

CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CIVIL DIVISION

In re:

Laser Spine Institute, LLC	Case No. 2019-CA-2762
CLM Aviation, LLC	Case No. 2019-CA-2764
LSI HoldCo, LLC	Case No. 2019-CA-2765
LSI Management Company, LLC	Case No. 2019-CA-2766
Laser Spine Surgery Center of Arizona, LLC	Case No. 2019-CA-2767
Laser Spine Surgery Center of Cincinnati, LLC	Case No. 2019-CA-2768
Laser Spine Surgery Center of Cleveland, LLC	Case No. 2019-CA-2769
Laser Spine Surgical Center, LLC	Case No. 2019-CA-2770
Laser Spine Surgery Center of Pennsylvania, LLC	Case No. 2019-CA-2771
Laser Spine Surgery Center of St. Louis, LLC	Case No. 2019-CA-2772
Laser Spine Surgery Center of Warwick, LLC	Case No. 2019-CA-2773
Medical Care Management Services, LLC	Case No. 2019-CA-2774
Spine DME Solutions, LLC	Case No. 2019-CA-2775
Total Spine Care, LLC	Case No. 2019-CA-2776
Laser Spine Institute Consulting, LLC	Case No. 2019-CA-2777
Laser Spine Surgery Center of Oklahoma, LLC	Case No. 2019-CA-2780

Assignors,

Consolidated Case No:
2019-CA-2762

To:

Soneet Kapila,
Assignee.

Division L

**ASSIGNEE'S MOTION FOR ORDER APPROVING SETTLEMENT AND
COMPROMISE OF CLAIMS WITH CLASS ASSERTING WARN ACT CLAIMS**

Soneet R. Kapila, as assignee (the “**Assignee**”) for the benefit of creditors for Laser Spine Institute, LLC (“**LSI**”) and fifteen (15) of LSI’s affiliates¹ (collectively the “**LSI Entities**”), by and

¹ LSI’s affiliates are: LSI Management Company, LLC; Laser Spine Institute Consulting, LLC; CLM Aviation, LLC; Medical Care Management Services, LLC; LSI HoldCo, LLC; Laser Spine Surgical Center, LLC; Laser Spine Surgery Center of Arizona, LLC; Laser Spine Surgery Center of Cincinnati, LLC; Laser Spine Surgery Center of St. Louis, LLC; Laser Spine Surgery Center of Pennsylvania, LLC; Laser Spine Surgery Center of Oklahoma, LLC; Laser Spine Surgery Center of Warwick, LLC; Laser Spine Surgery Center of Cleveland, LLC; Total Spine Care, LLC; and Spine DME Solutions, LLC (the “**Affiliated Companies**”).

through his undersigned attorneys, files this motion seeking the entry of (a) an order approving the settlement and compromise reached between the Assignee and the Class² asserting claims under the WARN Act. In support of this motion (the “**Motion**”), the Assignee states as follows:

Background

1. 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 Court on March 14, 2019, commencing an assignment for the benefit of creditors proceeding pursuant to Chapter 727 of the Florida Statutes (the “**LSI Assignment Case**”).

2. Simultaneous with the filing of the LSI Assignment Case, the Assignee filed fifteen other Petitions commencing the following assignment for the benefit of creditors proceedings for the Affiliated Companies of LSI (the “**Affiliated Assignment Cases**,” and together with the LSI Assignment Case, the “**Assignment Cases**”): LSI Management Company, LLC; Laser Spine Institute Consulting, LLC; CLM Aviation, LLC; Medical Care Management Services, LLC; LSI HoldCo, LLC; Laser Spine Surgical Center, LLC; Laser Spine Surgery Center of Arizona, LLC; Laser Spine Surgery Center of Cincinnati, LLC; Laser Spine Surgery Center of St. Louis, LLC; Laser Spine Surgery Center of Pennsylvania, LLC; Laser Spine Surgery Center of Oklahoma, LLC; Laser Spine Surgery Center of Warwick, LLC; Laser Spine Surgery Center of Cleveland, LLC; Total Spine Care, LLC; and Spine DME Solutions, LLC (each, an “**Assignor**” and collectively, the “**Assignors**”).

3. Before the Assignment Cases were filed, certain of the employees filed class action lawsuits (collectively, the “**Lawsuit**”) in the United States District Court for the Middle District

² Capitalized terms not defined herein shall have the meaning set forth in the Settlement Agreement.

of Florida, Tampa Division (the “**District Court**”) alleging that certain of the Assignors did not comply with their duty to give notice under the Worker Adjustment and Retraining Notification Act, 29 U.S.C. 2101 et seq. (the “**WARN Act**”), and seeking certification of a class for purposes of the lawsuit. Lawsuits were filed in the District Court by Deanna Ali on March 4, 2019 against LSI and LSI Management, LLC (8:19-cv-535-T-23JSS); by Heather Embry on March 4, 2019 against LSI, LSI Management, and LSI Holdco (8:19-cv-539-T-23AAS); and by Duane Higdon on March 4, 2019 against LSI, LSI Management, and LSI Holdco (8:10-cv-547-T-23TGW).

4. The District Court subsequently entered an order certifying the Class and appointing Ms. Ali and Ms. Embry as the class representatives (the “**Class Representatives**”).

5. On July 11, 2019, the Class Representatives filed a notice in the LSI Assignment Case referencing proofs of claims filed against the 16 Assignor entities (collectively, the “**Class POC**”), and attached the form of the proof of claim. The Class POC were filed in the remaining Assignment Cases and were to be identical other than the name of the Assignor. The Class POC assert a claim of 60 days back pay and benefits for approximately 516 individuals, which the Class Representatives estimate to exceed \$13 million. A copy of the notice of the Class POC is attached hereto as **Exhibit “A”**. The Class POC attach as a composite exhibit the complaints filed in the District Court. Like the complaints initiating the Lawsuits, the Class POC are based on the alleged failure of one or more of the Assignors to comply with the requirements of the WARN Act.

6. The Class POC appear to assert an entitlement to (i) an administrative expense claim under § 727.114(1)(b), (ii) a priority wage or benefits claim under § 727.114(1)(d), and/or (iii) a general unsecured claim under § 727.114(1)(f). Class POC, p 7, ¶¶ 7-9.

7. The Assignee has filed an objection to the Class POC in the Assignment Cases (the “**Assignee’s Objection**”). A copy of the Assignee’s Objection is attached hereto as **Exhibit “B”**.

8. 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 in the Assignment Cases. A copy of the Bailey Group Objection is attached hereto as **Exhibit “C”**.

Relief Requested

9. The Assignee and the WARN Act Claimants have been involved in lengthy and good faith settlement discussions, including a mediation session with a sophisticated third party mediator. The matter was not resolved at mediation but the Parties continued their settlement discussions. The Assignee and the Class Representatives reached an agreement on the terms of a settlement and compromise of the Claims asserted in the Lawsuits (the “**Settlement**”). A copy of the Settlement Agreement is attached as **Exhibit “D.”**

10. Pursuant to this Motion, the Assignee seeks the entry of an order approving the Settlement in accordance with the terms of the Settlement Agreement.

11. The key terms of the Settlement are as follows:³ (i) the Assignee shall pay the sum of \$750,000 in full settlement of Class POC, (ii) the WARN Act Claimants shall withdraw the Class POC, and (iii) the WARN Act Claimants will release all claims for WARN Act liability against the Assignees.

12. The effectiveness of the Settlement Agreement is conditioned upon approval by this Court and the District Court.⁴

³ The foregoing is a summary of the terms of the Settlement Agreement. The terms of the Settlement Agreement shall control in the event of any inconsistencies.

⁴ On January 9, 2023, the 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 was filed with the District Court.

Basis for Relief

13. The statutory framework provided for assignment for the benefit of creditors cases authorizes the Court to approve the Settlement Agreement. Section 727.109 of the Florida Statutes specifically empowers the Court to enter an order approving “the compromise or settlement of a controversy” upon motion by the Assignee. Fla. Stat. § 727.109(7). Further, the Court is authorized to “[e]xercise any other powers that are necessary to enforce or carry out the provisions of this chapter.” Fla. Stat. § 727.109(15).

14. Although the assignment statutes provide for court approval of settlements proposed by an assignee, the statutes do not set forth any specific criteria for approving settlements. The Assignee submits that analogous bankruptcy principles should guide this Court’s evaluation of the Settlement Agreement. “State courts often look to federal bankruptcy law for guidance as to legal issues arising in proceedings involving assignments for the benefit of creditors.” *Moecker v. Antoine*, 845 So. 2d 904, 912 n.10 (Fla. 1st DCA 2003).

15. It is generally recognized that the law favors compromise of disputes over litigation. *In re Bicoastal Corp.*, 164 B.R. 1009, 1016 (Bankr. M.D. Fla. 1993) (Paskay, C.J.). Some bankruptcy courts have held that a proposed settlement should be approved unless it yields less than the lowest amount that the litigation could reasonably produce. *In re Holywell Corp.*, 93 B.R. 291, 294 (Bankr. S.D. Fla. 1988) (Weaver, J.). In *In re Justice Oaks II, Ltd.*, 898 F.2d 1544 (11th Cir. 1990), *cert. denied* 498 U.S. 959, (1990), the court enunciated certain factors which must be considered in determining whether to approve a compromise. These factors include the following:

- (i) The probability of success in the litigation;
- (ii) The difficulties, if any, to be encountered in the matter of collection;

- (iii) The complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and
- (iv) The paramount interest of the creditors and a proper deference to their reasonable views in the premises.

Id.

16. ***The Probability of Success in Litigation.*** The terms of the Settlement Agreement satisfy the above *Justice Oaks* factors. The first factor of probability of success weighs in favor of approval of the Settlement Agreement when considered with the remaining factors. While the Assignee is confident in the merits of the Assignee's Objection to the Class POC, there is no certainty in litigation, including on appeal, that the Assignee will prevail on the Assignee's Objection in whole or in part. The Assignee asserts that the "faltering company" exception under the WARN Act applies but there are no assurances that the Assignee will prevail in arguments that the faltering company exception provides a defense, in whole or in part. Under the Settlement Agreement, the claims asserted in the Class POC are being resolved in their entirety, thereby eliminating the risk and expense of prosecuting the Assignee's Objection to the Class POC. The Settlement will allow the Parties and the Court to avoid protracted litigation in which the Class would continue to vigorously argue their entitlement to the amounts sought to be recovered by the Class POC and oppose the Assignee Objection and the Bailey Objection. The litigation would require a number of factual determinations that would likely preclude summary judgment and require a trial, including expert testimony.

17. ***The Collection Factor.*** The Settlement Agreement provides for the resolution of the Class POC filed in the Assignment Cases and the Assignee is not seeking any affirmative relief. Therefore, the second factor is not implicated.

18. ***Complexity of Litigation.*** The third factor of the complexity of the litigation weighs

in favor of approval of the Settlement Agreement. Specifically, the Class POC and the underlying WARN Act issues are complex in nature and involve novel legal issues. Resolution of the issues will likely require a trial on the merits and expert testimony of multiple experts. In view of the foregoing, the complexity of the these claims would result in multi-year litigation and a significant investment in legal and professional fees and costs with no assurances of success.

19. ***Paramount Interests of Creditors.*** The last factor as to whether the Settlement is in the paramount interest of creditors weighs in favor of approval of the Settlement. The Assignee believes that the creditors of the Assignment Cases will support the approval of this Motion and the Settlement Agreement. In the event that the Class POC is allowed, large priority claims would be allowed in the Assignment Cases. Such priority claims would be required to be paid in full before any distribution to unsecured creditors. Therefore, the Assignee believes that the Settlement Agreement is in the best interest of the creditors of the Assignment Estates.

20. For the foregoing reasons, the Assignee submits that the Settlement satisfies the *Justice Oaks* factors and falls well above the lowest point in the range of reasonableness and, accordingly, should be approved.

/s/ Scott A. Stichter

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Counsel for Assignee

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion has been furnished on this 10th day of January, 2023 by the Court's electronic system to all parties receiving electronic service and by either U.S. mail or electronic mail to the parties listed on the Limited Notice Parties list attached.

