of Notices of Objection; calculating the total number of Work Periods for the entire Class and determining Class Members' respective Settlement Shares; issuing the checks to effectuate the payments due under the Settlement; issuing the tax reports required under this Settlement (including, but not limited to, IRS Form(s) 1099); distributing any remaining funds as directed by the District Court; and otherwise administering the Settlement pursuant to this Agreement. The Claims Administrator will have the final authority to resolve all disputes concerning the calculation of a Participating Class Member's Settlement Share, subject to the dollar limitations set forth in this Agreement.

1. All Claims Administration Costs, including the cost of printing and mailing the Class Notice Packet, will be paid out of the Maximum Settlement Amount.
2. **Claims Administration Costs if Settlement Not Approved by Court or Becomes Void.** If an objection to the Settlement Agreement is filed with the Court, regardless of the ultimate outcome of any appeals taken, or if the Settlement is voided or rescinded, any costs incurred by the Claims Administrator shall be paid equally by the Parties (half by Defendants and half by Class Counsel), unless otherwise ordered by the District Court. Notwithstanding the above, if Defendants exercise their unilateral right to

void and withdraw from the Settlement at any time before the Effective Date, Defendants shall be responsible for all Claim Administration Costs through the date of such withdrawal.

E. Procedure for Approving Settlement.

1. **Motion for Preliminary Approval of Settlement by the District Court.**
 - a. Plaintiff will move the District Court for an order granting Preliminary Approval of the Settlement, setting a date no earlier than January 6, 2022 for the Final Approval Hearing, and approving the Class Notice and the Benefits Form.
 - b. Plaintiff will draft and submit with the Motion for Preliminary Approval a proposed Order Granting Preliminary Approval of Settlement; Approval of Notice to Class, Benefit Form; and Setting Hearing for Final Approval of Settlement.
 - c. Class Counsel will be responsible for drafting all documents necessary to obtain preliminary approval. Class Counsel will provide copies of all documents to be filed with the Court to Defendants at least five (5) business days before the documents are filed, for review and comment by Defendants. Defendants shall provide to Class Counsel any and all comments regarding the motion and proposed order at least one (1) business day prior to the filing date of such documents.
 - d. Should the District Court decline to preliminarily approve all material aspects of the Settlement (including but not limited to the scope of release to be granted by Participating Class Members or the binding effect of the Settlement on Participating Class Members), the Settlement will be null and void and the Parties will have no further obligations under it.
2. **Notice to Class Members.** After the District Court enters its order granting Preliminary Approval of the Settlement, every Class Member will be provided with the Class Notice Packet (which will include the Class Notice completed to reflect the Order Granting Preliminary Approval of the Settlement and the Benefit Form) as follows:
 - a. Using best efforts to provide it as soon as possible, and in no event later than twenty-one (21) business days after the District Court enters its Order Granting Preliminary Approval of the Settlement, Defendants will provide to the Claims Administrator a spreadsheet in Excel format containing, for each Class Member, his or her Class Data.

- b. Using best efforts to mail it as soon as possible, and in no event later than fourteen (14) days after receiving the Class Data, the Claims Administrator will mail the Class Notice Packets to all Class Members via first-class regular U.S. Mail using the mailing address information provided by Defendants, unless modified by any updated address information that the Claims Administrator obtains in the course of administration of the Settlement.

- c. Prior to mailing, the Claims Administrator shall perform a search based on the National Change of Address Database or any other similar services available, such as provided by Experian, for information to update and correct for any known or identifiable address changes. If a Class Notice Packet is returned because of an incorrect address on or before the Response Deadline, the Settlement Administrator will promptly, and not more than fourteen (14) days from receipt of the returned packet, use a skip trace search to identify a more current address for the Class Member and re-mail the Class Notice Packet to the Class Member. The Settlement Administrator will use the Class Data and otherwise work with Defendants to find a current address. The Settlement Administrator will be responsible for taking reasonable steps, consistent with its agreed-upon job parameters, court orders, and fee, as agreed to with Class Counsel and according to the following deadlines, to trace the mailing address of any Class Member for whom a Class Notice Packet is returned by the U.S. Postal Service as undeliverable. These reasonable steps shall include, at a minimum, the tracking of all undelivered mail; performing address searches for all mail returned without a forwarding address; and promptly re-mailing to Class Members for whom new addresses are found. Those Class Members who receive a re-mailed Class Notice Packet, whether by skip-trace or by request, shall have between the later of (a) an additional fourteen (14) days from the postmarked date of the re-mailed notice to postmark an opt out request or Notice of Objection to the Settlement. If the Class Notice Packet is re-mailed, the Settlement Administrator will note for its own records and notify Class Counsel and Defendants' Counsel of the date and address of each such re-mailing as part of a weekly status report provided to the Parties. Class Counsel will be entitled to receive from the Settlement Administrator any updated address information about a Class Member as the Settlement Administrator obtains such information.

