UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

DEANNA ALI and HEATHER EMBRY, on behalf of themselves and a class of those others similarly situated,

Plaintiffs,

v. **CASE NO.: 8:19-cv-535-T-23JSS (Consolidated)**

LASER SPINE INSTITUTE, LLC, LSI MANAGEMENT COMPANY, LLC and LSI HOLDCO LLC,

Defendants.
_____/

JOINT MOTION FOR ORDER: (1) PRELIMINARILY APPROVING SETTLEMENT AGREEMENT; (2) APPROVING FORM AND MANNER OF NOTICE TO THE CLASS; (3) SCHEDULING A FINAL FAIRNESS HEARING FOR THE FINAL CONSIDERATION AND APPROVAL OF THE SETTLEMENT AND (4) FINALLY APPROVING THE SETTLEMENT

Comes now Plaintiffs/Class Representatives Deanna Ali ("Ali") and Heather Embry ("Embry")("Plaintiffs" or "Class Representatives") on behalf of themselves and on behalf of all other persons similarly situated, as defined herein (the "Class Members") and Soneet R. Kapila, in his capacity as the Assignee ("Assignee") of Laser Spine Institute, LLC ("LSI") and each of its affiliated entities (collectively, the "Companies"). The Plaintiffs and the Assignee (collectively referred to herein as the "Parties"), by and through their respective counsel of record, submit this Joint Motion for an Order: (1) preliminarily approving the Settlement Agreement (the "Settlement") between the Parties pursuant to Federal Rule of Civil Procedure 23; (2) approving the form and manner of notice to the Class (the "Notice of Settlement"); (3) scheduling a Final Approval Hearing for the

final consideration and approval of the Settlement; and (4) finally approving the Settlement (the "Joint Motion"). In support of their Joint Motion, the Parties respectfully submit the following:

I.

Background

1. Before permanently closing its doors on March 1, 2019, LSI operated as a large medical-services company, specializing in minimally invasive spinal procedures.

2. The Companies had been actively seeking funding which the Companies believed would have allowed them to avoid a shutdown. After efforts to obtain financing failed, on March 1, 2019, Plaintiff and hundreds of other Company employees were terminated. The Assignees contend that some of the locations may not have had sufficient numbers of employees to constitute a "mass layoff" and/or "plant shutdown" as defined by the WARN Act.

3. The Companies provided no advance written notice of the mass layoff to Plaintiffs, or to any of the Class Members. However, the Companies contend that the failure to provide notice qualified for the "faltering company" exception to the WARN Act. In addition, the Companies provided notice to all employees on March 4, 2019.

4. On March 14, 2019, LSI executed and delivered an assignment for the benefit of creditors to the Assignee. The Assignee filed a Petition with the Circuit Court for the Thirteenth Judicial Circuit (the "Assignment Court") on March 14, 2019, commencing an assignment for the benefit of creditors proceeding pursuant

to section 727 of the Florida Statutes under Consolidated Case No. 2019-CA-2762 (the "LSI Assignment Case").

5. Simultaneous with the filing of the LSI Assignment Case, the Assignee filed fifteen other Petitions in the Assignment Court commencing an assignment for the benefit of creditors proceeding for each of the following 15 affiliates of LSI (the "Affiliated Assignment Cases" and together with the LSI Assignment Case, the "Assignment Cases"): CLM Aviation, LLC, LSI Holdco, LLC, LSI Management Company, LLC, Laser Spine Surgery Center of Arizona, LLC, Laser Spine Surgery Center of Cincinnati, LLC, Laser Spine Surgery Center Of Cleveland, LLC, Laser Spine Surgical Center, LLC, Laser Spine Surgery Center Of Pennsylvania, LLC, Laser Spine Surgery Center of St. Louis, LLC, Laser Spine Surgery Center Of Warwick, LLC, Medical Care Management Services, LLC, Spine DME Solutions, LLLC, Total Spine Care, LLC, Laser Spine Institute Consulting, LLC, and Laser Spine Surgery Center of Oklahoma, LLC.

6. Prior to commencing the Assignment Cases, the Companies employed more than 500 employees, including the Class Members, in their business operations in Tampa, Florida; Cincinnati, Ohio; St. Louis, Missouri; and Scottsdale, Arizona; with its corporate headquarters located in Tampa, Florida (collectively the "Facilities").

7. Three lawsuits — *Ali v. Laser Spine Institute, LLC, et al.*, 8:19-cv-535-T-23JSS; *Embry v. Laser Spine Institute, LLC, et al.*, 8:19-cv-539-T-23AAS; and *Higdon v. Laser Spine Institute, LLC, et al.*, 8:19-cv-547-T-23TGW —were filed asserting violations of the Worker Adjustment and Retraining Notification, or "WARN,"

Act, 29 U.S.C. §2101 *et seq* after the termination of Plaintiffs and hundreds of other similarly situated Class Members[1].

8. On June 13, 2019, the Court consolidated the cases "[s]olely for the purposes of determining whether to certify a class, whether to appoint a class representative, and whether to appoint class counsel."

9. Subsequently Duane Higdon withdrew his motion for class certification and the only remaining class certification motion was Heather Embry's motion (Doc. 14 in 8:19-cv-539-T-23AAS), which Deanna Ali adopted (Docs. 12–13). Thus, Ali and Embry moved to certify the same class, to represent the class together, and to appoint their attorneys as Class Counsel.

10. On July 8, 2019, the Court ender an Omnibus Order which granted Embry's class certification motion (Doc. 14 in 8:19-cv-539-T-23AAS) and certified the Class that includes:

> All Laser Spine Institute employees throughout the United States who were not given a minimum of 60 days' written notice of termination and whose employment was terminated on or about March 1, 2019, as a result of a "mass layoff" or "plant closing" as defined by the Workers Adjustment and Retraining Notification Act of 1988, excluding the directors and officers of Laser Spine Institute.

11. In addition, the Court appointed Deanna E. Ali and Heather Embry as Class Representatives. Ryan D. Barack, Luis A. Cabassa, Brandon J. Hill, and Michelle Erin Nadeau were appointed as Class Counsel. The Court also

[1] Capitalized terms not defined in this Joint Motion shall have the meaning set forth in the Settlement Agreement.

consolidated all of the matters in *Ali v. Laser Spine Institute, LLC, et al*., 8:19-cv-535-T-23JSS as the lead case.

12. On July 26, 2019, the Court subsequently approved the form of notice to the Class Members advising them of the existence of the Class and a mechanism to opt-out. (Doc. 16).

13. On August 16, 2019, the Notice of the Class was provided to 577 individuals. (Doc 17).[2]

14. No individuals asked to be excluded from the Class.

15. Since the commencement of the Assignment Cases, the Assignee has been administering the estates created in the Assignment Cases (collectively, the "Assignment Estates") and the Assignee has been successful in recovering some funds for the Assignment Estates. Class Counsel has been an active observer of the Assignment Cases and the associated litigation.

16. The Class has asserted class proofs of claim ("Class POC) in the Assignment Cases.

17. The Assignee filed on objection to the Class POC (the "Assignee's Objection"). On June 29, 2021, the Laserscopic Spinal Centers of America, Inc., Laserscopic Medical Clinic, LLC and Laserscopic Spine Centers of America, Inc.'s Objection to WARN Act Plaintiffs' Proof of Claim (the "Bailey Group Objection") was filed with the Court (the "Bailey Group Objection"). The Class POC, the

2 The initial list was mailed to 579 names, but it appears that Julie Marie Boyd aka Julie Marie Kunze and Kathryn Morse McAbee are on the mailing list twice.

Assignee Objection, and the Bailey Group Objection have not been adjudicated. by the Assignment Court.

18. On April 30, 2021, the Assignee filed the Answer and Affirmative Defenses of the Assignee to the Amended Class Action Complaint Filed by Deanna Ali. (Doc. 34)

19. On April 30, 2021, the Assignee's Motion to Abstain or Stay Action In Favor of Pending Claims Litigation In State Assignment Proceedings (Do. No. 33) was filed with this Court, although the Court has not ruled on the motion.