/s/ Scott A. Stichter
Scott A. Stichter

MASTER LIMITED NOTICE SERVICE LIST

September 14, 2022

Assignors and Assignor's Counsel: (via the Court's electronic servicing system)

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
Laser Spine Institute, LLC
Medical Care Management Services, LLC
Spine DME Solutions, LLC
Total Spine Care, LLC
Laser Spine Institute Consulting, LLC
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Las Vegas, NV 89118

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1310 Madrid St.
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Maricopa County Treasurer
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Those Parties and Attorneys Formally Requesting Notice (via the Court's electronic servicing system unless otherwise noted)

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**IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
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Assignors,	Consolidated Case No.
To:	2019-CA-2762

Soneet Kapila,	Division L
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Assignee

NOTICE OF FILING DOCUMENT

COMES NOW Class Representatives Heather Embry and Deanna Ali, by and through their undersigned counsel, and on behalf of the class, give notice of filing the following documents:

1. Proof of Claim for Laser Spine Institute, LLC
2. Proof of Claim for CLM Aviation, LLC
3. Proof of Claim for LSI HoldCo, LLC
4. Proof of Claim for LSI Management Company, LLC
5. Proof of Claim for Laser Spine Surgery Center of Arizona, LLC

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11. Proof of Claim for Laser Spine Surgery Center of Warwick, LLC
12. Proof of Claim for Medical Care Management Services, LLC
13. Proof of Claim for Spine DME Solutions, LLC
14. Proof of Claim for Total Spine Care, LLC
15. Proof of Claim for Laser Spine Institute Consulting, LLC
16. Proof of Claim for Laser Spine Surgery Center of Oklahoma, LLC

Respectfully submitted,

/s/ Ryan D. Barack

Ryan D. Barack

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/s/ Brandon J. Hill

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Attorneys for Class Representatives

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served via the Court's electronic filing portal on July 11, 2019 to all counsel of record and via hand delivery to Edward J. Peterson, Stichter, Riedel, Blain & Postler, P.A., 110 E. Madison St., Suite 200, Tampa, FL 33602.

/s/ Ryan D. Barack
Attorney

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
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Assignors,
To:

Consolidated Case No.
2019-CA-2762

Soneet Kapila,

Division L

Assignee

PROOF OF CLAIM

TO RECEIVE ANY DIVIDEND IN THESE PROCEEDINGS (THE "ASSIGNMENT CASES"), YOU
MUST COMPLETE THIS PROOF OF CLAIM AND DELIVER IT TO THE ASSIGNEE, OR THE
ASSIGNEE'S COUNSEL, NO LATER THAN:

JULY 12, 2019

THE ASSIGNEE'S NAME AND ADDRESS ARE AS FOLLOWS:

SONEET KAPILA, ASSIGNEE
1000 SOUTH FEDERAL HIGHWAY, SUITE 200
FORT LAUDERDALE, FL 33316

ASSIGNEE'S COUNSEL IS:
EDWARD J. PETERSON, ESQUIRE
STICHTER, RIEDEL, BLAIN & POSTLER, P.A.
110 E. MADISON ST., SUITE 200
TAMPA, FL 33602

1. PLEASE SPECIFY THE ASSIGNOR AGAINST WHICH YOU ASSERT A CLAIM:
Laser Spine Institute, LLC Case No. 2019-CA-2762
(IF YOU HAVE A CLAIM AGAINST MORE THAN ONE ASSIGNOR, YOU MUST FILE A SEPARATE CLAIM AGAINST EACH ASSIGNOR).

2. CREDITOR NAME (Your name): Heather Embry and Deanna Ali, as representatives of a class of former employees of the Assignor

ADDRESS: c/o Kwall Barack Nadeau PLLC

Wenzel Fenton Cabassa, P.A.

ADDRESS: 304 S. Belcher Rd., Suite C

1110 N. Florida Ave., Suite 300

CITY, STATE, ZIP: Clearwater, FL 33765

Tampa, FL 33602

TELEPHONE NUMBER: 727-441-4947

813-224-0431

E-MAIL ADDRESS: rbarack@employeeerights.com

bhill@wfcclaw.com

Please be sure to notify us if you have a change of address.

Check box if address on claim differs from address to which this notice was sent: []

3. BASIS FOR CLAIM:

[] Goods Sold

[X] Wages, Salaries and Compensations [] Tax Secured Creditor

[] Services Performed

[] Customer Deposit

[] Money Loaned

[X] Other: WARN Act, 29 U.S.C. 2101-2109 and expenses

[] Shareholder

incurred during the administration of the estate

4. DATE DEBT WAS INCURRED: On or about December 31, 2018

5. AMOUNT OF CLAIM:

The claim represents 60 days of back pay and benefits for approximately 516 individuals, which based upon available information appears to exceed \$13 million. Please see the attached for additional information.

6. Does Claim amend, replace, or supplement a prior claim? If so, please state the date and amount of the prior claim(s):

7. SUPPORTING DOCUMENTS: Attach copies of supporting documents, such as promissory notes, purchase order, invoices, itemized statement of running accounts, court judgments, or evidence of security interests. If the documents are not available, explain. If the documents are voluminous, attach a summary.
Documents attached.

8. SIGNATURE: Sign and print name and title, if any, of the creditor or other person authorized to file this claim:

As required by law, the proof of claim and any supporting documentation you submit shall become a part of the public record related to the Assignment Cases. As a result, the Assignee and his professionals shall be permitted, and may be directed by the Court, to include such documentation, including to the extent provided, protected health information, in any subsequent pleading, notice, document, list, or other public disclosure made in connection with the Assignment Cases. Such inclusion by the Assignee and his professionals shall not constitute a "wrongful disclosure" under HIPAA, the Florida Information Protection Act of 2014, or any regulations promulgated thereunder.

DATED: 7/11/2019

BY: /s/ Ryan D. Barack and /s/ Brandon Hill

Signature of Claimant or Representative

Ryan D. Barack and Brandon Hill, Class counsel

Print Name and Title Here

For Assignee's Use Only:
Claim Number: _____
Date: _____

**ADDENDUM TO PROOF OF CLAIM
BY HEATHER EMBRY AND DEANNA ALI
ON BEHALF OF THE EMPLOYEE CLASS**

This Addendum is a part of, and incorporated by reference into, the Proof of Claim set forth on the form filed by Heather Embry and Deanna Ali (the “Class Representatives”), on their own behalf and on behalf of a certified class of those similarly situated (collectively the “Class”).

In support thereof, the Class states as follows:

Background

1. On or about March 1, 2019, the Assignor terminated all of its employees as a result of a “mass layoff” or “plant closing” as defined by the Workers Adjustment and Retraining Notification Act of 1988, 29 U.S.C. § 2101, et seq., (the “WARN Act”).

2. Prior to the terminations, the Assignor did not provide the employees with a minimum of 60 days’ written notice of the termination, which was due on or about December 31, 2018.

3. The Class Representatives commenced litigation (copies of the complaints are attached as Composite Exhibit 1) and on July 8, 2019, the United States District Court for the Middle District of Florida certified the Class as follows:

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.

A copy of the Omnibus Order is attached as Exhibit 2.

4. Counsel for the Assignee has provided counsel for the Class with a list that identifies 516 individuals who are likely members of the Class. The list of names is attached as Exhibit 3.

Summary of Claims

5. The Class hold claims against the Assignor, the Assignee, its estate, and others pursuant to the WARN Act.

6. The Assignor, the Assignee, its estate, and others are liable under the WARN Act for the failure to provide the Class at least 60 days' advance notice of their termination as required by the WARN Act.

7. Some or all of the Class claims are entitled to allowance and payment as they are expenses incurred during the administration of the estate. Fla. Stat. §727.114(1)(b).

8. Some or all of the Class claims are entitled to allowance and payment as priority claims for wages, salaries, or commissions, including vacation, severance, and sick leave pay, or contributions to an employee benefit plan earned by employees of the assignor within 180 days before the filing date or the cessation of the assignor's business, whichever occurs first. Fla. Stat. §727.114(1)(d).

9. At a minimum, all of the Class claims that are not allowed as priority claims are entitled to allowance and payment as general unsecured claims.

10. The Class Representatives have diligently worked to quantify the claims held by the Class. The Assignor is in possession and control of the documentation necessary to better quantify the Class claims. On the basis of the information available to the Class Representatives at this time, the Class Representatives estimate the value of the Class Members' claims as in excess of \$13,000,000.00. This calculation is based upon an estimate of the weekly payroll and

Department of Labor reports that in March 2019, the average cost of total benefits for employees in the health care field was 38.5% of the total compensation.

11. Accordingly, the Class Representatives, on behalf of themselves and the Class, hereby demand allowance and payment of the Class claims in an amount no less than \$13,000,000.00

12. The Class Representatives, on behalf of themselves and the Class, also demand allowance and payment of their attorney's fees and costs.

Reservations

13. The Class Representatives submit this Proof of Claim at this time under compulsion of the bar date of July 12, 2019.

14. The foregoing is without prejudice to all of the other rights and claims in these proceedings of the Class Representatives and the Class.

15. In addition, the Class Representatives and the Class expressly reserve all other rights, remedies, interests, priorities, protections, claims, counterclaims, defenses, setoffs, and recoupments, without limitations, well as claims against any other entity, including, without limitations, the Assignor's present or former directors and officers.

16. The Class Representatives and the Class specifically reserve the right to amend, modify, withdraw, or supplement this Proof of Claim at any time, and the right to assert any other legal theory in support of recovery from the Class Representatives and the Class or any other entity.

17. By preparing, signing, and filing this Proof of Claim, or taking any action in connection therewith, the Class Representatives and the Class are not (a) in any manner whatsoever waiving or relinquishing any rights they may have against any other entity liable for

all or any parts of the matters set forth herein, (b) consenting to the jurisdiction of this Court with respect to any proceedings commenced in this case, (c) waiving the right to withdraw the reference with respect to objections, cases, or proceedings, (d) electing any remedy which waives or otherwise affects any other remedy, (e) limiting their claims or the claims of the Class Members to the amounts or theories set forth herein, or (f) estopped or prevented from taking any other action or position.

COMPOSITE EXHIBIT 1

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

**HEATHER EMBRY, on behalf of herself
and a class of those others similarly situated,**

Plaintiff,

v.

Case No.

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

Defendants.

CLASS ACTION COMPLAINT

HEATHER EMBRY (“Plaintiff”), on behalf of herself and a class of those similarly situated by and through the undersigned counsel, hereby sue **LASER SPINE INSTITUTE, LLC, LSI MANAGEMENT COMPANY, LLC and LSI HOLDCO LLC** (collectively “Defendants”) and allege as follows:

NATURE OF THE ACTION

1. This is an action brought pursuant to the Worker Adjustment and Retraining Notification Act of 1988, 29 U.S.C. § 2101 et. seq. (“WARN Act”). Defendants are liable under the WARN Act for the failure to provide the Plaintiff and all others similarly situated at least 60 days’ advance notice of their termination, as required by the WARN Act.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this proceeding pursuant to 28 U.S.C. § 1331 and 29 U.S.C § 2104 (a)(5).

3. Venue in this Court is proper pursuant to 29 U.S.C. § 2104(a)(5).

THE PARTIES

4. Plaintiff Heather Embry is a citizen and resident of the State of Florida and was employed by Defendants until termination without cause on or about March 1, 2019. Plaintiff submits to the jurisdiction of this Court.

5. Upon information and belief, at all relevant times, Defendant Laser Spine Institute, LLC was a company that touted its "minimally invasive" medical procedures, including but not limited to spinal procedures, and provided services at various locations, including but not limited to a 176,000-square-foot headquarters at 5332 Avion Park Drive in Tampa, Florida ("Facilities").

6. Upon information and belief, at all relevant times, Defendant LSI Management Company, LLC was a company that provided management services to Defendant Laser Spine Institute, LLC.

7. Upon information and belief, at all relevant times, Defendant LSI HoldCo LLC is the member and holding company of Defendant Laser Spine Institute, LLC and Defendant LSI Management Company, LLC.

8. Defendants had common ownership.

9. Defendants had common directors and/or officers.

10. Defendants had *de facto* exercise of control by the same individuals.

11. Defendants had unity of personnel policies emanating from a common source.
12. Defendants are a single employer within the meaning of 20 C.F.R. § 639.3(a).

STATEMENT OF FACTS

13. The WARN Act defines a “plant closing” as follows:

The permanent or temporary shutdown of a single site of employment, or one or more facilities or operating units within a single site or employment, if the shutdown results in an employment loss at the single site of employment during any 30-day period for 50 or more employees excluding any part-time employees.