The Claims Administrator will also email each Notice Packet using Class Member email addresses to the extent known to Defendants. The Claims Administrator will have no duty to resend email that are undeliverable, but may choose to resend any email that it determines was sent to an incorrect address.

- d. As part of its weekly status report, the Settlement Administrator will inform Class Counsel and Defendants' Counsel of any opt out requests and Notice of Objections to the Settlement that it receives. The costs of this notice program will be considered part of the administration fees and costs of the settlement to be paid from the Maximum Settlement Consideration to the third-party administrator.
 - e. Not later than the date by which the Plaintiff files his motion for final approval of the Settlement, the Settlement Administrator will serve on the Parties and file with the Court a declaration of due diligence setting forth its compliance with its obligations under this Agreement. Prior to the Final Approval Hearing, the Settlement Administrator will supplement its declaration of due diligence if any material changes occur from the date of the filing of its prior declaration.
3. **Dispute As to Work Period Information on Benefit Form.** The Class Members will have forty-five (45) days after the date on which the Claims Administrator mails the Class Notice Packets to dispute the Work Periods listed on the Benefit Form.
- a. Class Members will have the opportunity to dispute the Work Periods pre-printed on their individualized Benefit Forms by submitting to the Claims Administrator a writing explaining why they believe they should be credited with a different number of Work Periods along with any supporting documentation. In the event of such a dispute, Defendants will review their records to verify the correct information to the best of their abilities. Defendants' records will have a rebuttable presumption of correctness. After consultation with Class Counsel, the Class Member and Defendants, the Settlement Administrator will make a determination as to the disputed Work Periods and that determination will be final, binding on the Parties and the Class Member, and non-appealable.
 - b. In the event that a written dispute is submitted timely but is deficient in one or more respects, the Claims Administrator will notify the Class Member within fourteen (14) days of the deficiencies and stating that the Class Member will have fourteen (14) days from the date of the deficiency notice to correct the deficiency and resubmit the dispute. The envelope containing the resubmitted challenge must be postmarked within fourteen (14) days of the date of the deficiency notice to be considered timely, absent a showing of good cause.

4. **Objections to Settlement; Requests to Opt Out.** Class Members may submit: (1) objections to the Settlement; or (2) opt out requests pursuant to the following procedures:
- a. **Objections to Settlement.** The Class Notice will provide that Class Members who wish to comment on or object to the Settlement must file with the District Court and serve on counsel for the Parties not later than seventy-five (75) days after the Settlement Administrator mails the Class Notice Packets a written objection to the Settlement setting forth the grounds for the comment or objection, as described above in this Agreement. The date of fax or the postmark on the return mailing envelope shall be the exclusive means to determine whether an opt out request has been timely submitted. The statement will also indicate whether the Class Member intends to appear and object at the Final Approval Hearing; failure to do so will constitute a waiver of the right to appear at the hearing. A Class Member who does not file and serve a written objection in the manner and by the deadline specified above will be deemed to have waived any objections and will be foreclosed from making any objections (whether by appeal or otherwise) to the Settlement. Class Members who opt out of the Settlement will have no ability to object to the Settlement.
 - b. **Request to Opt-Out of the Settlement.** The Class Notice also will provide that Class Members who wish to exclude themselves from the Settlement must mail to the Claims Administrator not later than seventy-five (75) days after the Claims Administrator mails the Class Notice Packets a written and signed request to not participate in Settlement, i.e., to opt out of the Settlement. The date of fax or the postmark on the return mailing envelope shall be the exclusive means to determine whether an opt out has been timely submitted. If a question is raised about the authenticity of a signed opt out, the Claims Administrator will have the right to demand additional proof of the Class Member's identity. A Non-Participating Class Member will not participate in or be bound by the Settlement or the Judgment. Defendants will remain free to contest any claim brought by the Class Member that would have been barred by this Agreement, and nothing in this Agreement will constitute or be construed as a waiver of any defense Defendants have or could assert against such a claim nor will any person who properly elects not to participate be bound in any way by this proceeding. A Class Member who does not complete and mail a timely and valid request to opt out of the Settlement in the manner and by the deadline specified in this Agreement will automatically become a Participating Class Member and be bound by all terms and conditions of the Settlement, including its release of claims, if the

Settlement is approved by the District Court, and by the Judgment, regardless of whether he or she has objected to the Settlement.