20. The Parties have engaged in vigorous arm's length settlement negotiations for years and exchanged certain pertinent information.

21. On June 21, 2021, the Parties held a mediation conference with Mediator Mark Hanley. The mediation was continued with the consent of the Parties and counsel to allow the Parties to continue settlement efforts.

22. For the next 1.5 years, through December of 2022, the Parties' counsel continued engaging in settlement discussions while the Assignment Cases continued.

23. After extensive settlement negotiations, the Parties reached a tentative class-wide settlement for which they now seek Court approval.

24. The Parties agree that the Plaintiffs' WARN Act claims present significant and complex legal and factual issues regarding the asserted application of the WARN Act against the Companies. The Parties further agree that the recovery of and priority of WARN Act Claims in the Assignment Cases is subject

to the distribution procedures set forth in the statutes governing assignment for the benefit of creditors cases.

25. The Assignee believes there may be defenses to the asserted WARN Claims, including the priority of the WARN Act Claims in the Assignment Cases.

26. In an attempt to avoid costly litigation, the uncertainty of the outcome, and the depletion of Assignment Estate assets, the Parties reached a settlement, as described herein, through good faith, arms' length negotiations.

27. The Settlement Agreement, for which the Parties jointly seek this Court's approval, is annexed hereto as Exhibit "1."

II.

Summary of Settlement Terms

The Settlement terms are delineated below.[3]

A. The Settlement Class

The Settlement Class is a class under Federal Rule of Civil Procedure 23(b). On July 8, 2019, the Court has certified a Class that includes:

> All Laser Spine Institute employees throughout the United States who were not given a minimum of 60 days' written notice of termination and whose employment was terminated on or about March 1, 2019, as a result of a "mass layoff" or "plant closing" as defined by the Workers Adjustment and Retraining Notification Act of 1988, excluding the directors and officers of Laser Spine Institute.

[3] The Joint Motion seeks to summarize the terms of the Settlement. To the extent there is a conflict between the terms of the Joint Motion and the Settlement Agreement, the terms of the Settlement Agreement shall control.

B. Monetary Relief and Distributions

The Assignee shall pay the amount of Seven Hundred Fifty Thousand Dollars ($750,000) in full and final settlement of all claims including attorneys' fees and costs to the Qualified Settlement Fund. The monies will fund the Settlement Account and the Gross Settlement used to pay all distributions, fees, costs and expenses associated with the Settlement, including but not limited to funds utilized to compensate the Class Members; all costs associated with providing notice; all costs of Settlement Administration; and all attorneys' fees and expenses.

The Assignee shall pay the money to the Settlement Account, which will be established for the purposes of making the payments in the prior paragraph, according to instructions to be provided by the Settlement Administrator, for distribution by the Settlement Administrator. The fees and costs of the Settlement Administrator, which Class Counsel expects will not exceed $20,000, shall be paid from the Settlement Fund as part of Class Counsel's expenses. Once the Gross Settlement has been received by the Settlement Administrator, such amounts shall be promptly distributed by the Settlement Administrator as follows: (a) the funds, minus one third attorney fees ("Class Counsel's Fees"), plus expenses of litigation ("Class Counsel's Expenses"), shall be the amounts divided among the Class Members, i.e., $200.00 for each Class Member employed at any of the Facilities with fewer than fifty (50) non-part-time employees[4] (the "Small Facility Class

4 Relying on the definition of a "plant closing" found in the WARN Act at 29 U.S.C. §2101(a)(2) that requires the layoff at least 50 employees excluding part-time employees, the Assignee asserted that the Class Members who worked at Facilities with fewer than 50 employees were not protected by the WARN Act. The weight of authority supports this contention. *See e.g., Williams v. Phillips Petroleum Co.*, 23 F. 3d

(…continued)

Members' Net Pre-tax Payment") or a pro rata share of the remaining Settlement Fund allocated to each Class Member employed at any of the Facilities with at least fifty (50) non-part-time employees that could be recovered from the Assignment Estate, as calculated by Class Counsel, for each Class Member, based on the Companies' books and records (and estimated in some instances to the extent data was not available) and are not subject to challenge, (initial calculations are shown on Exhibit 2 hereto). Upon the Assignee's payment of the Settlement Payment, the Class Members shall receive no further distribution from the Assignee on account of the Class POC or any proofs of claim filed in the Assignment Cases. Payments of Class Counsel's Fees and Class Counsel's Expenses shall be made to Class Counsel by the Settlement Administrator from the Settlement Payment and reported to the IRS and the payee under the payee's name and taxpayer identification number, which such payee shall provide for this purpose, on an IRS 1099 Form.

C. Approval By Assignment Court

Within three (3) business days of Plaintiffs' filing of this Settlement Motion, the Assignee will file a motion with the Assignment Court seeking approval of the Settlement Agreement and seeking authorization for the Assignee to pay the Gross

930, 934-935 (5th Cir.), *cert denied*, 513 U.S. 1019 (1994)(holding that only employees of facilities with 50 or more full time employees are protected by the WARN Act). *But cf.*, *Kirkvold v. Dakota Pork Industries, Inc.*, CIV 97-4166, Dist. S.D. Dec. 15, 1997 (unreported decision holding that employees of a "small" facility closed as the foreseeable consequence of the closure of a "large" facility were protected by the WARN Act, citing 29 U.S.C. §2101 (a)(5)). In light of this authority, there was a substantial likelihood that the Class Members' claims who worked at facilities with less than 50 employees would be dismissed on summary judgment. Thus, the amount of the Settlement Fund allocated to such Class Members is reflective of this likely outcome, but also provides adequate consideration for the WARN Act release sought by the Assignee from each Class Member.

Settlement Funds as set forth herein. If approval by the Assignment Court is not granted, the Settlement Agreement shall be null and void *ab initio*.

D. Class Notice

Class Members will receive notice of the settlement and instructions by United States Mail and an Internet-based website that will remain active until the funds are disbursed. The Notice of Settlement will inform Class Members of: the right to and date by which a Class Member may object to the Settlement terms; the right to participate in the Final Approval Hearing; and the web address to the Settlement website where Class Members may access the Notice of Settlement and other related documents and information. A copy of the draft is attached as Exhibit 3. The Settlement Administrator or Class Counsel shall be charged with providing Class Notice by Direct Mail and Internet Posting. Should the Court grant this Motion, Notice will be given to Class Members promptly after entry of the order granting this Joint Motion.

E. Settlement Administration

A mutually agreeable Settlement Administrator shall be chosen by the Parties. The Settlement Administrator's responsibilities include the following:

i. Preparing and transmitting written notice that will be sent to all Class Members via United States Mail,

ii. Processing and transmitting distributions to the Settlement Class from the Common Fund, including being solely responsible for calculating the Tax and Withholding Amounts for each Class Member and remitting the Tax and Withholding Amounts to the IRS; and

iii. Determining all costs associated with administering the settlement, including but not limited to providing notice via United States Mail; and processing and transmitting distributions.

In addition, Class Counsel previously established and will maintain the Internet-based website, which will serve as another means for the Class Members to obtain information about the Settlement.

All fees and charges related to Settlement Administration to effectuate the Settlement shall be paid from the Gross Settlement.

F. Settlement Termination

If the Settlement Class is not approved by a Final Approval Order for any reason, the Settlement Agreement is deemed null and void *ab initio* and all representations made therein for purposes of effecting the Settlement retracted and without effect. In the event that no such Final Approval Order is entered, the Action shall revert to the state in which it existed prior to this Motion, including no certification of a class.

G. Attorneys' Fees and Costs

Class Counsel seeks one-third of the common settlement fund as attorneys' fees and, additionally, reimbursement of $6944.35 in litigation costs.

III.