29 U.S.C. § 2101(a)(2).

14. WARN Act defines a “mass layoff” as a reduction in force which is not the result of a plant closing and results in an employment loss at a single site of employment during any 30-day period for at least 33% of the active employees (excluding part-time employees) and at least 50 employees (excluding part-time employees); or at least 500 employees (excluding part-time employees). 29 U.S.C. § 2101(a)(3); 20 C.F.R. § 639.3(c).

15. The distinction between a plant closing and a mass layoff, according to the regulations, is that a plant closing involves “employment loss which results from the shutdown of one or more distinct units within a single site or the entire site” while a mass layoff “involves employment loss, regardless of whether one or more units are shut down at the site.” 20 C.F.R. §639.3(c)(1).

16. Plaintiff and all other similarly situated employees were employees, employed by Defendants, who were their employers, for all relevant and required periods of time.

17. Plaintiff and all other similarly situated employees were terminated as part of plant shutdowns or mass layoffs as defined by the WARN Act, for which they were entitled to receive 60 days advance written notice under the WARN Act.

18. On or about March 1, 2019, or on earlier or later dates, approximately 500 other similarly situated employees who reported to the Facilities were terminated as part of plant shutdowns or mass layoffs at the Facilities.

19. Pursuant to the WARN Act, Plaintiff maintains this action on behalf of herself and on behalf of each of the other similarly situated former employees.

20. Each of the other similarly situated former employees is similarly situated to the Plaintiff in respect to his or her rights under the WARN Act.

21. Defendants were required by the WARN Act to give the Plaintiff and the other similarly situated former employees or their representatives at least 60 days advance written notice of their respective terminations.

22. Prior to their terminations, neither Plaintiff nor the other similarly situated former employees or their representatives received written notice that complied with the requirements of the WARN Act.

23. Defendants failed to pay the Plaintiff and the other similarly situated former employees their respective wages, salary, commissions, bonuses, accrued holiday pay vacation which would have accrued for sixty (60) days following their respective terminations without notice and failed to make 401(k) contributions and provide them with health insurance coverage and other employee benefits.

CLASS ACTION ALLEGATIONS

24. Plaintiff sues under Rule 23(a) and (b) of the Federal Rules of Civil Procedure and the WARN Act, on behalf of herself, and a class of employees who worked at or reported to the Defendants' Facilities and were laid off without cause by Defendants as part or as the reasonably foreseeable result of plant shutdowns or mass layoffs ordered by Defendants at the Facilities (the "Class") on or about March 1, 2019 or on earlier or later dates.

25. The persons in the Class ("Class Members") are so numerous that joinder of all members is impracticable as there are over 500 potential class members.

26. There are questions of law and fact common to the Class Members, namely:

- (a) Whether the Class Members were employees of Defendants' who worked at or reported to Defendants' Facilities;
- (b) Whether the Defendants ordered the termination of employment of each of the Class Members without cause on their part and without giving them 60 days advance written notice as required by the WARN Act; and
- (c) Whether the Defendants were subject to any of the defenses provided for in the WARN Act.

27. The claims of the representative parties are typical of the claims of the Class, as they were terminated as part of the plant shutdown or mass layoff and did not receive the requisite notice.

28. The representative parties will fairly and adequately protect the interests of the class.

29. Plaintiff has retained counsel competent and experienced in complex class action employment litigation.

30. There is no conflict of interest between the Plaintiff and other members of the class.

31. A class action is superior to other available methods for the fair and efficient adjudication of this controversy—particularly in the context of WARN Act litigation, where the individual Plaintiff and class members may lack the financial resources to vigorously prosecute a lawsuit in federal court against a corporate defendant and separate actions would create a risk of inconsistent or varying adjudications with respect to individual class members and the adjudications with respect to individual class members would be dispositive of the interests of other members.

32. Defendants have acted on grounds that apply generally to the class.

33. There are questions of law and fact common to the Class Members that predominate over any questions solely affecting individual members of the Class, including but not limited to:

- (a) Whether the Class Members were employees of Defendants' who worked at or reported to Defendants' Facilities;
- (b) Whether the Defendants ordered the termination of employment of each of the Class Members without cause on their part and without giving them 60 days advance written notice as required by the WARN Act; and
- (c) Whether the Defendants were subject to any of the defenses provided for in the WARN Act.

**CAUSE OF ACTION
WARN ACT VIOLATIONS**

34. At all relevant times, the Defendants employed 100 or more employees, exclusive of part-time employees, or employed 100 or more employees who in the aggregate worked at least 4,000 hours per week exclusive of hours of overtime within the United States as defined by the WARN Act, and employed more than 50 employees at the Facilities.

35. At all relevant times, the Defendants were an “employer” of the Class Members as that term is defined by the WARN Act.

36. On or about March 1, 2019, and at previous and subsequent times, Defendants ordered “plant shutdowns” or “mass layoffs” as those terms are defined by the WARN Act.

37. Defendants’ actions at the Facilities resulted in an “employment loss” as that term is defined by the WARN Act for at least 33% of its workforce, and at least 50 of its employees, excluding (a) employees who worked less than six of the twelve months prior to the date WARN notice was required to be given and (b) employees who worked an average of less than 20 hours per week during the 90-day period prior to the date WARN notice was required to be given.

38. Defendants’ termination of the Class Members’ employment constituted plant shutdowns or mass layoffs as defined by the WARN Act.

39. The Plaintiff and each of the Class Members who were employed by Defendants and then terminated by Defendants as a result of Defendants’ executing plant shutdowns or mass layoffs at the Facilities were “affected employees” as defined by the WARN Act.

40. The Plaintiff and each of the Class Members are “aggrieved employees” of the Defendants as that term is defined by the WARN Act.

41. Pursuant to the WARN Act, Defendants were required to provide at least 60 days prior written notice of the termination, or notice as soon as practicable, to the affected employees, on their representative, explaining why the sixty (60) days prior notice was not given.

42. Defendants failed to give at least sixty (60) days prior notice of the termination in violation of the WARN Act.

43. The Defendants failed to pay the Plaintiff and each of the Class Members their respective wages, salary, commissions, bonuses, accrued holiday pay and accrued vacation for 60 working days following their respective terminations, and failed to make the pension and 401(k) contributions, provide other employee benefits under ERISA, and pay their medical expenses for 60 calendar days from and after the dates of their respective terminations.

44. As a result of Defendants’ failure to pay the wages, benefits and other monies as asserted, the Plaintiff and Class Members were damaged in an amount equal to the sum of the members’ unpaid wages, accrued holiday pay, accrued vacation pay, accrued sick leave pay and benefits which would have been paid for a period of sixty (60) calendar days after the date of their terminations.

RELIEF SOUGHT

WHEREFORE, the Plaintiff and Class Members demand trial by jury and judgment against the Defendants as follows:

a. An amount equal to the sum of: unpaid wages, salary, commissions, bonuses, accrued holiday pay, accrued vacation pay pension and 401(k) contributions and other ERISA benefits, for sixty (60) working days following the member employee's termination, that would have been covered and paid under the then applicable employee benefit plans had that coverage continued for that period, all determined in accordance with the WARN Act, 29 U.S.C§2104(a)(1)(A);

b. Certification that, pursuant to Fed. R. Civ. P. 23 (a) and (b) and the WARN Act, Plaintiff and the Other Similarly Situated Former Employees constitute a single class;

c. Designation of Plaintiff as Class Representative;

d. Appointment of the undersigned attorneys as Class Counsel;

e. Interest as allowed by law on the amounts owed under the preceding paragraphs;

f. The reasonable attorneys' fees and the costs and disbursements the Plaintiff incurs in prosecuting this action, as authorized by the WARN Act; and

g. Such other and further relief as this Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff further demands a jury trial on all issues so triable as of right.

Respectfully submitted,

/s/ Ryan D. Barack

Ryan D. Barack

Florida Bar No. 0148430

Primary: rbarack@employeeerights.com

Secondary: jackie@employeeerights.com

Michelle Erin Nadeau

Florida Bar No. 0060396

Primary: mnadeau@employeeerights.com

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Kwall Barack Nadeau PLLC

304 S. Belcher Road, Suite C

Clearwater, Florida 33765

(727) 441-4947

(727) 447-3158 Fax

Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
DIVISION**

**DENNA E. ALI, on behalf
of herself and on behalf of all others
similarly situated,**

Plaintiff,

v.

CASE NO.: 8:19-cv-00535

**LASER SPINE INSTITUTE, LLC, and
LSI MANAGEMENT, LLC,**

Defendants.

_____ /

**FIRST AMENDED CLASS ACTION COMPLAINT
(JURY TRIAL DEMANDED)**

Plaintiff, Deanna E. Ali, on behalf of herself and on behalf of all others similarly situated, by and through her undersigned counsel, files this First Amended Class Action Complaint against Defendants, Laser Spine institute, LLC, and LSI Management, LLC, (“Defendants”), and alleges as follows:

NATURE OF THE ACTION

1. This is a class action for the recovery by the Plaintiffs, on their own behalf and on behalf of approximately 1,000 other similarly situated former employees (collectively the “Class”, as defined below), of damages in the amount of 60 days’ compensation and benefits for each of them by reason of the Defendants’ violation of their rights under the Worker Adjustment and Retraining Notification Act, 29 U.S.C. § 2101 et seq. (the “WARN Act”). The Plaintiff and the other Class members were employees of Defendants who were terminated without cause on their part in or about March 1, 2019, as part of or as the reasonably expected consequence of a mass layoff or plant closing, which was effectuated by Defendants on or about that date. Defendants

failed to give the Plaintiff and the other Class members at least 60 days' advance notice of their termination. As a consequence, the Plaintiff and the other Class members are entitled under the WARN Act to recover from the Defendants their respective compensation and benefits for 60 days, no part of which has been paid.

JURISDICTION

2. This Court has jurisdiction over this proceeding pursuant to 28 U.S.C. § 1331 and 29 U.S.C. § 2104(a)(5).

3. The violation of the WARN Act alleged herein occurred in this District.

4. Venue in this Court is proper pursuant to 29 U.S.C. § 2104(a)(5).

THE PARTIES

5. On information and belief, at all relevant times, Defendants were a business authorized to conduct business in the State of Florida.

6. On information and belief, at all relevant times, Defendants maintained an office or facility in Tampa, Florida (the "Facility").

7. On information and belief, in or about March 2019, Defendants employed approximately 1,000 people across the country.

8. Prior to their terminations, the Plaintiff was an employee of Defendants who worked for the Defendants.

9. In or around March 1, 2019, the Plaintiff was terminated from her employment, without cause on her part, by the Defendants.

10. In or about March 1, 2019 and thereafter, the Plaintiff and approximately 1,000 other employees of the Defendants who had been working for the Defendants were terminated

without cause on their part as part of or as the reasonably expected consequence of the terminations that occurred on or about March 1, 2019 (collectively, the “Class”).

11. The Plaintiff brings this action on her own behalf and, pursuant to rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure, on behalf of herself and the other members of the Class.

THE CLAIM FOR RELIEF

12. At all relevant times, the Defendants employed 100 or more employees, exclusive of part-time employees, i.e., those employees who had worked fewer than 6 of the 12 months prior to the date notice was required to be given or who had worked fewer than an average of 20 hours per week during the 90 day period prior to the date notice was required to be given (the “Part-Time Employees”), or employed 100 or more employees who in the aggregate worked at least 4,000 hours per week exclusive of hours of overtime within the United States.

13. The terminations in or about March 1, 2019 of the employment of persons who worked at the Facility for Defendants resulted in the loss of employment for at least 50 employees excluding Part-Time Employees.

14. The terminations in or about March 1, 2019 of the employment of persons who worked at the Facility or as the reasonably foreseeable consequence of those terminations resulted in the loss of employment for at least 33% of the Facility’s employees excluding Part-Time Employees.

15. The Plaintiff and the other Class members were discharged without cause on their part in or about March 1, 2019 or thereafter as the reasonably expected consequence of the terminations that occurred in or about March 1, 2019.

16. The Plaintiff and each of the other Class members experienced an employment loss as part of or as the reasonably expected consequence of the mass layoff and/or plant closing that occurred in or about March 1, 2019.

17. Prior to the terminations, the Plaintiff and the other Class members did not receive written notice at least 60 days in advance of the termination of their employment.