- c. **Settlement Binds All Class Members Who Do Not Opt-Out.** Any Class Member who does not affirmatively opt-out of the Settlement Agreement by submitting a timely and valid written opt out request shall be bound by all of its terms, including those pertaining to the Released Claims, as well as any Judgment that may be entered by the Court if it grants final approval to the Settlement.
 - d. **Report.** Not later than fourteen (14) days after the deadline for submission of opt out requests and Notices of Objection, the Claims Administrator will provide the Parties with a complete and accurate list of all Participating Class Members and Non-Participating Class Members.
5. **No Solicitation of Comment, Objection, Election Not to Participate.** Neither the Parties nor their respective counsel will solicit or otherwise encourage directly or indirectly any Class Member to object to the Settlement, submit an opt out request, or appeal from the Judgment.
 6. **Plaintiff's Waiver of Right to Be Excluded and Object.** Plaintiff agrees to sign this Settlement Agreement and, by signing this Settlement Agreement, is hereby bound by the terms herein. For good and valuable consideration, and by his signature below, Plaintiff further agrees that he shall not request to be excluded from the Settlement Agreement, nor object to any terms of it. Any such request for exclusion or objection by Plaintiff shall be void and of no force or effect. Efforts by Plaintiff to circumvent the terms of this paragraph shall be void and of no force or effect.
 7. **Waiver of Right to Appeal.** Provided that the Judgment is consistent with the terms and conditions of this Agreement, Plaintiff and Participating Class Members who did not timely submit an objection to the Settlement, and Class Counsel hereby waive any and all rights to appeal from the Judgment, including all rights to any post-judgment proceeding and appellate proceeding, such as, but not limited to, a motion to vacate judgment, a motion for new trial, a motion for relief under Rule 60, Federal Rules of Civil Procedure and any extraordinary writ, and the Judgment therefore will become nonappealable at the time it is entered. The waiver of appeal does not include any waiver of the right to oppose any appeal, appellate proceedings or post-judgment proceedings. This paragraph does not preclude Plaintiff or Class Counsel from appeal from a refusal by the District Court to award the requested Class Counsel Fees Payment, or the Class Counsel Litigation Expenses Payment sought by them.
 8. **Vacating, Reversal, or Material Modification of Judgment on Appeal or Review.** If, after a notice of appeal, a petition for review, or a petition

for *certiorari*, or any other motion, petition, or application, the reviewing court vacates, reverses, or modifies the Judgment such that there is a material modification to the Settlement (including, but not limited to, the scope of release to be granted by Participating Class Members or the binding effect of the Settlement on Participating Class Members), and that court's decision is not completely reversed and the Judgment is not fully affirmed on review by a higher court, then either Plaintiff or Defendants will have the right to void the Settlement, which the Party must do by giving written notice to the other Parties, the reviewing court, and the District Court not later than thirty (30) days after the reviewing court's decision vacating, reversing, or materially modifying the Judgment becomes Final. A vacation, reversal, or modification of the District Court's award of the Class Counsel Fees Payment or Litigation Expenses Payment will not constitute a vacation, reversal, or material modification of the Judgment within the meaning of this paragraph, provided that Defendants' obligation to make payments under this Settlement will remain limited by the Maximum Settlement Amount.