The Class

In this case, the Court has previously certified a Class that includes:

> All Laser Spine Institute employees throughout the United States who were not given a minimum of 60 days' written notice of termination and whose employment was terminated on or about March 1, 2019,

> as a result of a "mass layoff" or "plant closing" as defined by the Workers Adjustment and Retraining Notification Act of 1988, excluding the directors and officers of Laser Spine Institute.

(*See* Doc. 14, p. 5).

The Court held that the class satisfied the four requirements of Civil Rule 23(a): (1) numerosity, (2) commonality, (3) typicality, and (4) adequacy of representation. Fed. R. Civ. P. 23.

The Court also held that the Class satisfies Rule 23(b)(3) because common legal and factual issues — such as whether the WARN Act's obligations applied to LSI and, if so, whether LSI failed to provide the notice required by the WARN Act — predominate over Class Members' individualized issues, such as damage determinations. The Court held that resolving these common issues in a single action is superior to a mass of individual claims addressing the same issues.

IV.

LEGAL ANALYSIS

A. The Settlement is Fair, Adequate and Reasonable and Should be Preliminarily Approved

"In determining whether to approve a proposed settlement, the cardinal rule is that the District Court must find that the settlement is fair, adequate and reasonable and is not the product of collusion between the parties." *Cotton v. Hinton*, 559 F.2d 1326, 1330 (5th Cir. 1977). "A settlement is fair, reasonable and adequate when the interests of the class as a whole are better served if the litigation is resolved by the settlement rather than pursued." *In re Checking Account Overdraft*

Litig., 830 F. Supp. 2d 1330, 1344 (S.D. Fla. 2011)(internal citations and quotations omitted).

A district court's judgment as to the fairness, adequacy and reasonableness of a class settlement is "informed by the strong judicial policy favoring settlement as well as by the realization that compromise is the essence of settlement." *Bennett v. Behring Corp.*, 737 F.2d 982, 986 (11th Cir. 1984); *Cotton*, 559 F.2d at 1331 ("Particularly in class action suits, there is an overriding public interest in favor of settlement."). The policy favoring settlement is at its zenith in cases concerning complex matters because inherent costs, delays and risks of continued litigation may overwhelm any benefit to the class. *See, e.g., Ass'n for Disabled Americans, Inc. v. Amoco Oil Co.*, 211 F.R.D. 457, 466 (S.D. Fla. 2002). The district court is vested with broad discretion in determining the fairness of a class settlement, and that discretion will not be disturbed "absence a clear showing of abuse of that discretion." *Bennet*, 737 F.2d at 986.

Settlement of a class action is a two-process: preliminary approval and a subsequent fairness hearing. *Smith v. Wm. Wrigley Jr. Co.*, 2010 WL 2401149, at *2 (S.D. Fla. June 15, 2010) (citing *Holman v. Student Loan Xpress, Inc.*, 2009 WL 4015573, at *4 (M.D.Fla. Nov.19, 2009)). The preliminary approval stage serves to determine whether the settlement is within the "range of reasonableness," *Manual For Complex Litigation, Third*, § 30.41, and the Eleventh Circuit directs district courts to consider the following to assess the fairness, adequacy and reasonableness of a proposed class settlement:

> (1) the likelihood of success at trial; (2) the range of possible recovery; (3) the point on or below the range of possible recovery at which a settlement is fair, adequate and reasonable; (4) the complexity, expense and duration of litigation; (5) the substance and amount of opposition to the settlement; and (6) the stage of proceedings at which the settlement was achieved.

Bennett, 737 F.2d at 986. "Preliminary approval is appropriate where the proposed settlement is the result of the parties' good faith negotiations, there are no obvious deficiencies and the settlement falls within the range of reason." *Wm. Wrigley Jr. Co.*, 2010 WL 2401149, at *2. When sufficient discovery has been provided and the parties have bargained at arm's-length, there is a presumption in favor of the settlement. *City P'ship Co. v. Atl. Acquisition Ltd. P'ship*, 100 F.3d 1041, 1043 (1st Cir. 1996); *Manual for Complex Litigation, Third*, § 30.42 (A "presumption of fairness, adequacy, and reasonableness may attach to a class settlement reached in arm's-length negotiations between experienced, capable counsel after meaningful discovery.").

Once a district court grants preliminary approval, all Settlement Class Members are to receive notice of the proposed Settlement's terms, and of the date of the hearing for final approval of the settlement, the parties may evidence and argument concerning the fairness, adequacy, and reasonableness of the settlement. *See Manual for Complex Litigation, Fourth*, §§ 13.14, 21.632.

A. The Class Settlement Agreement is the Result of Good-Faith, Arm's-Length Negotiations

In the instant case, the Settlement Agreement was reached only after extensive arm's-length negotiation between very experienced counsel. Prior to

reaching the instant Settlement Agreement, the Parties engaged in a mediation with an experienced mediator that did not result in a resolution.

Furthermore, the Parties have conducted a significant informal discovery and engaged in substantial informal and formal settlement discussions, all of which have informed the Parties of the relative strengths and weaknesses of their positions, thereby providing the "benefit of adversarial litigation"- an invaluable benefit for a district court in considering the fairness of a class settlement. *See Cotton*, 559 F.2d at 1332 (approving settlement over objection that not enough discovery was done, finding that the Plaintiff was adequately informed despite the fact that "very little formal discovery was conducted and that there is no voluminous record in the case.")

Accordingly, it is clear that the Settlement Agreement satisfies procedural due process and should be preliminarily approved.

B. This Settlement Satisfies the Standard for Preliminary Settlement Approval

Application of the *Bennett* factors makes clear that the Settlement is fair, adequate and reasonable, and this Court should accordingly grant preliminary approval of the Settlement.

1. Likelihood of Success at Trial

Had the Settlement not been reached and litigation continued, the Class face the risk of not prevailing on their claims. At all times, the Companies and the Assignee has maintained that the Class's claims are unfounded. Additionally, the Assignee has asserted that some or all of the amounts sought to be recovered by the Class POC are not entitled to priority under Florida law.

And even if the Class was to ultimately prevail at trial, the likely recovery of any money was in doubt. Moreover, recovery could be delayed for years until the conclusion of the Assignment Cases and be further delayed should the Assignee elect to appeal an adverse final judgment. *Lipuma v. Am. Express Co.*, 406 F. Supp. 2d 1298, 1322 (S.D. Fla. 2005)(noting that the specter of an appeal from an adverse final judgment is an "uncertaint[y] in outcome strongly favor[ing] approval of" a settlement). The Settlement provides the Class with instant relief that is subject to neither contingency nor delay associated with further litigation or the outcome of the Assignment Cases.

Because the interests of the Class are best advanced by the Settlement and the significant benefits the Class Members derived therefrom outweigh further litigation, this Court should grant preliminary approval of the Settlement.

2. The Point of the Settlement Amount is Fair Considering the Range of Recovery[5]

In determining whether a settlement agreement is fair, "[b]y far the most important factor is a comparison of the terms of the proposed settlement with the likely recovery that plaintiffs would realize if they were successful at trial." *Blackman v. D.C.*, 454 F. Supp. 2d 1, 8 (D.D.C. 2006) "A settlement can be satisfying even if it amounts to a hundredth or even a thousandth of a single percent of the potential recovery." *Behrens v. Wometco Enterprises, Inc.*, 118 F.R.D. 534, 542 (S.D. Fla. 1988), aff'd sub nom., 899 F.2d 21 (11th Cir. 1990) (internal citations omitted). "The Court's role is not to engage in a claim-by-claim, dollar-by-dollar evaluation, but to evaluate the proposed settlement in its totality. . . . Moreover, the existence of strong defenses to the claims presented makes the possibility of a low recovery quite reasonable." *Lipuma v. Am. Express Co.*, 406 F. Supp. 2d 1298, 1322-1323 (S.D. Fla. 2005)

Class Counsel and the Assignee's Counsel have substantial experience litigating employment claims as well as issues raised by the commencement of the Assignment Cases. In light of that experience, the Parties' Counsel are well-positioned to evaluate the utility of settlement and are of the opinion that the settlement amount is reasonable especially in light of the Assignment Estates' financial condition. *See Warren v. City of Tampa*, 693 F. Supp. 1051, 1059 (M.D.Fla.1988) (the Court gives "great weight to the recommendations of counsel

5 The second and third *Bennet* factors are considered together because they are "easily combined." *Behrens v. Wometco Enterprises, Inc.*, 118 F.R.D. 534, 541 (S.D. Fla. 1988), aff'd sub nom., 899 F.2d 21 (11th Cir. 1990)

for the parties, given their considerable experience in this type of litigation."); *see also In re Domestic Air Transp. Antitrust Litig.*, 148 F.R.D. 297, 312-13 (N.D.Ga.1993) ("[T]he court is entitled to rely upon the judgment of the parties' experienced counsel [and] '[t]he trial judge, absent fraud, collusion, or the like, should be hesitant to substitute its own judgment for that of counsel.'") (quoting *Cotton*, 559 F.2d at 1330).