18. The Plaintiff and the other Class members constitute a Class within the meaning of Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure.

19. Each of the other Class members is similarly situated to the Plaintiff with respect to his or her rights under the WARN Act.

20. Common questions of law and fact are applicable to all members of the Class.

21. The common questions of law and fact arise from and concern the following facts, among others: that all Class members enjoyed the protection of the WARN Act; that all Class members were employees of the Defendants who worked at the Facility; that the Defendants terminated the employment of all the members of the Class without cause on their part; that the Defendants terminated the employment of the members of the Class without giving them at least 60 days' prior written notice as required by the WARN Act; that the Defendants failed to pay the Class members wages and to provide other employee benefits for a 60-day period following their respective terminations; and on information and belief, the issues raised by an affirmative defenses that may be asserted by the Defendants.

22. The Plaintiff's claims are typical of the claims of the other members of the Class in that for each of the several acts of Defendants described above, the Plaintiff and the other Class members is an injured party with respect to his/her rights under the WARN Act.

23. The Plaintiff will fairly and adequately protect and represent the interests of the Class.

24. The Plaintiff has the time and resources to prosecute this action.

25. The Plaintiffs has retained the undersigned counsel who have had extensive experience litigating WARN Act claims, employee rights' claims and other claims in Federal court.

26. The Class is so numerous as to render joinder of all members impracticable in that there are approximately 1,000 members of the Class.

27. The questions of law and fact common to the members of the Class predominate over any questions affecting only individual members.

28. A class action is superior to other available methods for the fair and efficient adjudication of the controversy.

29. No Class member has an interest in individually controlling the prosecution of a separate action under the WARN Act.

30. No litigation concerning the WARN Act rights of any Class member has been commenced.

31. Concentrating all the potential litigation concerning the WARN Act rights of the Class members in this Court will avoid a multiplicity of suits, will conserve judicial resources and the resources of the parties, and is the most efficient means of resolving the WARN Act rights of all the Class members.

32. On information and belief, the names of all the Class members are contained in Defendants' books and records.

33. On information and belief, a recent residence address of each of the Class members is contained in Defendants' books and records.

34. On information and belief, the rate of pay and the benefits that were being paid or provided by Defendants to each Class member at the time of his or her termination are contained in Defendants' books and records.

35. As a result of Defendants' violation of the WARN Act, each Class member is entitled to recover an amount equal to the sum of: (a) his/her respective wages, salaries, commissions, bonuses and accrued pay for vacation and personal days for the work days in the 60 calendar days prior to their respective terminations and fringe benefits for 60 calendar days prior to their respective terminations; and (b) his/her medical expenses incurred during the 60-day period following their respective terminations that would have been covered and paid under the Defendants' health insurance plan had that plan provided coverage for such period.

36. Defendants failed to pay the Plaintiff and the other Class members for the Defendants' violation of the WARN Act in an amount equal to the sum of or any part of the sum of (a) their respective wages, salary, commissions, bonuses and accrued pay for vacation and personal days for the work days in the 60 calendar days prior to their respective terminations and fringe benefits for 60 calendar days prior to their respective terminations; and (b) their medical expenses incurred during the 60 calendar days from and after the date of his/her termination that would have been covered under the Defendants' benefit plans had those plans remained in effect.

37. Plaintiff hereby demands a jury trial of all issues that may be so tried.

WHEREFORE, the Plaintiff demands judgment as follows:

A. In favor of the Plaintiff and each other Class member against the Defendants equal to the sum of: (a) wages, salary, commissions, bonuses, accrued pay for vacation and personal

days, for 60 days; (b) pension, 401(k) contributions, health and medical insurance and other fringe benefits for 60 days; and (c) medical expenses incurred during the 60 day period following their respective terminations that would have been covered and paid under the Defendants' health insurance plans had coverage under that plan continued for such period, all determined in accordance with the WARN Act, 29 U.S.C. § 2104 (a)(1)(A).

- B. Appointment of the Plaintiff as Class Representatives;
- C. Appointment of the undersigned as Class Counsel;
- D. In favor of the Plaintiff for the reasonable attorneys' fees and the costs and disbursements of prosecuting this action, as authorized by the WARN Act, 29 U.S.C. § 2104 (a)(6).
- E. Interest allowed by law;
- F. Such other and further relief as this Court deems just and proper.

Dated this 4th day of March, 2019.

Respectfully submitted,



LUIS A. CABASSA

Florida Bar Number: 0053643

BRANDON J. HILL

Florida Bar Number: 0037061

WENZEL FENTON CABASSA, P.A.

1110 North Florida Avenue, Suite 300

Tampa, FL 33602

Main No.: 813-224-0431

Direct No.: 813-379-2565

Facsimile: 813-229-8712

Email: lcabassa@wfclaw.com

Email: bhill@wfclaw.com

Email: twells@wfclaw.com

EXHIBIT 2

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

DEANNA ALI,

Plaintiff,

v.

CASE NO. 8:19-cv-535-T-23JSS

LASER SPINE INSTITUTE, LLC, et al.,

Defendants.

HEATHER EMBRY,

Plaintiff,

v.

CASE NO. 8:19-cv-539-T-23AAS

LASER SPINE INSTITUTE, LLC, et al.,

Defendants.

DUANE HIGDON,

Plaintiff,

v.

CASE NO. 8:19-cv-547-T-23TGW

LASER SPINE INSTITUTE, LLC, et al.,

Defendants.

OMNIBUS ORDER

In three cases — *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 — a former employee of Laser Spine Institute sues the company for violating the WARN Act, 29 U.S.C.

§§ 2101–09. Each plaintiff sues on behalf of a proposed class, and orders on June 13, 2019, 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.” However, Duane Higdon withdraws his motion for class certification and announces that he will either “pursue his claims individually . . . or as a member of the proposed class if it is certified.” (Doc. 20 in 8:19-cv-547-T-23TGW)

Accordingly, the only remaining class certification motion is Heather Embry’s motion (Doc. 14 in 8:19-cv-539-T-23AAS), which Deanna Ali adopts (Docs. 12–13 in 8:19-cv-535-T-23JSS). That is, Ali and Embry move to certify the same class, to represent the class together, and to appoint their attorneys as class counsel.

A party moving for class certification must demonstrate that the proposed class satisfies each requirement of Rule 23(a), Federal Rules of Civil Procedure, and at least one requirement of Rule 23(b). *Rutstein v. Avis Rent-A-Car Sys.*, 211 F.3d 1228, 1233 (11th Cir. 2000). Rule 23(a) permits class certification:

only if (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class.

Forty class members can establish numerosity. *Cox v. Am. Cast Iron Pipe Co.*, 784 F.2d 1546, 1553 (11th Cir. 1980). Ali declares that 500 people worked at LSI's Tampa, Florida office when LSI stopped operating in March 2019. (Doc. 14-1 in 8:19-cv-539-T-23AAS) Embry declares that "hundreds of people . . . worked for LSI." (Doc. 14-2 in 8:19-cv-539-T-23AAS) And one of Embry's attorneys declares that he reviewed LSI records, which "appear[]" to establish a class of "approximately 500 people nationwide" (Doc. 14-3 in 8:19-cv-539-T-23AAS) The proposed class is sufficiently numerous.

Class members in the proposed class will share questions of whether the WARN Act obligated LSI to announce an impending closure and whether LSI failed to satisfy the WARN Act's requirements. Particularly, the class members will need to establish that LSI caused "a mass layoff" or "plant closing," as the WARN Act defines those terms, and that the "layoff" or "closing" resulted in employees' termination without due notice. *Sides v. Macon Cty. Greyhound Park, Inc.*, 725 F.3d 1276, 1281 (11th Cir. 2013). These issues are "susceptible to class-wide proof." *Cooper v. Southern Co.*, 390 F.3d 695, 714 (11th Cir. 2004).

Ali and Embry's claims are typical of the class's claims because Ali and Embry's claims concern the same alleged "mass layoff" or "plant closing" and because each class member was due the same notice. *Prado-Steiman v. Prado v. Bush*, 221 F.3d 1266, 1279 (11th Cir. 2000) ("typicality measures whether a sufficient nexus exists between the claims of the named representatives and those of the class").

Differences in class members' damages do not extinguish typicality. *Kornberg v. Carnival Cruise Lines, Inc.*, 741 F.2d 1332, 1337 (11th Cir. 1984).

Ali and Embry can "fairly and adequately protect the interests of the class" because neither appears to have a "substantial conflict of interest" with the rest of the class and because both appear willing and able to "adequately prosecute the action." *Valley Drug Co. v. Geneva Pharm., Inc.*, 350 F.3d 1181, 1189 (11th Cir. 2003).

The proposed 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. Resolving those common issues in a single action is superior to a mass of individual claims addressing the same issues. *Jackson v. Motel 6 Multipurpose, Inc.*, 130 F.3d 949, 1006 (11th Cir. 1997).

To appoint a lawyer* as class counsel, Rule 23(g)(1)(A) requires a district court to consider:

* The motions request appointment of "the law firms Wenzel Fenton Cabassa P.A. and Kwall Barack Nadeau PLLC as class counsel." But only a lawyer, not a law firm, appears in court for a client. *Sandyland Produce, LLC v. Tar Heel Farms, Inc.*, 2007 WL 1080005, at *1 n.1 (M.D. Fla. Apr. 9, 2007) (Glazebrook, M.J.) ("The Local Rules contemplate that attorneys, not law firms[,] appear as counsel for parties."); *Infohand Company, Ltd. v. Sprint Spectrum, L.P.*, 2005 WL 1862408, at *1 (D. Kan. Aug. 3, 2005) (Waxse, M.J.) ("[L]aw firms do not . . . appear[] on behalf of parties. Only individual attorneys may enter . . . their appearance.").

However, the advisory committee's notes to the 2003 amendments to Rule 23 explain that Rule 23 contemplates several lawyers collaborating to represent a class.

(i) the work counsel has done in identifying or investigating potential claims in the action; (ii) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action; (iii) counsel's knowledge of the applicable law; and (iv) the resources that counsel will commit to representing the class.

Ali and Embry's attorneys — Ryan D. Barack, Luis A. Cabassa, Brandon J. Hill, and Michelle Erin Nadeau — are experienced employment law litigators. Barack has held two leadership positions within The Florida Bar's Labor and Employment Law Section, and Cabassa and Hill have served as class counsel in two WARN Act class actions in the Middle District of Florida. The attorneys declare that they are willing and able to commit attention and resources to representing the class. Further, the attorneys have demonstrated diligence by briefing thoroughly the class certification motion, by proposing a class certification notice, by creating an informative website that presents useful information about the class action, by hosting a conference call with more than forty former LSI employees to discuss the class action, by reviewing LSI employment records, and by monitoring LSI's assignment action in the state court.

Embry's class certification motion (Doc. 14 in 8:19-cv-539-T-23AAS) is

GRANTED. Embry's proposed class is **CERTIFIED**. The class 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.

Deanna E. Ali and Heather Embry are **APPOINTED** as class representatives. Ryan D. Barack, Luis A. Cabassa, Brandon J. Hill, and Michelle Erin Nadeau are **APPOINTED** as class counsel.

In accord with Rule 42(a), Federal Rules of Civil Procedure, and Local Rule 1.04(c), the clerk is directed to **CONSOLIDATE** for all purposes *Ali v. Laser Spine Institute, LLC, et al.*, 8:19-cv-535-T-23JSS, and *Embry v. Laser Spine Institute, LLC, et al.*, 8:19-cv-539-T-23AAS. *Ali v. Laser Spine Institute, LLC, et al.*, 8:19-cv-535-T-23JSS (Consolidated) is the lead case, and Ali and Embry must file documents in only 8:19-cv-535-T-23JSS (Consolidated). The clerk must **CLOSE** 8:19-cv-539-T-23AAS. And in accord with Higdon's notice, the clerk must **TERMINATE** Higdon's class certification motion (Doc. 14 in 8:19-cv-547-T-23TGW).

No later than **JULY 15, 2019**, Ali and Embry must review the appendix attached to this order, revise the proposed class certification notice, and move for approval of the certification notice.

ORDERED in Tampa, Florida, on July 8, 2019.