- F. **Final Settlement Approval Hearing and Entry of Judgment.** Upon expiration of the deadlines to postmark opt out requests and objections to the Settlement Agreement, and with the Court's permission, a Final Approval/Settlement Fairness Hearing shall be conducted to determine the Final Approval of the Settlement Agreement along with the amounts properly payable for (a) individual Settlement Shares; (b) the LWDA Payment; (c) the Class Counsel's Fees and Litigation Expenses; and (d) all Claims Administration Costs. The Final Approval/Settlement Fairness Hearing shall not be held earlier than January 6, 2022. Class Counsel will be responsible for drafting all documents necessary to obtain final approval. Class Counsel will also be responsible for drafting the attorneys' fees and costs application to be heard at the final approval hearing. Class Counsel will provide a copy of the motion for final approval and proposed order and judgment to Defendants at least five (5) business days before the documents are filed, for review and comment by Defendants. Defendants shall provide to Class Counsel any and all comments regarding the motion and proposed order and judgment at least one (1) day prior to the filing date of such documents.
- G. **Judgment and Continued Jurisdiction.** Upon final approval of the Settlement by the Court, the Parties shall present the Judgment to the Court for its approval, which shall include a dismissal with prejudice of the entire Action. After entry of the Judgment, the Court shall have continuing jurisdiction solely for purposes of addressing: (a) the interpretation and enforcement of the terms of the Settlement, (b) Settlement administration matters, and (c) such post-Judgment matters as may be appropriate under court rules or as set forth in this Agreement.
- H. **Tax Liability.** Defendants makes no representation as to the tax treatment or legal effect of the payments called for hereunder, and Plaintiff and Participating Class Members are not relying on any statement, representation, or calculation by Defendants or by the Claims Administrator in this regard. Plaintiff and

Participating Class Members understand and agree that they will be solely responsible for the payment of any taxes and penalties assessed on the payments described herein. Class members will be solely responsible for the reporting and payment of taxes owed by them pursuant to this Agreement (including any penalties incurred). Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY” AND EACH PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN “OTHER PARTY”) ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY’S OR ADVISER’S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

- I. **Final Report by Settlement Administrator to Court.** Within ten days after final disbursement (and redistribution of any uncashed checks, if applicable) of all funds from the Maximum Settlement Amount, the Claims Administrator will serve on the Parties and file with the Court a declaration providing a final report on the disbursements of all funds from the Maximum Settlement Amount.
- J. **Release of Claims.** As of the date of the Judgment, all Participating Class Members hereby fully and finally release the Released Parties from all of the Released Claims. With respect to the Released Claims only, Participating Class Members are releasing all rights under section 1542 of the California Civil Code, which provides:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of

executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

K. **Confidentiality.** No comments of any kind regarding the Settlement, the settlement-related documents, related communications, or the settlement negotiations may be made at any time to the press/media or otherwise, or otherwise publicized, circulated, or posted in any manner, unless the Parties expressly agreed in writing, with the exception that Class Counsel may provide links to the notice and a synopsis of the settlement on their respective websites. Notwithstanding the foregoing, Defendants shall have the right to disclose the settlement and its terms for accounting or public filing purposes, or to otherwise comply with any public reporting duties. This provision does not preclude Class Counsel from referencing the Settlement pursuant to court order. Any communication about the Settlement by Class Counsel to Class Members prior to the court approved mailing will be limited to a statement that a settlement has been reached and the details will be communicated in a forthcoming Court-approved notice. Nothing set forth herein, however, shall prohibit the Parties from providing this Agreement to the Court in connection with the Parties' efforts to seek the Court's approval of this Settlement.

L. **Miscellaneous Terms.**

1. **No Effect on Other Remuneration.** The Settlement Shares will not result in any additional payments (such as bonuses) beyond those provided by this Agreement to Plaintiff or Participating Class Members, and Plaintiff and Participating Class Members will be deemed to have waived all such claims, whether known or unknown by them, as part of their release of claims under this Agreement.
2. **Revocation of Settlement Agreement by Defendants.** Defendants shall have, in their sole discretion, the right to void and withdraw from the Settlement Agreement if at any time prior to final approval: (a) five percent (5%) or more of all Class Members opt out of the Settlement; or (b) the Settlement is construed in such a fashion that Defendants would be required to pay more than the Maximum Settlement Amount; or (c) the Court does not certify the Settlement Class, or does not certify a class releasing the claims set forth herein or otherwise makes an order inconsistent with any of the material terms of this Settlement; or (d) any pending litigation or litigation filed prior to final approval of the Settlement results in a final judgment that in any way prevents this Settlement from resolving all claims covered by this Settlement; or (e) Plaintiff or Class Counsel materially breaches the Settlement; or (f) the Court does not approve a Released Claims Period that extends through and including the date of Final Approval of the settlement by the Court; or (g) the Court schedules a Final Approval hearing to occur prior to January 6, 2022; or (h) the Court conducts a Final Approval Hearing prior to January 6, 2022. In the event Defendants revoke the Settlement pursuant to sub-sections (f), (g) or (h) above, then Defendants agree to work expeditiously with Plaintiff to prepare and execute

an updated settlement agreement consistent with the material terms of the Parties' original executed class action settlement that had been presented to the Court on April 30, 2021 (Dkt. 188) (with a Maximum Settlement Amount of \$7,000,000) for prompt submission to the Court for review and approval. Plaintiff does not have the right to withdraw from the settlement if the Court does not award or reduces the amount of attorneys' fees sought in the motions for preliminary or final approval.