The Settlement proposed falls within the reasonable range of possible recovery for members of the Settlement Class when compared to recent Court-approved WARN Act class action settlements in the Middle District of Florida. For example, in a recent WARN Act case settlement styled *Benson v. Enter. Leasing Co. of Orlando, LLC,* No. 6:20-CV-891-RBD-LHP, 2022 WL 4354846 (M.D. Fla. Sept. 20, 2022), class members ultimately received somewhere between $400 - $500, before taxes. *See also, Molina v. Ace Homecare LLC*, No. 8:16-CV-2214-T-30TGW, 2019 WL 3225662, at *1 (M.D. Fla. June 28, 2019), report and recommendation adopted, No. 8:16-CV-2214-T-27TGW, 2019 WL 3219931 (M.D. Fla. July 17, 2019)(approving class action settlement in which WARN Act class members receive $500 net payments).

In this case, the Class will receive $750,000 to settle all the WARN Act claims. In light of the challenges associated with the Assignment Estates' financial condition, the Settlement amount is a significant amount. The average pre-tax payment to each Class Member will exceed $900, with $200 being paid to Class Members who worked at Small Facilities [not a defined term].

3. Complexity, Expense, and Duration of Litigation

The Settlement Class will receive a significant immediate benefit with the Settlement, which is superior to further protracted litigation.

> The Court should consider the vagaries of litigation and compare the significance of immediate recovery by way of the compromise of the mere possibility of relief in the future, after protracted and extensive litigation. In this respect, "[i]t has been held proper to take the bird in the hand instead of a prospective flock in the bush."

Borcea, 238 F.R.D. at 674 (quoting *In re Shell Oil Refinery*, 155 F.R.D. 552, 560 (E.D.La.1993)).

This Action has been pending for more than three years and the expense of any further proceedings or trial would further dilute the available funds. And there is also a strong likelihood that should trial be conducted to completion, the unsuccessful party would appeal the adverse judgment.

4. Stage of Proceedings at Which Settlement was Achieved

This factor is relevant because it is used "to ensure that Plaintiffs had access to sufficient information to adequately evaluate the merits of the case and weigh the benefits of settlement against further litigation." *Lipuma*, 406 F. SUpp.2d at 1324.

As discussed above, this Action has been pending for more than 3 years. The Parties have engaged in informal discovery and provided extensive information to each other during this lengthy period of time. Class Counsel has been an active observer of litigation in the Assignment Cases, including attending hearings, depositions and monitoring the case file and docket. The foregoing strongly militates in favor of preliminary approval of the Settlement.

C. The Notice and Administration Plan Is Constitutionally Sound and Should Therefore be Approved

The "court must direct notice in a reasonable manner to all class members who would be bound by the proposal." Fed. R. Civ. P. 23(e)(1). Class Notice should be "reasonably calculated, under the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections" *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). To satisfy this standard "[n]ot only must the substantive claims be adequately described but the notice must also contain information reasonably necessary to make a decision to remain a class member and be bound by the final judgment or opt out of the action." *Twigg v. Sears, Roebuck & Co.*, 153 F.3d 1222, 1227 (11th Cir. 1998) (internal quotations omitted).

The Parties' proposed Notice Program readily meets this standard. The Settlement Administrator will send written notice and the Class Counsel will place the Notice on the previously established Internet website within thirty (30) days of entry of an order preliminarily approving the Settlement. The Internet website will remain active until the funds are distributed. The Notice provides Class Members with information regarding their right to be present and speak at the Fairness Hearing and make objections to the Settlement terms. The Notice also provides a definition of the Class, and a description of the lawsuit and causes of action asserted. The Notice provides sufficiently clear information so as to enable a Class Member to properly object, speak at a fairness hearing, and obtain

information regarding the lawsuit and settlement. Accordingly, this Court should approve of the Notice Program because it provides the best notice possible.

D. The Court Should Schedule A Fairness Hearing

Once the Settlement is preliminarily approved, a fairness hearing should be conducted. At the hearing, the Court may hear all evidence and argument necessary to evaluate the fairness, adequacy, and reasonableness of the Settlement. The Court will determine whether: the Settlement should ultimately be approved; to approve Class Counsel's application for attorneys' fees and costs; and to enter a final judgment.

The Parties respectfully request that this Court schedule a final approval hearing as soon as practicable.

CONCLUSION

Based on the foregoing, this Court should enter an order certifying the Settlement Class and granting preliminary approval of the Settlement.

DATED this 9th day of January, 2023.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of January, 2023, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send a notification of this filing to all counsel of record.

/s/ Ryan D. Barack
Ryan D. Barack

EXHIBIT 1

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

DEANNA ALI and HEATHER EMBRY,
on behalf of themselves
and a class of those
others similarly situated,

Plaintiffs,

v. CASE NO.: 8:19-cv-535-T-23JSS
(Consolidated)

LASER SPINE INSTITUTE, LLC,
LSI MANAGEMENT COMPANY, LLC and
LSI HOLDCO LLC,

Defendants.
_____/

SETTLEMENT AGREEMENT

Plaintiffs/Class Representatives Deanna Ali ("Ali") and Heather Embry ("Embry")("Plaintiffs" or "Class Representatives") on behalf of themselves and on behalf of all other persons similarly situated, as defined herein (the "Class Members") and Soneet R. Kapila, in his capacity as the Assignee ("Assignee") of Laser Spine Institute, LLC ("LSI") and each of its affiliated entities (collectively, the "Companies") hereby enter into this Class Action Settlement Agreement and Release ("Agreement") to resolve all Claims in this action, subject to approval of

this Court and the Assignment Court.

I. Recitals.

1. Before permanently closing its doors on March 1, 2019, LSI operated as a large medical-services company, specializing in minimally invasive spinal procedures.

2. The Companies had been actively seeking funding which the Companies believed would have allowed them to avoid a shutdown.

3. The efforts to obtain financing were not successful, and on March 1, 2019, Plaintiffs and hundreds of other employees were terminated. The Companies contend that some of the locations may not have had sufficient employees to constitute a "mass layoff" and/or "plant shutdown" as defined by the WARN Act, while other locations had a "mass layoff" and/or "plant shutdown."

4. The Companies provided no advance written notice of the mass layoff to Plaintiffs, or to any of the Class Members. However, the Companies contend that the failure to provide notice qualified for the "faltering company" exception to the WARN Act. In addition, the Companies did provide notice to all employees on March 4, 2019.

5. On March 14, 2019, LSI executed and delivered an assignment for the benefit of creditors to the Assignee. The Assignee filed a Petition with the Circuit

Court for the Thirteenth Judicial Circuit (the "Assignment Court") on March 14, 2019, commencing an assignment for the benefit of creditors proceeding pursuant to section 727 of the Florida Statutes under Consolidated Case No. 2019-CA-2762 (the "LSI Assignment Case").