STEVEN D. MERRYDAY
UNITED STATES DISTRICT JUDGE

EXHIBIT 3

List of Terminated Employees

Adams,	Emily W	
Adey,	Brian	Phillip
Adey,	Jessica	Lee
Alessandro,	Nathan	
Ali,	Denna	E.
Allen,	Christine	M
Alonso,	Teresita	
Alves,	Luigi	A
Anderson,	Jerre!!	D
Anderson,	Kellen	Russell
Arce,	Luis	Antonio
Armstrong,	Elana	Nadine
Arnzen,	Heather	Ann
Arthur,	Sherry	Ann
Bachan,	Magdalena	W
Balk,	Christine	June
Barrazueta,	Golda	Esperanza
Baruch,	Ronald	
Bazzano,	Traci	Lynn
Begaj,	Natasha	
Bell,	Lisa	M
Benn,	Corbett	F
Benson,	Chad	A.
Bernat,	Deborah	A
Berrios,	Angel	Andre
Betancourt,	Kalise	Deni
Beverly,	Shalaina	
Bishai,	Adel	
Blackman,	Jennifer	Lorraine
Blackmon,	Amber	Marie
Blanco,	Andres	Alejandro
Bland,	Shanna	L
Blok,	Robert	J
Boaz,	Allison	Sue
Boggs,	Crystal	Amber
Borkowski,	Sheri	Ann
Bowers,	Vicki	
Bowles,	Kayla	Nicole
Bowser,	Jennifer	Miller
Boyd,	Julie	Marie
Bradshaw,	Jeffrey	Gray
Brellenthin,	Ashley	Ann
Brinkman,	Michael	Alex
Brinson,	Tonya	J

Brinson,	Holly	Noel
Brock,	Cynthia	A
Brodmerkel,	James	Porter
Brotski,	Linda	
Brown,	Deloris	
Brown,	Drew	J
Brueggemann,	Carl	John
Bryant,	Julie	Marie
Brzezinski,	Colleen	Marie
Burgess,	Ryan	A
Bussell,	Sonja	M
Byam,	Tracy	Anne
Cader,	Ahmad	B
Calderon,	Ketty	
Carbone,	Matthew	John
Carlin,	Matthew	A
Carter,	John	Mark
Carter,	Willie	
Casares,	Mary	Elizabeth
Casares,	Nicholas	Adam
Cassiadoro,	Melissa	D
Castanon,	Kevin	
Castillo,	Mario	A
Cayson,	Ritay	Y
Cekan,	Christopher	S
Centanni,	Renee	Elizabeth
Cerreta,	Clinton	M
Champagne,	Brittany	Grace
Chau,	Camie	Leigh
Choe,	Sung	Hyok
Cinotti,	Diane	F
Cipriani,	Alicia	A
Ciulla,	Shannon	Kathleen
Clarke,	Elyse	Claire
Clay,	William	A
Coleman,	Erika	Renia
Collins,	Melynn	
Colon,	Yaritza	
Colon,	Merissa	Nicole
Comer,	Tyneshia	L
Concklin,	Michelle	R
Coppola,	Maria	A
Corrigan,	Sean	J
Cosgrove,	Luke	Henry
Cosme,	Elisa	Maria
Courte,	Kimberly	M

Cowans,	Melissa	J
Cravens,	Linda	Marie
Cringolo,	Roberto	
Crowther,	Ryan	F
Curren,	Jill	Halley
Daniels,	Elizabeth	A
Davis	II,	Reginald
Davis,	Sydney	J
Davis,	Colleen	E
Davis,	Reginald	James
Dean,	Kelly	Elizabeth
Dearth,	Jason	Eric
DeBerry,	Candace	Brooke
Debi,	Emily	Anne
Deignan,	Shawn	P
DeLa Cruz	Rebecca	
Densmore,	Elizabeth	Ann
Depalo,	Stephen	Nicholas
Derr,	Karen	A
Desjardins,	Thomas	P
DeSouza,	Treva	Nichole
Dillingham,	Brandon	Miles
Dills,	Anthony	L
Ditch,	Amanda	J
Donald,	Mary	Kathleen
Doolan,	Cheryl	Ann
Douglas,	Karen	
Duba,	Taylor	Ashley
Dudley,	Julie	Conard
Duffy,	Amanda	A
Early,	Molly	M
Eaton-		
Moseley,	Melissa	Joann
Ebersole,	Julie	A
Edgerton,	Elizabeth	Lauren
Edwards,	Paige	M
Eichorn,	Melissa	Jean
El	Tayib,	lbeer
Elliott,	Ross	C
Ellis,	Ami	Yvonne
Embry,	Heather	M
Erce,	Amanda	Nicole
Ernde,	Ryan	David
Ernde,	Kristina	R
Ertel,	Kristina	Lynn
Escobar,	Monica	

Espinoza,	Isabel	Renee
Esposito,	Cherise	Courtney
Esquivel,	Kimberley	Ann
Euler,	Natalie	Ann
Eyer,	Brady	August
Fahringer,	Jennifer	
Fan,	Alana	Michele
Farrar,	Jonathan	Ross
Faulkner,	Jordan	Elizabeth
Fay,	Elizabeth	Margaret
Feltham,	Jillian	Laurel
Fernandez,	Maria	E
Fernandez,	Lisette	M
Figueroa,	Glenn	Michael
Figueroa,	Brittany	Jo
Finke,	Matthew	Dean
Fitzgerald,	Sean	P
Fitzpatrick,	Brandon	Sean
Flood,	Brian	K
Fontana,	Krystyna	
Ford,	Leidy	L
Frances,	Carla	Marie
Franco,	Yadira	Isabel
Frey,	Jared	J
Fuchs,	Paul	Gene
Fuller,	Jennifer	
Gagnon,	Crystal	Lynn
Gainous,	India	Osmeia
Gaitan,	Paul	
Gale,	Michael	N
Galvez,	Antia	
Gamboa,	Maria	T
Gandhi,	Anand	
Garrison,	Michelle	C
Gay-Lawton,	Deborah	A
Geisert,	Julia	Michele
Gibbens,	Deborah	Dee
Gibbons,	Sabrina	M
Gibson,	Donna	K
Gillen,	Elysa	
Giraldo,	Ana	G
Girton,	Keith	
Gitchel,	Jody	A
Glose,	Kathleen	
Goodridge,	Steven	G
Gordon,	Emily	Elizabeth

Gosik,	Kathleen	
Goulish,	Brittni	K
Greenhill,	Alexandria	Nicole
Gross,	Anthony	Adam
Groteke,	Eric	Khristian
Grubb,	Laurie	Ann
Gruber,	Robert	
Guanciale,	Jennifer	R
Gustafson	II,	Tony
Guzman,	Consuelo	E
Haban,	Mary	Beth
Hajeski,	Danielle	Michelle
Hallman,	Karen	Ann
Hamilton,	Tamala	S
Hanna,	Nihaya	Hanna
Hanson,	Melissa	Marie
Hantl,	Craig	
Hardy,	David	
Harris,	Richard	Leroy
Harvey,	Britani	A
Hawthorne,	Timothy	Eugene
Haynie,	Kathryn	L
Heisel,	Latasha	S
Helems,	Conniejo	L
Henderson,	Christopher	A
Henry,	Tykeshia	Lawana
Hernandez,	Tanya	M
Herschell,	Casey	N
Hiatt,	Angela	Dawn
Hicks,	James	Dustin
Higdon,	Duane	Eric
Hill,	Nicholas	H
Hines,	Dominique	D
Hinkle,	Margaret	M
Hinson,	Todd	
Hinton,	Kendrick	L
Hoard,	Sonja	
Holliday,	Joseph	H
Holm,	Michelle	J
Hom,	Benjamin	
Howard,	Catherine	A
Howell,	Susan	M
Hoy,	Kelly	
Huchro,	Jordan	Stanley
Hunt,	Tammy	Renee
Hurley,	Jason	P

Husi,	Ederina	
Irish,	Joshua	Eugene
Jaquez,	Esther	C
Jedrzejowska,	Sylwia	Kinga
Jenkins,	JaneIle	Elizabeth
Jennings,	Alivia	L
Johnson,	Lauren	Nichole
Jones,	Ronald	
Jones,	Elitha	Sharunn
Jones,	Kimberly	A
Jovel,	Victoria	B
Joy,	Alan	Nadukudy
Kakarlapudi,	Raj	Veerabhadra
Kaminski,	Arika	N
Kanjirathingal,	Alka	Joy
Keish,	Jacqueline	
Keller,	Susan	
Kenney,	Chad	J
Kihn,	Shawn	Erik
Kinch,	Kyle	Bradley
Kirkpatrick,	Donald	L
Kiwczak,	Steven	
Kling,	Tylee	R
Knight,	Courtney	G
Knopik,	Christopher	Scott
Kormoski,	Joanne	
Koser,	Robert	Bradley
Krezel,	Adam	Ryan
Kunz,	Darren	
Labarge,	Morgan	Jessica
Lapierre,	Meredith	Ota
LaRosa,	Michelle	R
Larson,	Michael	L
Laurent,	Stephanie	Lanier
Lawrence,	Rosalie	Marie
Leasure,	Autumn	M
Lembo,	John	L
Letzkus,	Annie	Barrett
Levy,	Ethan	
Lightle,	Catherine	Marie
Lin,	Ling	
Lincoln,	Caleb	Victor
Linkey,	Kelly	Marie
Lipscomb,	Diane	
Lisowski,	Beverly	Ann
Liverpool,	Venita	K

Loaiza,	Alexis	A
Loeb,	Nicole	Bohannon
Lopez,	Alberta	M
Isak,	Alexander	
Luke,	Timothy	
Lukose,	Teena	
MacDonald,	Corey	G
Machette,	Alyssa	N
Macias,	Alain	E
Mackey,	Samantha	C
MacKinnon,	Lisa	
Maddox,	Jared	
Malone,	Mona	Jill
Man-Son-		
Hing,	Justin	Cory
Marden,	Alyssa	Krystyne
Marks,	Jennifer	Lyn
Marshall,	Adele	V
Martin,	Jennifer	R
Martin,	Jamie	Marie
Matthes,	Aaron	Randall
McAbee,	Kathryn	Morse
McAllister,	Kayla	R
McCabe,	Shannon	M
McCall,	Dana	A
McCaughan,	Kelly	M
McCauley,	Mary	Rose
McColl,	Bailey	A
McCormick,	Anne	
McCraney,	Michael	D
McDonald,	Audrey	Etta
McKenna,	Kristin	Lyn
McKinney,	Scott	Engleman
McLellan,	Emily	I
McMorrow,	Michael	Garrett
McReynolds,	Adriana	Marie
Meade,	Alexa	Christian
Menmuir,	Brett	G
Merchant,	Alexa	J
Meyer,	Harold	K
Miller,	Nicole	D
Miller,	Elizabeth	Ashley
Miller,	Andrea	
Milman,	Aleksandr	
Mitchell,	Meredith	L
Moats,	Stephanie	Brooke

Mohamed,	Lanina	Corrin
Molina,	Evelyn	
Montenarello,	Renee	
Montgomery,	Catrina	M
Moreno,	Deborah	Lynn
Morin,	Daniel	
Morris,	Susan	M
Mullen,	Carla	D
Murray,	Michael	A
Nations,	Jessica	
Nehus,	Karen	Ann
Newberry,	Laura	E
Newton,	Roger	Kern
Norton,	Nicole	
Norton,	Sharon	
O'Brien,	Aaron	P
Oglesby,	Sandra	Gaye
Oldfield,	Patricia	M
Otero,	Bibecca	
Packard,	Rochelle	C
Padilla,	Sophie	Marie
Page,	Vivian	
Pagliuca,	Christopher	M
Painter,	Jane	Irene
Panteliodis,	Alexander	Stephen
Parchem,	Colleen	M
Parenti,	Andrew	R
Parker,	Danielle	Leigh
Peake,	Carolyn	
Peavler,	Connie	Sue
Peavler,	Christopher	Scott
Pemberton,	Leah	S
Peregolise,	Sabrina	Delila
Perez	Presmanes,	Silvio
Perez,	Ileana	Carmen
Perry,	Sean	
Perry,	Matthew	
Pham,	Linda	Em
Phillips,	Daniel	Malachi
Pick,	Collin	
Pietsch,	Kevin	R
Pirrello,	Joseph	A
Poff,	Melissa	Stephenie
Polanco,	Kristeen	Patricia
Polatas,	Paige	L
Pontenberg,	Kimberly	Ann