3. **Nullification of Settlement Agreement.** In the event that: (a) the Court does not finally approve the Settlement as provided herein; or (b) the Settlement does not become final for any other reason, then this Settlement Agreement, and any documents generated to bring it into effect, shall be null and void. Any order or judgment entered by the Court in furtherance of this Settlement Agreement shall likewise be treated as void from the beginning.
4. **Invalidity of Any Provision.** Before declaring any provision of this Settlement Agreement invalid, the District Court shall first attempt to construe the provision as valid to the fullest extent possible consistent with applicable precedents so as to define all provisions of this Settlement Agreement valid and enforceable.
5. **No Prior Assignments.** The Parties and their counsel represent, covenant, and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or right herein released and discharged.
6. **Reclassification.** No later than either January 6, 2022 or thirty (30) days after the Effective Date, whichever date is later, Defendants will implement a change in the structure of their California sales operations, whereby Class Members currently classified by Defendants as IRS Form 1099 independent contractor sales representatives in direct territories within California who are satisfactorily performing their expected duties under their contracts will be offered employment as IRS Form W-2 employees (either directly with Defendants or with one or more third-party distributor entities). To the extent a Class Member whose average annual income exceeds \$300,000 ("Highly Compensated Group") declines the employment offer, then Defendants reserve the right to continue to engage such person(s) as non-employee IRS Form 1099 independent contractor(s). The retention of any Class Members as an IRS Form 1099 independent contractor shall not be considered or deemed a breach of this Settlement, and Class Counsel waives any ability to challenge the retention of any such persons as an IRS Form 1099 independent contractor.
7. **No Admission of Liability or Class Certification for Other Purposes.**

- a. Defendants deny that they have engaged in any unlawful activity, have failed to comply with the law in any respect, have any liability to anyone under the claims asserted in the Actions, or that, but for this Settlement, a class should be certified or a PAGA representative action maintained, in the Action. This Agreement is entered into solely for the purpose of compromising highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission of liability or wrongdoing by Defendants, or an admission by Plaintiff that any of their claims was non-meritorious or any defense asserted by Defendants was meritorious. This Settlement and the fact that Plaintiff and Defendants were willing to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (other than solely in connection with the Settlement).
- b. Defendants have agreed to the certification of the Class for the sole purpose of effectuating this Settlement. Should the Settlement be voided by Defendants pursuant to this Agreement, or not approved by the District Court, or should the Judgment not become Final, the fact that the Parties were willing to stipulate to class certification as part of the Settlement will have no bearing on, and will not be admissible in connection with, the issue of whether a class should be certified in a non-settlement context in this Action or any other action, and in any of those events Defendants expressly reserve the right to further challenge and oppose class certification.
- c. Whether or not the Judgment becomes Final, neither the Settlement, this Agreement, any document, statement, proceeding or conduct related to the Settlement or the Agreement, nor any reports or accounting of those matters, will be (i) construed as, offered or admitted in evidence as, received as, or deemed to be evidence for any purpose adverse to Defendants or any other beneficiary of the releases granted under this Agreement (the “Released Parties”), including, but not limited to, evidence of a presumption, concession, indication or admission by any of the Released Parties of any liability, fault, wrongdoing, omission, concession or damage; or (ii) disclosed, referred to or offered in evidence against any of the Released Parties, in any further proceeding in the Actions, or any other civil, criminal or administrative action or proceeding except for purposes of effectuating the Settlement pursuant to this Agreement.
- d. This section and all other provisions of this Agreement notwithstanding, any and all provisions of this Agreement may be admitted in evidence and otherwise used in any and all proceedings to enforce any or all terms of this Agreement, or in defense of any claims released or barred by this Agreement.