6. Simultaneous with the filing of the LSI Assignment Case, the Assignee filed fifteen other Petitions in the Assignment Court commencing an assignment for the benefit of creditors proceeding for each of the following 15 affiliates of LSI (the "Affiliated Assignment Cases" and together with the LSI Assignment Case, the "Assignment Cases"): CLM Aviation, LLC, LSI Holdco, LLC, LSI Management Company, LLC, Laser Spine Surgery Center of Arizona, LLC, Laser Spine Surgery Center of Cincinnati, LLC, Laser Spine Surgery Center Of Cleveland, LLC, Laser Spine Surgical Center, LLC, Laser Spine Surgery Center Of Pennsylvania, LLC, Laser Spine Surgery Center of St. Louis, LLC, Laser Spine Surgery Center Of Warwick, LLC, Medical Care Management Services, LLC, Spine DME Solutions, LLLC, Total Spine Care, LLC, Laser Spine Institute Consulting, LLC, and Laser Spine Surgery Center of Oklahoma, LLC.

7. Prior to commencing the Assignment Cases, the Companies employed more than 500 employees, including the Class Members, in their business operations in facilities located in Tampa, Florida, Cincinnati, Ohio, St. Louis,

Missouri, Wayne, Philadelphia, Pennsylvania, and Scottsdale, Arizona; with its corporate headquarters located in Tampa, Florida (collectively the "Facilities").

8. Three lawsuits — *Ali v. Laser Spine Institute, LLC, et al.,* 8:19-cv-535-T-23JSS; *Embry v. Laser Spine Institute, LLC, et al.,* 8:19-cv-539-T-23AAS; and *Higdon v. Laser Spine Institute, LLC, et al.*, 8:19-cv-547-T-23TGW —were filed asserting violations of the Worker Adjustment and Retraining Notification, or "WARN," Act, 29 U.S.C. § 2101 *et seq* after the termination of Plaintiffs and hundreds of other similarly situated Class Members.

9. On June 13, 2019, the Court consolidated the cases "[s]olely for the purposes of determining whether to certify a class, whether to appoint a class representative, and whether to appoint class counsel."

10. Subsequently Duane Higdon withdrew his motion for class certification and the only remaining class certification motion was Heather Embry's motion (Doc. 14 in 8:19-cv-539-T-23AAS), which Deanna Ali adopted (Docs. 12–13). Thus, Ali and Embry moved to certify the same class, to represent the class together, and to appoint their attorneys as class counsel.

11. On July 8, 2019, the Court ender an Omnibus Order which granted Embry's class certification motion (Doc. 14 in 8:19-cv-539-T-23AAS) and certified a class (the "Class") that includes:

> All Laser Spine Institute employees throughout the United States who were not given a minimum of 60 days' written notice of termination and whose employment was terminated on or about March 1, 2019, as a result of a "mass layoff" or "plant closing" as defined by the Workers Adjustment and Retraining Notification Act of 1988, excluding the directors and officers of Laser Spine Institute.

12. In addition, the Court appointed Ali and Embry as the Class Representatives. Ryan D. Barack, Luis A. Cabassa, Brandon J. Hill, and Michelle Erin Nadeau were appointed as Class Counsel. The Court also consolidated all of the matters in *Ali v. Laser Spine Institute, LLC, et al.*, 8:19-cv-535-T-23JSS as the lead case.

13. On July 26, 2019, the Court subsequently approved the form of notice to the Class Members advising them of the existence of the Class and a mechanism to opt-out. (Doc. 16).

14. On August 16, 2019, the Notice of the Class was provided to 577 individuals. (Doc 17). [1]

15. No individuals asked to be excluded from the Class.

16. Since the commencement of the Assignment Cases, the Assignee has been administering the estates created in the Assignment Cases (collectively, the "Assignment Estates") and the Assignee has been successful in recovering some

[1] The initial list was mailed to 579 names, but it appears that Julie Marie Boyd aka Julie Marie Kunze and Kathryn Morse McAbee are on the mailing list twice.

funds for the Assignment Estates. Class Counsel has been an active observer of the Assignment Cases and their associated litigation.

17. The Class has asserted class proofs of claim ("Class POC") in the Assignment Cases.

18. The Assignee filed on objection to the Class POC (the "Assignee's Objection"). On June 29, 2021, the Laserscopic Spinal Centers of America, Inc., Laserscopic Medical Clinic, LLC and Laserscopic Spine Centers of America, Inc.'s Objection to WARN Act Plaintiffs' Proof of Claim (the "Bailey Group Objection") was filed with the Court (the "Bailey Group Objection"). The Class POC, the Assignee Objection, and the Bailey Group Objection have not been adjudicated. by the Assignment Court.

19. On April 30, 2021, the Assignee filed the Answer and Affirmative Defenses of the Assignee to the Amended Class Action Complaint Filed by Deanna Ali. (Doc. 34)

20. On April 30, 2021, the Assignee's Motion to Abstain or Stay Action In Favor of Pending Claims Litigation In State Assignment Proceedings (Do. No. 33) was filed, although the Court has not ruled on the motion.

21. The Parties have engaged in vigorous arm's length settlement negotiations for years and exchanged certain pertinent information.

22. On June 21, 2021, the Parties held a mediation conference with Mediator Mark Hanley. The mediation was continued with the consent of the Parties and counsel to allow the Parties to continue settlement efforts.

23. The Parties agree that the Plaintiffs' WARN Act claims present significant and complex legal and factual issues regarding the asserted application of the WARN Act against the Companies. The Parties further agree that the recovery of and priority of WARN Act Claims against the Companies is subject to the distribution procedures set forth in the statutes governing assignment for the benefit of creditors cases.

24. The Assignee believes there may be defenses to the asserted WARN Claims, including the priority of the WARN Act Claims in the Assignment Cases.

25. In an attempt to avoid costly litigation, the uncertainty of outcomes, and the depletion of Assignment Estate assets, the Parties reached a settlement, as described herein, through good faith, arms' length negotiations.

II. Definitions.

As used in this Agreement, capitalized terms and phrases not otherwise defined have the meanings provided below:

1. Action or Lawsuit: The above-captioned action, *Ali v. Laser Spine*

Institute, LLC, et al., 8:19-cv-535-T-23JSS, United States District Court, Middle District of Florida, Tampa Division.

2. Agreement or Settlement or Settlement Agreement: This Class Action Settlement Agreement and Release.

3. Assignee: Soneet R. Kapila, in his capacity as the Assignee of Laser Spine Institute, LLC ("LSI") and each of its affiliated entities.

4. Assignment Court: The Circuit Court for the Thirteenth Judicial Circuit which has jurisdiction over the Assignee and the Consolidated Case No. 2019-CA-2762.

5. Assignment Estate: The estates created In each of the Assignment Cases.

6. Class: The class certified pursuant to Fed. R. Civ. P. 23 consisting of "All Laser Spine Institute employees throughout the United States who were not given a minimum of 60 days' written notice of termination and whose employment was terminated on or about March 1, 2019, as a result of a "mass layoff" or "plant closing" as defined by the Workers Adjustment and Retraining Notification Act of 1988, excluding the directors and officers of Laser Spine Institute." There are approximately 577 Class Members.

7. Class Counsel: Ryan D. Barack and Michelle E. Nadeau of Kwall Barack Nadeau PLLC and Luis A. Cabassa, Brandon J. Hill, and Amanda Heystek of Wenzel Fenton Cabassa, P.A.,

8. Class Notice Date: The date that Notices of Settlement are initially mailed to Settlement Class Members.

9. Class Representatives or Named Plaintiffs: Deanna Ali ("Ali") and Heather Embry ("Embry").

10. Court: The U.S. District Court for the Middle District of Florida, Tampa Division.

11. Deadline to Object: The date the Court establishes by which any objections to the Settlement must be filed with the Court. Settlement Class Members shall have sixty (60) days after the Notice of Settlement is mailed to object to the Settlement.