Porter,	Anissia	Renee
Powell,	Timothy	J
Pozzuoli,	Marc	Davide
Prada,	Stefan	
Pratt,	Frederick	Jordan
Ragosta,	David	R
Ram,	Katie	Ann
Ramirez,	Pablo	A
Ramirez,	Rosina	J
Raplere,	Danisha	Louise
Ray,	Shannon	Lynn
Rechtzigel,	Lisa	M
Reeves,	Chris	
Reiling,	Tonya	
Reilly,	Colin	Edward
Reshamwala,	Gaurav	M
Reyes,	Luz	Violeta
Riedl,	Kelly	Ann
Ringuette,	Shaylin	Li
Rios	Cosme,	Sheila
Rivas,	Elisabeth	
Rivers,	Rebekah	Lee
Roberts,	Maya	Addia
Robinson,	Tangela	C
Robinson,	Lyle	
Rodriguez,	Jodi	Lynn
Rodriguez,	Dayana	
Rodriguez,	Jessica	
Rojas,	Mary	Angel
Romanowski,	Kathleen	C
Rondou,	Craig	E
Rosendo,	Sixta	Migdalia
Runyon,	Tracy	Lynn
Sainz,	Rex	Cameron
Sandifer,	Karen	G
Santiago,	Maria	Del
Sarikaya,	Serpi!	
Sawdy,	Ginger	
Schaer,	Nancy	Ann
Schmelzer,	Dorothy	L
Schmidt,	Katlyn	Leigh
Schneider,	Amanda	Dawn
Schuler,	Anthony	R
Schulte,	Lindsay	M
Sexton,	Eric	Wayne
Sharp,	Nathanial	D

Silapheth,	Phetsavanh	
Silvas,	Christina	Lee
Sinkiewicz,	Spencer	Ryan
Smith,	Alicia	Erlynn
Smits,	Haley	J
Snee,	Martin	E
Snyder,	Jeffrey	
Snyder,	Sarah	Virginia
Songhurst,	Stephen	
Sortor,	Stacey	Linn
Souris,	Breana	Christin
Spielberger,	Nicholas	Allen
Stancil,	Brittney	M
Stephens,	Krystal	Ann
Stevens,	Katie	Lynn
Stewart,	Henrietta	
Stewart,	Lauren	Suzanne
Stinedurf,	Chad	C
Stinedurf,	Kimberly	
Straus,	Emily	A
Subianto,	Lisa	
Sullins,	Ashaki	
Swain,	Nicole	Elizabeth
Swann,	Dyan	
Sweeney,	Lori	Beth
Synhorst,	Darin	William
Taft,	Elyse	Kathleen
Talbert,	Teddy	Tyrone
Tankersley,	Jodie	Lynn
Tateishi,	Megan	Melissa
Taub,	Ian	Asher
Taylor,	Warren	R
Taylor,	Riley	Michele
Taylor,	Melinda	L
Taylor,	Katherine	Ann
Teague,	Danielle	
Terranova,	Victoria	
Test,	Jennifer	
Test,	Samuel	
Test,	James	
Test,	Sandra	
Test,	Jacob	
Thomas,	Yvonne	Shauntay
Thompson,	Felicia	M
Thompson,	Stephan	E
Thompson,	Kevin	D

Thorson,	Yvette	
Timko,	Shelley	Kranson
Timko,	Donald	J
Tobin,	Douglas	Scott
Toncelli,	Tracy	Lessard
Townsend,	Meredith	Weiss
Trehan,	Sunjay	D
Turner,	Ackanik	
Turner,	Michelle	L
Ung,	Dung	Anh
Urena-Espinal,	Manuela	
Valencia,	Cindy	Lee
Vallamkondu,	Nagasrinivasulu	
VanBebber,	Austin	Wynn
Vashchuk,	Pavlo	
Vatsar-Fail,	Erika	Liis
Vega,	Giancarlo	
Vega,	Melissa	
Verna,	Andrew	C
Villani,	Tina	Elizabeth
Vincz,	Vicki	Kay
Voytovich,	Vitaliy	
Walker,	Mailani	K
Ward,	Andrew	J
Warren,	Amy	Louise
Watkins,	Celissia	Nicole
Watkins,	Therese	Hageman
Watson,	Rudolph	Wade
Watts,	Nakisha	
Wedekind,	Caryn	E
Weiss,	Michael	
Wellington,	Breanna	Rose
Wells,	Jennifer	J
Wendell,	Cynthia	
Wenzel,	Gregory	C
Wharrie,	Bethany	N
Whitney,	Linde	Marie
Whyte,	Kolleen	Ellen
Wical,	Ronald	Robert
Wikoff,	Lindsay	Elaine
Wilcox-		
Miranda,	Amy	Sue
Wilcoxson,	Cassandra	Fonseca
Wilhelmi,	Nicole	Elizabeth
Wilhelmi,	Courtney	Ann
Williams,	Kenneth	Maurice

Williams,	Sandra	
Wilson,	Miriam	Michelle
Wilson,	Jasmine	Erisha
Windham,	Kerenina	
Wiseman,	Laura	D
Woods,	Destiny	G
Wooten,	Tammy	
Wright,	Brianna	Alexis
Yates,	Ryan	Gene
Yazdani,	Neda	
Yingling,	Daniel	
Young,	Atecia	Tashata
Zavala,	Natalie	Victoria
Zilly,	Anthony	Edward
Zimmerman,	Maryjude	S

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CIVIL DIVISION

In re:

Laser Spine Institute, LLC¹
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, LLC
Total Spine Care, LLC
Laser Spine Institute Consulting, LLC
Laser Spine Surgery Center of Oklahoma, LLC

Case No. 2019-CA-2762
Case No. 2019-CA-2764
Case No. 2019-CA-2765
Case No. 2019-CA-2766
Case No. 2019-CA-2767
Case No. 2019-CA-2768
Case No. 2019-CA-2769
Case No. 2019-CA-2770
Case No. 2019-CA-2771
Case No. 2019-CA-2772
Case No. 2019-CA-2773
Case No. 2019-CA-2774
Case No. 2019-CA-2775
Case No. 2019-CA-2776
Case No. 2019-CA-2777
Case No. 2019-CA-2780

Assignors,

Consolidated Case No.
2019-CA-2762

to

Soneet Kapila,

Division L

Assignee.

OBJECTION TO WARN ACT PLAINTIFFS' PROOFS OF CLAIM

¹ On April 8, 2019, the Court entered an order administratively consolidating this case with the assignment cases (collectively, the "Assignment Cases" or the "Assignment Estates") of the following entities: LSI Management Company, LLC; Laser Spine Institute Consulting, LLC; CLM Aviation, LLC; Medical Care Management Services, LLC; LSI HoldCo, LLC; Laser Spine Surgical Center, LLC; Laser Spine Surgery Center of Arizona, LLC; Laser Spine Surgery Center of Cincinnati, LLC; Laser Spine Surgery Center of St. Louis, LLC; Laser Spine Surgery Center of Pennsylvania, LLC; Laser Spine Surgery Center of Oklahoma, LLC; Laser Spine Surgery Center of Warwick, LLC; Laser Spine Surgery Center of Cleveland, LLC; Total Spine Care, LLC; and Spine DME Solutions, LLC (collectively, the "Assignors").

**NOTICE OF OPPORTUNITY TO OBJECT
AND REQUEST A HEARING**

The Assignee seeks an order disallowing the WARN Act Claims (defined below) filed by Class Representatives Heather Embry and Deanna Ali. Responses must be filed and served on Assignee, Soneet R. Kapila, KapilaMukamal, LLP, 1000 South Federal Highway, Suite 200, Fort Lauderdale, FL 33616 and Scott Stichter, Stichter Riedel, Blain & Postler, P.A., 110 E. Madison Street, Suite 200, Tampa, Florida 33602 within 21 days from the service of this Objection. If no responses are filed, the Court may grant the relief without further notice. In the event a response is timely filed and served, the Court will hold a hearing to consider any timely filed responses and to consider this Objection. Any such hearing will be separately noticed.

Soneet Kapila, as Assignee for the Assignment Estates, objects to the claims filed in various Assignment Cases by Class Representatives Heather Embry and Deanna Ali, asserting administrative, priority, or general unsecured claims based on WARN Act claims.

BACKGROUND

1. On March 14, 2019, Laser Spine Institute, LLC (“LSI”) executed and delivered an assignment for the benefit of creditors to the Assignee. The Assignee filed a Petition with the Court on March 14, 2019, commencing an assignment for the benefit of creditors proceeding pursuant to Chapter 727 of the Florida Statutes (the “LSI Assignment Case”).

2. In 2018 and continuing in the months before the Assignment Cases were filed, the Assignors had been in discussions with Texas Capital Bank (“TCB”), their senior secured lender, various other parties, and outside funding sources regarding a restructuring. The negotiations were centered around a discounted note purchase of the TCB debt by a friendly purchaser, including or in addition to a chapter 11 bankruptcy filing and debtor-in-possession financing (“DIP Financing”) to allow the companies to continue to operate and restructure their obligations. The

Assignors hired Kirkland & Ellis as restructuring counsel and TRS Advisors as their investment bankers.

3. On Friday, March 1, 2019, unexpectedly and without prior notice, TCB determined that it would not proceed with the restructuring, and, without notice, setoff or swept the cash that the Assignors had access to and were using to fund operations. Up to as late as the afternoon of March 1, 2019, the Assignors were still expecting receipt of a DIP Financing commitment to fund a chapter 11 reorganization that would have forestalled any employee terminations.

4. The next business day, Monday, March 4, 2019, the Assignors issued a letter to its employees (the “**Notice**”), informing them of the efforts to obtain financing and the sudden and unexpected action that terminated their ability to operate. As the Assignors were left with no alternative but to cease operations, the letter informed the employees of their termination. The Assignors reasonably and in good faith believed the obvious truth that had a letter giving a WARN Act notice been issued earlier, all prospects for financing and a successful reorganization would have evaporated.

5. Certain of the employees commenced litigation in the United States District Court for the Middle District of Florida, Tampa Division (the “**District Court**”), alleging that the Assignors had a duty to give notice under the WARN Act, but did not, and seeking certification of a class for purposes of the lawsuit. Lawsuits were filed by Deanna Ali on March 4, 2019 against LSI and LSI Management, LLC; by Heather Embry on March 4, 2019 against LSI, LSI Management, and LSI Holdco; and by Duane Higdon on March 4, 2019 against LSI, LSI Management, and LSI Holdco. The District Court subsequently entered an order certifying a class, and appointing Ms. Ali and Ms. Embry as the class representatives (the “**Class Representatives**”).

6. On July 11, 2019, the Class Representatives filed a notice referencing proofs of claims filed against the 16 Assignor Entities (collectively, the “**WARN Act Claims**”), and attached the form of the proof of claim against LSI. The WARN Act Claims filed against the remaining 15 Assignor Entities appears to be identical other than the name of the Assignor. The WARN Act Claims assert an entitlement to 60 days back pay and benefits for approximately 516 individuals, which the Class Representatives estimate to exceed \$13 million.

7. The WARN Act Claims are based on the alleged failure of one or more of the Assignors to comply with the requirements of the Worker Adjustment and Retraining Notification Act, 29 U.S.C. 2101 et seq. (the “**WARN Act**”), which under certain circumstances requires an employer to provide 60-days’ notice of an employee’s termination. The WARN Act Claims appear to assert an entitlement to (i) an administrative expense claim under § 727.114(1)(b), (ii) a priority wage or benefits claim under § 727.114(1)(d), and/or (iii) a general unsecured claim under § § 727.114(1)(f). Claim, p 7, ¶¶ 7-9.

8. As discussed below, the WARN Act Claims should be disallowed. First, the WARN Act Claims were filed against each of the Assignors, despite the fact that only certain of the Assignors qualify as “employers” subject to the WARN Act notice requirements. Second, the Assignors who were employers gave the notice required under the WARN Act because they qualify for the “faltering company” exception to the WARN Act. Third, even if WARN Act notices were not properly given, the resulting claims are not entitled to administrative expense priority, and are not entitled to priority wage claim status in the amounts and for the individuals identified.