8. **Waiver.** No waiver of any condition or covenant contained in this Agreement or failure to exercise a right or remedy by any of the Parties hereto shall be considered to imply or constitute a further waiver by such party of the same or any other condition, covenant, right or remedy.
9. **Integrated Agreement.** After this Agreement is signed and delivered by all Parties and their counsel. The Parties expressly recognize California Civil Code Section 1625, which provides that a written agreement is to be construed according to its terms and may not be varied or contradicted by extrinsic evidence, and the Parties agree that no such extrinsic oral or written representations or terms shall modify, vary or contradict the terms of this Agreement.
10. **Invalidity of Any Provision.** Before declaring any provision of this Settlement Agreement invalid, the District Court shall first attempt to construe the provision as valid to the fullest extent possible consistent with applicable precedents so as to define all provisions of this Settlement Agreement valid and enforceable.
11. **Attorney Authorization.** Class Counsel and Defendants' Counsel warrant and represent that they are authorized by Plaintiff and Defendants, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement.
12. **Modification of Agreement.** This Agreement, and any and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their successors-in-interest.
13. **Agreement Binding on Successors.** This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
14. **Retention of Jurisdiction.** The Parties request and stipulate that the District Court may retain jurisdiction to enforce and issue such orders as are reasonable and necessary to carry out the terms of the Agreement.
15. **Cooperation in Drafting.** The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
16. **Fair, Adequate and Reasonable Settlement.** The Parties and their respective counsel believe and warrant that this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at this Agreement through arms-length negotiations, taking into account all relevant factors, current and potential. The Parties further acknowledge that

they are each represented by competent counsel and that they have had an opportunity to consult with their counsel regarding the fairness and reasonableness of this Agreement.

17. **Representation By Counsel.** The Parties acknowledge that they have been represented by counsel throughout all negotiations that preceded the execution of this Agreement, and that this Agreement has been executed with the consent and advice of counsel. Further, Plaintiff and Class Counsel expressly warrant and represent that there are no liens on the Settlement Agreement.
18. **Headings.** The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
19. **Cooperation and Execution of Necessary Documents.** All Parties shall cooperate in good faith and execute all documents to the extent reasonably necessary to effectuate the terms of this Settlement Agreement.
20. **Notice.** All notices, demands or other communications between the Parties in relation to this Agreement will be in writing and shall be transmitted by email, deemed delivered on the date of transmission so long as transmitted before 6:00 p.m. on a regular business day, and addressed as follows:

To Plaintiff and the Class:

LOHR RIPAMONTI & SEGARICH LLP

Jason Lohr

Roberto Ripamonti

100 Pine St., Ste. 1250

San Francisco, CA 94111

Phone: (415) 683-7947

Email: jason.lohr@lrlp.com

Email: roberto.ripamonti@lrlp.com

SCHERER, SMITH & KENNY LLP

Denis Kenny

John Lough

140 Geary Street, Seventh Floor

San Francisco, CA 94108

Phone: (415) 433-1099

Email: denis@sfcounsel.com

Email: john@sfcounsel.com

To Defendants:

MORGAN, LEWIS & BOCKIUS LLP
Eric Meckley
Joseph Lewis
One Market, Spear Street Tower
San Francisco, CA 94105-1126
Phone: (415) 442-1000
Email: emeckley@morganlewis.com
Email: joseph.lewis@morganlewis.com

21. **Execution in Counterpart.** This Agreement may be executed in one or more counterparts. All executed counterparts and each of them will be deemed to be one and the same instrument provided that counsel for the Parties will exchange between themselves original signed counterparts. Facsimile signatures will be accepted if the original signature is provided within seven days. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

IV. EXECUTION BY PARTIES

The Parties and their counsel hereby execute this Agreement.

Dated: June 3, 2021

Defendants Zimmer US, Inc., Biomet U.S.
Reconstruction, LLC, and Biomet Biologics, LLC.



By Chad F. Phipps

Title SVP, General Counsel & Secretary

Dated: _____, 2021

Plaintiff James Karl

LOHR, RIPAMONTI & SEGARICH LLP

Dated: _____

By: _____

Jason Lohr
Roberto Ripamonti
Attorneys for Plaintiff and the Class

SCHERER, SMITH & KENNY LLP

Dated: _____

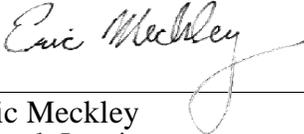
By: _____

Denis Kenny
John Lough
Attorneys for Plaintiff and the Class

MORGAN, LEWIS & BOCKIUS LLP

Dated: June 3, 2021

By: _____


Eric Meckley
Joseph Lewis
Attorneys for Defendants
Defendants Zimmer US, Inc., Biomet U.S.
Reconstruction, LLC, and Biomet Biologics, LLC