12. Defendants: The named defendants in this lawsuit LSI and its afflicted entities which have assigned their assets to the Assignee.

13. Effective Date: The first day after the first date on which all of the following have occurred: a) all Parties and Class Counsel have executed this Agreement; b) the Court has preliminarily approved this

Agreement; c) the Assignment Court has approved this Agreement; d) reasonable notice has been given to the Settlement Class Members, including providing them an opportunity to object to the Settlement; e) the Court has a held the Final Approval Hearing, entered the Final Approval Order, and awarded Class Counsel its reasonable attorneys' fees and costs; and f) any period for appeals, motion for reconsideration, rehearing, certiorari or any other proceeding seeking review ("Review Proceeding") has expired without the initiation of a Review Proceeding, or if a Review Proceeding has been timely initiated, that there has occurred a full and complete disposition of any such Review Proceeding, including the exhaustion of proceedings in any remand and/or subsequent appeal on remand. However, if there is no Review Proceeding initiated, then the Effective Date is 35 days following the later of (i) the entry of the Final Approval Order, or (Ii) the approval of the Settlement by the Assignment Court.

14. Final Approval Hearing: The hearing to be conducted by the Court following the Court's preliminary approval of this Settlement, dissemination of the Notice of Settlement to the Settlement Class distributed by the Settlement Administrator, at which time Plaintiffs will request (and Defendant will not oppose) the Court to finally

approve the fairness, reasonableness, and adequacy of the terms of this Settlement and to enter a Final Approval Order.

15. Final Approval Motion: The joint motion seeking final approval of this Settlement.

16. Final Approval Order: The Court's order granting final approval of this Settlement on the terms provided herein or as the same may be modified by subsequent written mutual agreement of the Parties.

17. Gross Settlement: The total maximum amount that Assignee shall pay in settlement of this Action pursuant to this Agreement.

18. IRS: The Internal Revenue Service.

19. Net Settlement Proceeds: The amount of money remaining after the Gross Settlement is reduced by the following amounts, none of which Assignee opposes: Court-approved attorneys fees' and costs; Court-approved costs of the settlement administration process, including the provision of CAFA notices and the Notice of Settlement; and a general release payment to the Named Plaintiffs.

20. Notice of Settlement: The Notice of Class Action Settlement approved by the Court in its Preliminary Approval Order, which shall be sent to the Settlement Class Members by the Settlement Administrator by U.S. Mail.

21. Parties: Named Plaintiffs, the putative Class, and Defendant.

22. Person: An individual, partnership, corporation, governmental entity or any other form of entity or organization.

23. Preliminary Approval Motion: The joint motion seeking preliminary approval of this Settlement Agreement.

24. Preliminary Approval Order: The Court's order preliminarily approving this Settlement Agreement.

25. Released Parties: Defendant and its direct and indirect, past, present or future parents, subsidiaries, affiliates, divisions, joint ventures, predecessors, successors, Successors-In-Interest, and assigns, and each Person that controls, is controlled by, or is under common control with them.

26. Settlement Class Members or Class Members: Any individual who is a member of the Settlement Class.

27. Settlement Account: The account, which shall be a qualified settlement fund as established by IRS regulations ("Qualified Settlement Fund"), that is established by the Settlement Administrator for purposes of administering monetary relief under this Agreement.

28. Settlement Administrator: A third-party settlement administrator

selected and retained by the Parties for purposes of administering the Settlement and mailing the Notice of Settlement and Settlement Payments to Settlement Class Members. The cost of administration will be approximately $20,000 which shall be paid from the Settlement Account.

29. Settlement Fund Payor: Assignee

30. Settlement Payment: A portion of the Net Settlement Proceeds that each Settlement Class Member shall be entitled to receive, payable by check from the Settlement Administrator minus applicable payroll taxes, pursuant to this Agreement.

31. Successor-In-Interest: The estate, legal representatives, heirs, successors or assigns, including successors or assigns that result from corporate mergers or other structural changes.

III. Monetary Benefits to the Settlement Class.

1. Settlement Account. Within ten (10) days of the Effective Date, the Settlement Administrator shall establish a Settlement Account, which shall be treated as a Qualified Settlement Fund, for purposes of administering monetary relief under this Agreement. The Settlement Administrator shall provide Class Counsel and Assignee's counsel with

any information relating to the Settlement Account that is reasonably necessary for the Assignee to fund the Settlement Account, including but not limited to a properly executed Form W-9.

2. Funding of Settlement Account. Within fifteen (15) days of the Effective Date, the Assignee shall deposit a sum total of seven-hundred and fifty thousand dollars and zero cents ($750,000) into the Settlement Account, which shall establish the Gross Settlement and be used by the Settlement Administrator to pay Settlement Class Members, all employer-side and employee-side payroll taxes, employer matches, and deductions, expenses of settlement administration, including the Notice of Settlement, and Class Counsel's attorneys' fees and costs. None of this money shall revert to Assignee.

3. Settlement Payments. The Net Settlement Proceeds, *i.e.,* the amount remaining in the Settlement Account after deduction of any and all amounts approved by the Court for Class Counsel's attorneys' fees and costs, and the expenses of settlement administration, shall be distributed to Settlement Class Members in the form of individual settlement checks.

4. Manner of Distribution. The Settlement Administrator shall send the Settlement Payments to Settlement Class Members by U.S. Mail within thirty (30) days after the Assignee has funded the Settlement Account. For purposes of this mailing, the Settlement Administrator shall use the address information that was provided for the initial Class Notice mailing, subject to appropriate updating of addresses by cross-referencing the National Change of Address Database. This is a "claims paid" settlement. No action need be taken to receive a settlement payment. If any Settlement Payment is returned by the U.S. Postal Service with a forwarding address before the check's expiration date, the Settlement Administrator will promptly re-mail the check to the forwarding address. If the Settlement Payment is returned without a forwarding address, the Settlement Administrator shall make reasonable efforts to obtain a current address for the pertinent Settlement Class Member, and the Settlement Administrator shall re-mail the check if a current address is obtained before the check's expiration date.

5. Deadline for Cashing Checks. Each Settlement Class Member shall have sixty (60) days from the date which appears on the face of check

issued to him/her to negotiate his/her settlement check. If any funds remain in the Settlement Account after the 60-day deadline for Settlement Class Members to negotiate their settlement checks as a result of uncashed or undeliverable checks, the Settlement Administrator shall retain such funds in the Settlement Account for a reasonable period to allow for the processing and payment of any checks that may still be in the bank's check clearing process. Thereafter, the Settlement Administrator shall close out the Settlement Account and issue payments for any remaining balance to the State of Florida Office of Unclaimed Property.

6. Taxes. Payments to Class Members from the Gross Settlement Fund shall be made net of all applicable employer- and employee-side employment taxes as determined to be due by the Settlement Administrator, including, without limitation, FICA/Medicare tax and employer matching, and federal, state and local income and unemployment tax withholding (the "Tax and Withholding Amounts"). The Settlement Administrator shall be solely responsible for remitting the Tax and Withholding Amounts to the IRS. Payments of Class Counsel's Fees and Class Counsel's Expenses shall be made to Class

Counsel by the Settlement Administrator without withholding and reported to the IRS and the payee under the payee's name and taxpayer identification number, which such payee shall provide for this purpose, on a 1099 Form. The payment of administration fees and costs to the Settlement Administrator shall be made without withholding and reported to the IRS and the payee under the payee's name and social security number on a 1099 Form. The Settlement Administrator will issue W-2 forms and 1099 forms, as applicable. Class Members shall be informed in the Notice that, after the payments contemplated under the Settlement have been made and issued, each Class Member is responsible for any resulting tax obligations.