ARGUMENT

9. The Assignee objects, pursuant to Florida Statute § 727.113, to the WARN Act Claims, and seeks an order (a) sustaining this objection; (b) disallowing the WARN Act Claims in

their entirety, or, in the alternative, determining the amount and priority portion of any allowed WARN Act Claims; and (c) providing such other and further relief as is just and proper.

10. Florida Statute § 727.113(1) provides in pertinent part that:

“At any time before the entry of an order approving the assignee’s final report, the assignee or any party in interest may file with the court an objection to a claim, which objection must be in writing and set forth the nature of the objection, and shall serve a copy thereof on the creditor at the address provided in the proof of claim, and to the assignee and the assignee’s attorney, if any. The objection may be served on negative notice. All claims properly filed with the assignee and not disallowed by the court constitute all claims entitled to distribution from the estate.”

11. The Assignee objects to the WARN Act Claims because the relevant Assignors complied with the WARN Act and the applicable exception to the notice requirement under the “faltering company exception” under the circumstances and acted in good faith in doing so. In addition, the WARN Act is not applicable to every person employed by the Assignors. Finally, if the Court determines that an Assignor did not comply with the WARN Act, the WARN Act Claims should be disallowed to the extent that they assert an administrative expense priority, and any priority amount should be fixed and capped.

A. The WARN Act Claims should be disallowed.

12. The WARN Act Claims should be disallowed because not all of the Assignors are “employers” for purposes of the WARN Act.

13. The WARN Act Claims should be disallowed because LSI qualifies for the “faltering company” exception to the WARN Act notice requirements, and the letter issued to employees constituted proper notice under the circumstances.

14. A valid WARN Act claim requires the presence of the following three elements: “(1) a mass layoff [or plant closing as defined by the statute] conducted by (2) an employer who fired employees (3) who, pursuant to WARN, are entitled notice.” *Sides v. Macon County*

Greyhound Park, Inc., 725 F.3d 1276, 1281 (11th Cir. 2013). Regulations prescribe when an employer must give the WARN Act notice, whom the employer must notify, how the employer must give notice, and what information the notice must contain. *See* 20 C.F.R. §§ 639 *et seq.* In essence, absent exception, the WARN Act requires 60 days written notice to employees affected by a facility closure. If less than the 60-day notice period is given, the exceptions to liability include (i) the faltering company exception, and (ii) the good faith exception.

15. The WARN Act codifies the Faltering Company exception as follows:

“An employer may order the shutdown of a single site of employment before the conclusion of the 60-day period if as of the time that notice would have been required the employer was actively seeking capital or business which, if obtained, would have enabled the employer to avoid or postpone the shutdown and the employer reasonably and in good faith believed that giving the notice required would have precluded the employer from obtaining the needed capital or business.”

29 U.S.C. § 2102(b)(1).

16. The exception thus permits shortened notice by a company that was (1) actively seeking capital or business; (2) had a realistic opportunity to obtain the financing sought; (3) which capital or business, if obtained, would have allowed the company to continue operating or postpone the closing; and (4) had a good faith basis for believing that issuing a WARN Act notice earlier would have precluded (doomed) its attempt to obtain the necessary capital or business. *See* 20 CFR § 639.9.

17. Here, LSI gave notice to its employees of their termination by the March 4 letter. Although this constituted less than 60-days' notice, LSI qualifies for the Faltering Company exception. LSI was actively seeking capital to avoid or reorganize under a chapter 11 case, was in active negotiations with potential lenders for the capital up to March 1. Had the financing been secured, LSI would have been able to attempt to satisfy secured claims against the companies at a significant discount and restructure in chapter 11. Such actions would have allowed LSI to avoid

or delay the closing of the Tampa facility. Management had a good faith basis to believe that, had notice been given earlier, its efforts to obtain financing and pursue a successful reorganization would have been doomed.

18. When an employer reduces the notice period under one of the statutory exceptions, the WARN Act still requires that the employer “give as much notice as is practicable.” 29 U.S.C. §2102(b)(3), can include “*notice after the fact.*” 20 C.F.R. § 639.9 (*emphasis added*). “This reflects the DOL’s acceptance that occasions may exist where it is not practicable for an employer to provide notice prior to a mass layoff or plant closing, and that in those circumstances, “practicable” may extend beyond the actual date of the event.” *Sides*, 725 F.3d at 1284.

19. Here, the Notice given to employees meets the various requirements for the contents of a WARN Act notice, and was given to the employees with as much notice as practicable.

20. The WARN Act Claims should be disallowed because the faltering company exception applies to limit the notice required to be given to employees, and the notice that LSI did give met the applicable requirements of the WARN Act. Alternatively, the WARN Act Claims should be disallowed because LSI acted in good faith in giving as much notice as possible under the circumstances.

21. A court, in its discretion, may reduce the amount of the liability or penalty provided for in the WARN Act, if the employer can prove that the act or omission was in good faith and that the employer had reasonable grounds for believing that the act or omission was not a violation of WARN Act. 29 U.S.C. § 2104(a)(4). While the good faith exception is fact intensive, “[t]he pertinent inquiry in deciding whether to exercise the court’s discretion in favor of reducing the defendant’s liability is the defendant’s conduct *prior* to the notice; *i.e.*, whether the act or omission

which violated this chapter was in good faith and whether the employer reasonably believed that the act or omission was not a violation of this Act, 29 U.S.C. § 2104(a)(4).” *Jones v. Kayser-Roth Hosiery, Inc.*, 748 F. Supp. 1276, 1291 (E.D. Tenn. 1990).

22. Here, the faltering company exception applies. As demonstrated by the notice, LSI believed in good faith that it would qualify for the exception, and that issuing a notice earlier would have precluded any ability to avoid or delay the shutdown. The WARN Act Claims should be disallowed or reduced because of LSI’s good faith reliance on the exception.

23. The WARN Act Claims should be disallowed in part because employees located at LSI locations other than the Tampa facility are not affected by a “plant closing” or a “mass layoff” as those terms are defined in the WARN Act.

24. The WARN Act only applies to plant closing or mass layoffs, both of which correspond to 50 or more employee single sites, excluding part-time employees, which also includes recent (within 6 months) hires. 29 USC 2101(a)(2)-(3). Temporary employees, independent contractors, and employees who were employed at single sites with fewer than 50 employees do not qualify as “affected employees” under the WARN Act, they should not be included in the Claim.

25. Although the Tampa facility had more than 50 employees, the remaining Laser Spine locations did not. The list attached to the WARN Act Claims includes persons who were not employees at the Tampa location, and therefore would not have been affected employees. Also, to the extent any of the employees at the Tampa facility were temporary employees or recent hires, they are not affected employees. The WARN Act Claims should be disallowed or reduced on those bases.

B. If allowed, the WARN Act Claims should be limited in priority.

26. The WARN Act damages alleged in the WARN Act Claims, even if they are allowable, are not entitled to an administrative expense claim in the Assignment Cases. In pertinent part, § 727.114 provides for administrative-type priority for “(b) Expenses incurred during the administration of the estate, . . .” § 727.114(b), Fla. Stat. WARN Act damages are “earned” on termination of employment. *E.g., In re Cargo, Inc.*, 138 B.R. 923, 927 (Bankr. N.D. Iowa 1992). The termination occurred on March 1, 2019, and the Assignment Cases were not filed until March 14, 2019. The alleged damages, if any, would have been earned prior to the filing of the Assignment Cases, and thus were not “incurred” during the administration of the estate. The WARN Act Claims should be disallowed to the extent they seek an administrative expense priority.

27. Any priority portion should be reduced because not all damages alleged in the WARN Act Claims qualify as priority wage claims. With respect to priority wage claims, the assignment statute provides a lower priority claim for “[c]laims for wages, salaries, or commissions, including vacation, severance, and sick leave pay, or contributions to an employee benefit plan earned by employees of the assignor within 180 days before the filing date or the cessation of the assignor’s business, whichever occurs first, but only to the extent of \$10,000 per individual employee.” § 727.114(d), Fla. Stat.

28. As part of the WARN Act Claims, the Class Representatives seek interest, fees, and costs, which are not part of a priority claim. To the extent that amounts requested are not for wages, salaries, or commissions, including vacation, severance, and sick leave pay, for 60 days, or contributions to a benefit plan earned over the applicable period, the WARN Act Claims should be disallowed as a priority wage claim. Additionally, awards of a prevailing party’s reasonable attorney’s fees are discretionary, 29 U.S.C. § 2104(a)(6), and should not be awarded here.

29. Additionally, to the extent that the amount requested in the WARN Act Claims exceeds the cap of \$10,000 per individual employee, the WARN Act Claims should be reduced in part. The WARN Act Claims do not provide any breakdown of the amount claimed on a per-employee basis, so the Assignor reserves the right to amend or supplement this Objection as necessary and appropriate.

CONCLUSION

30. The WARN Act Claims should be disallowed. Those Assignors that are employers subject to the WARN Act whose employees qualify as affected employees meet the “faltering company” exception, so the notice given to the employees was proper. If any damages are allowed, they should be limited under the priority cap, with any balance allowed as a general unsecured claim only.

WHEREFORE, the Assignee requests that the Court disallow the WARN Act Claims and grant such further relief to which he is entitled.

Dated: April 30, 2021.

/s/ Scott A. Stichter

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 30, 2021, the foregoing **OBJECTION TO WARN
ACT PLAINTIFFS' PROOFS OF CLAIM** has been sent via the Court's electronic filing portal
to all counsel of record to and via electronic mail and U.S. Mail to:

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/s/ Scott A. Stichter
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MASTER LIMITED NOTICE SERVICE LIST

October 1, 2020

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CLM Aviation, LLC
LSI HoldCo, LLC
LSI Management Company, LLC
Laser Spine Surgery Center of Arizona, LLC
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Laser Spine Surgery Center of Cleveland, LLC
Laser Spine Surgical Center, LLC
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**IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CIVIL DIVISION**

In re:

Laser Spine Institute, LLC	Case No. 2019-CA-2762
CLM Aviation, LLC	Case No. 2019-CA-2764
LSI HoldCo, LLC	Case No. 2019-CA-2765
LSI Management Company, LLC	Case No. 2019-CA-2766
Laser Spine Surgery Center of Arizona, LLC	Case No. 2019-CA-2767
Laser Spine Surgery Center of Cincinnati, LLC	Case No. 2019-CA-2768
Laser Spine Surgery Center of Cleveland, LLC	Case No. 2019-CA-2769
Laser Spine Surgical Center, LLC	Case No. 2019-CA-2770
Laser Spine Surgery Center of Pennsylvania, LLC	Case No. 2019-CA-2771
Laser Spine Surgery Center of St. Louis, LLC	Case No. 2019-CA-2772
Laser Spine Surgery Center of Warwick, LLC	Case No. 2019-CA-2773
Medical Care Management Services, LLC	Case No. 2019-CA-2774
Spine DME Solutions, LLC	Case No. 2019-CA-2775
Total Spine Care, LLC	Case No. 2019-CA-2776
Laser Spine Institute Consulting, LLC	Case No. 2019-CA-2777
Laser Spine Surgery Center of Oklahoma, LLC	Case No. 2019-CA-2780

Assignors,

Consolidated Case No:
2019-CA-2762

To:

Soneet Kapila,

Assignee

Division L

**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**

Laserscopic Spinal Centers Of America, Inc. ("LSCA"), Laserscopic Medical Clinic, LLC ("LMC") and Laserscopic Spine Centers of America, Inc. ("Spine") (collectively the "Laserscopic Claimants"), acting by and through the undersigned counsel, file their objection to

the WARN Act Plaintiffs' Notice of Proof of Claim filed on July 11, 2019 (the "Notice"). In support, the Laserscopic Claimants allege and state as follows:¹

1. The Laserscopic Claimants represent the largest claimants against the Assignment for the Benefit of Creditors estate (the "LSI Estate"). The Laserscopic Claimants filed Proofs of Claim totaling over \$372,000,000.00. LSCA and LMC have actual damage claims of \$264,000,000 plus interest in the amount of \$87,976,680, for a total compensatory damages award of \$351,976,680; LSCA and LMC were also awarded punitive damages in the amount of \$5,000,000 plus interest of \$1,666,225, for a total award of \$6,666,225 in punitive damages against the LSI Estate. These amounts are currently accruing post-judgment interest at Florida's statutory rate. Spine holds a claim for \$6,831.172 plus interest of \$2,266,066 or \$9,097,238 total against the LSI Estate, which is likewise accruing post-judgment interest. The Laserscopic Claimants' claims are based upon the Opinion entered by the Second District Court of Appeals. The Laserscopic Claimants are aware of no opposition to their Proofs of Claim filed against the LSI Estate.