IV. Attorneys' Fees and Expenses; Costs of Administration.

1. Unopposed Motion for Attorneys' Fees and Expenses. At least fourteen (14) days prior to the deadline for Settlement Class Members to file objections to the Settlement, Plaintiffs will seek an order from the Court awarding Class Counsel their reasonable attorneys' fees in the sum total of one-third of the total common fund, which equals two hundred fifty thousand dollars ($250,000.00), plus litigation costs

totaling $. Assignee agrees that it will not oppose Plaintiffs' application for attorneys' fees and costs up to and including these amounts. Attorneys' fees and costs will be paid from the Settlement Fund. The procedure for and the allowance or disallowance of any application for fees and expenses are matters separate and apart from the Settlement. Both sides agree that the amount of the attorneys' fees and costs were not discussed until after the Settlement Fund amount was agreed to. Any order or proceeding relating to fees and expenses, or any appeal from any order relating thereto, or any reversal or modification thereof, shall have no effect on the Settlement and shall not operate to, or be grounds to, terminate or cancel the Agreement or to affect or delay the finality of the Final Approval Order or Judgment.

2. Payment of Approved Attorneys' Fees and Expenses. As set forth above, within ten (10) days of the Effective Date, the Settlement Administrator shall establish a Settlement Account, which shall be treated as a Qualified Settlement Fund, for purposes of administering monetary relief under this Agreement. Then, within ten (10) days after Assignee has funded the Settlement Account, pursuant to the terms

of the Court order granting such award, the Settlement Administrator shall pay Class Counsel's attorneys' fees and costs by wire transfer or check to the trust account of Wenzel Fenton Cabassa, P.A., 1110 N. Florida Ave., Suite 300, Tampa, FL 33602.

3. Cost of Administration. The Parties agree that all costs of administration, including the Notice of Settlement, shall be paid out of the Gross Settlement and not separately by Assignee nor by Class Counsel. The cost of administration will be approximately $20,000 which shall be paid from the Settlement Account.

VI. Release of Claims.

1. Class Member Release of Claims. On the Effective Date, and in consideration of the benefits provided by this Agreement, the sufficiency of which will have been determined by the Court and is hereby acknowledged by the Parties, Named Plaintiffs, Ali and Embry, all Class Members, and each of the foregoing's attorneys, agents, spouses, parents, children, beneficiaries, heirs, assigns, and dependents shall fully and forever release, waive, acquit, and discharge Assignee and each of the Released Parties from any and all claims that were raised or could have been raised based on the facts

alleged in any Complaint filed in the Action, including but not limited to any and all WARN Act claims that were asserted or could have been asserted in this litigation and any similar claims that could arise under state or local law (together, the "Released Claims"), whether or not Named Plaintiffs and such Class Members have received a monetary benefit from the Settlement, whether or not such Class Members have actually received the Settlement Notice, whether or not such Class Members have filed an objection to the Settlement or to any application by Class Counsel for an award of attorneys' fees and costs, and whether or not the objections or claims for distribution of such Class Members have been approved or allowed. This is not a general release, but is meant to include claims related to failure to provide sufficient notice prior to termination under federal or state law comparable to WARN Act claims.

VII. Notice and Right to Object.

1. Notice to Settlement Class Members. The Settlement Administrator shall utilize the Court-approved Notice of Settlement, which will be the only forms utilized by the Administrator. The form of notice will be posted on the lsiemployeelawsuit.com website along other

pertinent documents. Moreover, within thirty (30) days after the Preliminary Approval Order granting approval of the format and contents of form of the Notice of Settlement, the Settlement Administrator will send the form Notice of Settlement to all Settlement Class Members via first-class U.S. Mail, postage prepaid in the approved form of envelope, if applicable.

2. Manner of Distributing Notice. For purposes of distributing the Notice of Settlement, the Settlement Administrator shall use the address information that was provided for the initial Class Notice mailing, subject to appropriate updating of addresses by cross-referencing the National Change of Address Database. If any Notice of Settlement is returned by the U.S. Postal Service with a forwarding address, the Settlement Administrator will promptly re-mail the Notice to the forwarding address provided. If the Notice of Settlement is returned without a forwarding address, the Settlement Administrator shall make reasonable efforts to obtain a valid address for the pertinent Settlement Class Member and mail the Notice to the updated address.

3. Objections. Any Class Member who wishes to object to the Settlement must file a timely written statement of objection with the Clerk of

Court and mail a copy of that objection with the requisite postmark to the Class Counsel and Counsel for the Assignee (at the address provided in the Notice of Settlement) no later than the Deadline to Object. The statement of objection must state the case name and number; state with specificity the grounds for the objection; state whether it applies to only the objector, to a specific subset of the class, or to the entire class; provide the name, address, telephone number, and email address of the Class Member making the objection; and indicate whether the Settlement Class Member intends to appear at the Final Approval Hearing, either with or without counsel. In addition, any statement of objection must be personally signed by the Class Member and, if represented by counsel, then also by counsel. Any Class Member who fails to timely object to the Settlement in the manner specified above shall be deemed to have waived any objections to the Settlement and shall be foreclosed from making any objections, whether by appeal or otherwise, to the Settlement.

VIII. Settlement Approval.

1. Preliminary Approval Motion. The Parties will work in good faith so that they may file a joint motion for preliminary approval by December

20, 2022. The Parties agree to collaborate in good faith in the preparation and finalization of the Preliminary Approval Motion. The Preliminary Approval Motion will request that the Court (a) preliminarily approving this Settlement Agreement; (b) approving the form and manner of notice to the Class; (c) scheduling a Final Fairness Hearing for the final consideration and approval of the Settlement; and (d) finally Approving the Settlement.

2. Assignment Court Approval. Within three (3) business days of Plaintiffs' filing of the Preliminary Approval Motion, the Assignee will file a motion with the Assignment Court advising the Assignment Court about the Settlement Agreement and seeking approval of the Assignee's settlement of the claims and to make the distribution from the Assignment Estate as set forth herein. If approval by the Assignment Court is not provided, the Settlement Agreement shall be null and void ab initio.

3. Final Approval Motion. At least ten (10) days before the Final Approval Hearing, or on the date set by the Court (if different), Plaintiffs shall file a Joint Motion for Final Approval. The Parties agree to collaborate in good faith in the preparation and finalization of the Final Approval

Motion and Final Approval Order. Prior to finalizing the Final Approval Motion, the Settlement Administrator shall provide Class Counsel and Defendant's counsel with a report listing the names and addresses of all Settlement Class Members to whom the Settlement Administrator mailed a Notice of Settlement.

4. Right to Terminate Settlement. The Parties shall each have the right to unilaterally terminate this Agreement by providing written notice of their election to do so within ten (10) business days after any of the following have occurred: (a) the Court's refusal to grant preliminary approval of the Settlement after the Parties have attempted to re-submit the Preliminary Approval Motion at least one time addressing any issues raised by the Court as to the first Preliminary Approval Motion and/or Settlement Agreement; or (b) the Court's refusal to grant final approval of the Settlement (or if the Final Approval Order agreed to by the Parties is materially modified in a manner unacceptable to either Party). In addition, if any objection(s) is timely made and, as a result of said objection, the Final Approval Order is reversed, or if the Final Order is materially modified in a manner unacceptable to either Party by the Court, or any other court, the

Parties shall each have the right to unilaterally terminate this Agreement by providing written notice of their election to do so within ten (10) business days of such an order.

5. The above notwithstanding, the Parties agree that should any of the conditions set forth in the prior Paragraph apply, the Parties will, within the above-indicated period, meet and confer by telephone in a good-faith attempt to reach agreement on a settlement of this Action.

6. Termination of Settlement. If the Settlement is terminated pursuant to this Agreement, the Parties will return to the *status quo ante,* and the Action shall proceed as if this Settlement had never been negotiated. In particular, it is agreed by the Parties that:

(a) the Settlement proposed herein shall be of no further force and effect;

(b) all funds deposited in the Qualified Settlement Fund, and any interest earned thereon, shall be returned to Assignee within thirty (30) calendar days after the Settlement Agreement is finally terminated or deemed null and void; and

(c) this Settlement Agreement and all negotiations, proceedings and statements relating thereto, and any amendment thereof, shall be null and void and shall be without prejudice to the Parties or the Released Parties, and each Party and Released Party shall be restored to his, her or its respective position as it existed prior to the execution of this Settlement Agreement.