2. Based on the representations of the Assignee, the only remaining assets available for distribution to the unsecured creditors of the LSI Estate are, or will be, the proceeds from litigation currently being prosecuted on behalf of the LSI Estate. Most assets of the LSI Estate were subject to the secured lien claims of Texas Capital Bank ("TCB"), and such lien claims have been unopposed by the Assignee.

3. The WARN Act Plaintiffs' Notice/Proof of Claim is invalid. No Florida statute or case permits class claims in an ABC Proceeding and permitting class claims would run counter to the intent of the statute, which is that a creditor authorizes the claim in a specific amount based on actual knowledge. The ABC Statute (Fla. Rev. Stat. §727.112) specifies rigid requirements

¹ The Laserscopic Claimants adopt and incorporate the arguments raised in the Assignee's Objection to the WARN Act Plaintiffs' Proof of Claim filed on April 30, 2021. Filing # 125916511.

for a proof of claim that were not followed here. Specifically, under §727.112(a) “All claims . . . must be filed in accordance with the provisions of this chapter, and any such claim not so filed is barred from any further recovery against the estate.” (emphasis added) Under §727.112(a)(3), only the *creditor or authorized agent* may sign the proof of claim form, and the claim must be filed with the actual *amount* of the claim and *name and address* of the creditor.² The Notice does not list a name and address of an actual creditor, does not state the actual claim amount of any creditor (other than it, in total, *may* “exceed” \$13 million) and was not signed by the creditor or their authorized agent (class action plaintiffs are not agents for other class members). Indeed, it is doubtful the putative creditors were aware a claim was being filed, much less the filing was authorized.

4. Counsel for the WARN Act Plaintiffs would have to ask this Court to use federal bankruptcy law as an analogue to the ABC Statute to find extra-statutory authority for submitting a class claim. Florida “courts often look to federal bankruptcy law for guidance as to legal issues arising in proceedings involving assignments for the benefit of creditors.” *Miami Perfume Junction, Inc. v. Osborne*, 46 Fla. L. Weekly 24 (Fla. 3 DCA 2020).; *Moecker v. Antoine*, 845 So. 2d 904, 911 (Fla. 1st DCA 2003). But even federal bankruptcy law would reject this class claim because it was not approved by the Court in advance and does not contain necessary information.³

5. Under federal bankruptcy law, generally speaking, there are only limited circumstances where a “class” proof of claim is permissible, and even then, only where

² “Claims shall be in written form entitled ‘proof of claim,’ setting forth the name and address of the creditor and the nature and amount of the claim and executed by the creditor or the creditor’s authorized agent.” Fla. Rev. Stat. §727.112(a)(3).

³ “Rule 3001(b) allows a creditor to decide to file a proof of claim and to instruct an agent to do so; it does not allow an ‘agent’ to decide to file a proof of claim and then inform a creditor after the fact.” *In re Standard Metals Corp.*, 817 F.2d 625, 631 (10th Cir. 1987) but see, *In re Charter Co.*, 876 F.2d 866, 869-71 (11th Cir. 1989) (“The Bankruptcy Code contains no explicit provision authorizing the filing of class proofs of claim.”, but class claims can be allowed (though technically unauthorized) when they do not prejudice the claimant and when filed under the bankruptcy court’s supervision).

permission to file as a class is obtained prior to the bar date. *See, e.g., In re Wildwood Vill., LLC*, 2021 Bankr. LEXIS 1188, *8-9 (M.D. Fla. May 4, 2021)⁴ (“A bankruptcy court must first determine that it is appropriate to apply Fed. R. Bankr. P. 2023 prior to analyzing whether the requirement of Fed. R. Civ. P. 23 have been satisfied. Whether to permit a class action proof of claim is a matter of discretion. In exercising that discretion, a two-step analysis is performed. First, the court must decide whether it is beneficial to apply Rule 7023, via Fed. R. Bankr. P. 9014(c), to the claims administration process. Second, the court must determine whether the requirements of Fed. R. Civ. P. 23 have been satisfied, such that a class proof of claim may properly be filed.”).⁵ Thus, even going beyond the ABC Statute and expanding it to the ABC proceeding, the WARN Act Plaintiffs failed to seek leave of this Court before filing their Notice, which would have enable this Court to engage in the two-step analysis—all before the class claim could be validly submitted. Those prerequisites did not occur here and, accordingly, the Notice is barred as the submission date has long since passed.

6. Second, the Notice does not submit the required supporting documentation required under the Florida ABC Statute or federal bankruptcy law – it merely attached an unverified complaint with a list of names. Under the ABC Statute, a claim based on a writing must have the writing attached (*i.e.*, an employment agreement, pay stub with redacted social security number, independent contractor agreement, employee severance agreement).⁶ From the Notice, it is impossible to determine how much any named class member would claim, what the

⁴ The court in *In re Wildwood* noted that class proofs of claim are not routine occurrences, and it was a case of first impression as it related to Subchapter V given it was only newly enacted. *Id.* at *7.

⁵ In so doing, the bankruptcy court should consider, among other things, whether the class was certified pre-petition, whether the members of the proposed class received notice of the bar date; and whether the certification will adversely affect the administration of the estate. Ignoring the fact that the WARN Act Plaintiffs had actual knowledge of the bar date, for the reasons outlined herein, allowing the Notice will adversely affect the administration of the ABC proceeding here.

⁶ “When a claim or an interest in property of the assignor securing the claim is based on a writing, the original or a copy of such writing shall be filed with the proof of claim, together with evidence of perfection of any security interest, if applicable.” Fla. Rev. Stat. 727.112(a)(4).

nature of the relationship is (contractor, employee, professional), how a claim is computed, or even the amount of a claim. The claim states, “The claim represents 60 days of back pay and benefits for approximately 516 individuals, which based upon available information appears to exceed \$13 million. Please see the attached for additional information.” The Assignee cannot pay “appears to exceed” damages, or even know the basis of the claim for each putative employee. The only thing attached was an unverified complaint with no computation of damages.

7. The Notice also fails (under bankruptcy or ABC law) because it has conflicting boxes checked and purports to include claimants for WARN Act damages owed after the ABC proceeding was commenced. There is conflicting information on the face of the Notice as to the priority of the claims. Under federal bankruptcy law, when there is conflicting or contradictory information on the face of a proof of claim, the claim loses its status of being prima facie valid. The same is true under Fla. Rev. Stat. §727.112(a)(5), which grants prima facie validity only to a claim “executed and delivered in accordance with this section”. As stated above, the Notice is not a proper proof of claim.

8. Additionally, there is no evidence from the Notice where one can find that the putative claimant was employed for at least six months during the last twelve months and worked no fewer than 20 hours a week. This required predicate information for the would-be claimant is missing from the proof of claim form and attachments for each of those allegedly employed. The claimant bears the burden of providing prima facie evidence that, assuming their employer is not exempt from WARN Act liability, the claimant would qualify as an employee under the statute.

9. The affected entities were exempt from WARN Act liability for the reasons stated by the Assignee under the “faltering company” doctrine. Also, the affected entities do not

include the parent company (LSI Holdco), which received the proceeds of the recent tort settlement. Only the employing entity would owe WARN Act damages if the “faltering company” exception did not apply. As discussed by the Assignee in his objection, it appears the WARN Act Plaintiffs did not, in most part, work for the parent LSI Holdco.

10. Thus, certain of the WARN Act Plaintiffs are not entitled to share in any of the proceeds of the existing tort claim settlements or those in the future for several reasons. *First*, the Settlement Agreement and General Release that resolved the D&O cases in March of 2021 (and subsequently approved by this Court) makes clear that the payment required under the Settlement Agreement is required to be made by “Defendants”. *See* Settlement Agreement, ¶2 (“Within 30 days from the date of the “Final Order, as defined in Paragraph 4 below, Defendants agree to pay or cause to be paid to Plaintiff the total sum of...”). The “Defendants” as defined in the Settlement Agreement were officers and directors of LSI Holdco LLC, which was not the entity that employed the WARN Act Plaintiffs.⁷ If WARN Act Plaintiffs were not employed by LSI Holdco, they cannot recover WARN Act damages from LSI Holdco – only from the entity that actually employed them.

11. Further, the remaining tort claims likewise do not relate to the entity(ies) that employed the WARN Act Plaintiffs. To illustrate, the Assignee filed a variety of avoidance claims against certain interest holders of LSI Holdco who received distributions from LSI Holdco. But, again, the WARN Act Plaintiffs were not employed by LSI Holdco, LLC. Rather, upon information and belief, they were employed by LSI Management, LLC, and perhaps certain

⁷ Throughout the Settlement Agreement, the references are to the “Defendants,” which are defined in the Preamble. The specifically identified individuals are the officers/managers/directors of LSI Holdco, LLC, not the subsidiary entities.

other entities (not LSI Holdco, LLC). The WARN Act requires only the employer⁸ to give such notice, not the parent, or any affiliates or related entities.

12. In addition to the above, it is also not clear that the WARN Act claims would be a priority or administrative claim under Florida Law. The court in *Kettell v. Bill Heard Enters.* (*In re Bill Heard Enters.*), 400 B.R. 795, 805-06 (Bankr. N.D. Ala. 2009) noted the risk of “double dipping” by allowing WARN Act notices wage priority:

While the Court recognizes that a majority of the courts have treated WARN Act damages as being in the nature of wages and have accorded such claims the same priority classification as all other wages claims under § 507(a)(4), the Court is also aware of at least one decision, *First Magnus Fin. Corp.*, 390 B.R. 667 (Bankr. Ariz. 2008), in which the bankruptcy court expressed concern that prepetition employees not be allowed to “double-dip” and get *both* a priority claim for unpaid prepetition wages, as well as an administrative claim for any WARN Act damages claims, which due only to timing of the bankruptcy filing carries those damages into the post-petition phase.”

Certainly, this is particularly true in an ABC proceeding. Under section 727.114(d) there is no specific reference to the WARN Act, and no Florida case has held that WARN Act claims are entitled to a wage priority in an ABC proceeding.⁹ For this reason, there is no basis to categorize a WARN Act claim with any greater priority than any other unsecured claim.

⁸ 20 CFR §693.3(a) defines employer to include over 100 employees and LSI Holdco, LLC did not have 100 or more employees and, therefore, falls outside the WARN Act. That regulation provides for inclusion of non-employers as employers when facts, such as *de facto* control, are proven. The Class Representatives plead LSI Holdco is a “common employer”, but the employees’ actions were not directed by LSI Holdco, as they were mostly employed and controlled locally at each facility, almost never by the parent. Thus, LSI Holdco is not a common employer.

⁹ Allowed claims shall receive distribution under this chapter in the following order of priority and, with the exception of paragraph (1)(a), on a pro rata basis:

(d) Claims for wages, salaries, or commissions, including vacation, severance, and sick leave pay, or contributions to an employee benefit plan earned by employees of the assignor within 180 days before the filing date or the cessation of the assignor’s business, whichever occurs first, but only to the extent of \$10,000 per individual employee.

WHEREFORE, the Laserscopic Claimants pray for an Order of this Court denying the Notice/Proof of Claim of the WARN Act Plaintiffs, and for such other relief as this Court may equitably grant the Laserscopic Claimants.

Dated: June 29, 2021.

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CERTIFICATE OF SERVICE

I CERTIFY that on **June 29, 2021**, a true and correct copy of the foregoing has been electronically filed with the Clerk of Court through the Florida Courts E-Filing Portal, which will send a Notice of Electronic Filing to all counsel of record or electronic mail to the parties listed on the Limited Notice Parties attached.

/s/ Jennifer G. Altman
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MASTER LIMITED NOTICE SERVICE LIST

January 14, 2020

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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 enter 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 an 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 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 \$6944.35. 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 lsiemployee lawsuit.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

DATE

Denna E. Ali

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

Dec 29, 2022

DATE

12/29/22

DATE

DEANNA ALI

Heather Embry
Heather Embry (Dec 29, 2022 14:02 EST)

HEATHER EMBRY

Soneet Kapila

SONEET R. KAPILA, in his capacity as the
Assignee of Laser Spine Institute, LLC and each
of its affiliated entities