7. Settlement Modification. The Parties may agree by written stipulation of counsel to reasonable modifications of the timetables set forth in this Agreement or to modifications to this Agreement to effectuate the purpose of this Agreement or to conform to guidance from the Court without the need to formally amend this Agreement.

8. Dismissal with Prejudice: Within five (5) days after the Effective Date, Plaintiffs and Assignee agree that they will jointly stipulate to the dismissal with prejudice of the Action. Plaintiffs and Assignee agree they will request that the Assignment Court and this Court retain jurisdiction to enforce the Settlement Agreement for a limited period of time.

9. Withdrawal of Class POC. Within five (5) days after the Effective Date, the Plaintiffs shall withdraw the Class POC.

IX. Other Provisions.

1. Mediation; Dispute Resolution. In the event that the Parties disagree upon the terms of this Settlement Agreement or as to any matter concerning the administration of this Class Action Settlement, the Parties and the relevant Released Parties agree to use their best efforts to amicably resolve the dispute and to participate in mediation before

a mutually agreeable mediator prior to seeking relief from the Court or the Assignment Court.

2. Authority. The signatories below represent that they are fully authorized to enter into this Agreement. All Class are bound by the signature of the Plaintiffs as to any settlement and/or judgment.

3. Standing: Both Parties agree that Plaintiffs and the Class Members have Article III standing sufficient for settlement purposes.

4. No Admission/ No Waiver. The Settlement shall not be deemed to be an admission of any liability or wrongdoing by Assignee or any Released Party in any manner, nor shall it be construed as such, but rather it is understood that Assignee is settling this matter merely to avoid the uncertainties and the cost of protracted litigation. Neither this Settlement Agreement, nor any document or account relating to this Settlement shall be construed as, offered or admitted into evidence as, or be deemed to be evidence for any purpose adverse to Assignee or any Released Party, except for purposes of settling this Action or enforcing settlement of this Action. Assignee enters into this Agreement solely on the facts and circumstances particular to the matters covered by this Agreement. This Settlement Agreement shall

not be deemed as an admission by, waiver of, or used as estoppel against, the rights of Assignee.

5. Best Reasonable Efforts and Mutual Full Cooperation. The Parties agree to fully cooperate with one another to accomplish the terms of this Agreement, including, but not limited to, executing such documents and taking such other actions as may be reasonably necessary to implement the terms of this Settlement. The Parties will use their best reasonable efforts, including all efforts contemplated by this Agreement and any other efforts that may become necessary as ordered by the Court or otherwise to effectuate this Agreement and to secure the Court's approval of the Settlement.

6. Binding Effect on Successors, Successors-In-Interests, and Assigns. This Agreement will be binding upon and will inure to the benefit of the Parties and their respective heirs, trustees, executors, administrators, successors, Successors-In-Interest, and assigns.

7. Construction. The Parties agree that the terms and conditions of this Agreement are the result of lengthy, arms'-length negotiations between the Parties and that this Agreement will not be construed in favor of or against any party by reason of the extent to which any party

or party's counsel participated in the drafting of this Agreement.

8. Entire Agreement. This Settlement Agreement and the attached Exhibits, incorporated herein by reference, constitute the entire agreement of the Parties with respect to the subject matter hereof and supersedes all prior negotiations, communications, and agreements between the Parties and may not be amended, or any of their provisions waived, except by a writing executed by all Parties hereto. The Parties (a) acknowledge that it is their intent to consummate this Settlement Agreement; and (b) agree to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of the Settlement Agreement and to exercise their commercially reasonable best efforts to accomplish the foregoing terms and conditions of the Settlement Agreement. The Parties intend this Settlement Agreement to be a final and complete resolution of all disputes between them, relating to or arising out of the subject matter of the Action. Accordingly, the Parties agree that the terms of the Settlement Agreement represent a good-faith settlement, reached voluntarily based upon adequate information and after consultation with experienced counsel. The Parties also agree Plaintiffs' attorneys'

fees and costs were negotiated separately from the Settlement Fund and benefits to class members under this agreement

9. Governing Law. This Settlement Agreement shall be governed by the laws of the State of Florida without giving effect to the conflict of laws or choice of law provisions thereof, except to the extent that the law of the United States governs any matter set forth herein, in which case such federal law shall govern.

10. Venue. The Parties hereby agree that any action brought upon the enforcement of this Agreement shall be commenced or filed in the United States District Court for the Middle District of Florida, Tampa Division or in the Assignment Court.

11. Extensions. The Parties may agree, in writing, subject to the approval of the Court where required, to reasonable extensions of time to carry out the provisions of this Settlement Agreement.

12. Effect of Captions and Headings. Paragraph titles, captions, or headings in this Agreement are inserted as a matter of convenience and for reference purposes only, and in no way define, limit, extend, or describe the scope of this Agreement or any provision in it. Each term of this Agreement is contractual and is not merely a recital.

13. Notices. Unless otherwise specifically provided in this Agreement, any notices or communications to the Parties relating to this Settlement should be sent to their respective counsel in writing and will be deemed to have been duly given as of the third (3) business day after mailing by U.S. registered or certified mail, return receipt requested or as of the date of delivery confirmation by Federal Express, United Parcel Service, or equivalent express carrier, as follows:

Plaintiffs' Counsel:

Luis A. Cabassa
Brandon J. Hill
Wenzel Fenton Cabassa, P.A.
1110 N. Florida Ave., Suite 300
Tampa, FL 33602

Ryan Barack
Michelle Nadeau
Kwall Barack Nadeau PLLC
304 S Belcher Rd., Suite C
Clearwater, FL 33765

Assignee's Counsel:

Scott A. Stichter
Daniel R. Fogarty
Stichter, Riedel, Blain & Postler, P.A.
110 E. Madison Street, Suite 200
Tampa, FL 33602

14. Counterparts. This Agreement may be executed in one or more

counterparts. All executed copies of this Agreement and photocopies thereof (including facsimile and/or emailed copies of the signature pages) shall have the same force and effect and shall be as legally binding and enforceable as the original.

15. Class Signatories. The Parties agree that because the Class Members are so numerous, it is impossible and impracticable to have each Class Member execute this Agreement. Therefore, the Notice of Settlement will advise all Class Members of the binding nature of the release and will have the same force and effect as if executed by each Class Member.

16. Authority of Court. The administration and implementation of the Settlement as embodied in this Settlement Agreement shall be under the authority of the Court. The Court shall retain jurisdiction to protect, preserve, and implement the Settlement Agreement, including, but not limited to, enforcement of the release contained in the Agreement. The Court expressly retains jurisdiction in order to enter such further orders as may be necessary or appropriate in administering and implementing the terms and provisions of the Settlement Agreement.

X. Execution.

1. The undersigned, being duly authorized, have caused this Settlement Agreement to be executed on the dates shown below and agree that it shall take effect on Effective Date, as defined in this Agreement, and provided that it has been executed by all Parties.

12 / 29 / 2022	Denna E. Ali
DATE	DEANNA ALI
_____	_____
DATE	HEATHER EMBRY
_____	_____
DATE	SONEET R. KAPILA, in his capacity as the Assignee of Laser Spine Institute, LLC and each of its affiliated entities

X. Execution.

1. The undersigned, being duly authorized, have caused this Settlement Agreement to be executed on the dates shown below and agree that it shall take effect on Effective Date, as defined in this Agreement, and provided that it has been executed by all Parties.

DATE	DEANNA ALI
Dec 29, 2022	Heather Embry Heather Embry (Dec 29, 2022 14:02 EST)
DATE	HEATHER EMBRY
12/29/22	
DATE	SONEET R. KAPILA, in his capacity as the Assignee of Laser Spine Institute, LLC and each of its affiliated entities