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13 Los Angeles, CA 90071

14 *Attorneys for Defendants*

15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
16 **FOR THE COUNTY OF ORANGE**

17 ANDREA MARQUEZ, individually, and
18 on behalf of other members of the general
19 public similarly situated;

20 Plaintiff,

21 v.

22 NIHON KOHDEN AMERICA, INC., a
23 California corporation; and DOES 1
24 through 100, inclusive;

25 Defendants.

Case No.: 30-2021-01184495-CU-OE-CXC

Assigned for All Purposes to:
Honorable Randall J. Sherman
Department CX-105

CLASS ACTION

**AMENDMENT TO THE JOINT
STIPULATION OF CLASS ACTION AND
PAGA SETTLEMENT**

Complaint Filed: February 17, 2021
FAC Filed: December 30, 2022
Trial Date: None Set

1 This Amendment to the Joint Stipulation of Class Action and PAGA Settlement is
2 entered into by Plaintiff Andrea Marquez (“Plaintiff”) on her own behalf and on behalf of all
3 members of the Class on the one hand and Defendants Nihon Kohden America, Inc. and Vaco
4 LLC (“Defendants”) on the other.

5 **RECITALS**

6 1. On January 13, 2023, the Parties fully executed the Joint Stipulation of Class
7 Action and PAGA Settlement (“Settlement Agreement”) representing the long-form agreement
8 submitted to the Court for approval.

9 2. On January 18, 2023, Plaintiff submitted the Settlement Agreement to the Court
10 for approval, which was set for hearing on April 7, 2023.

11 3. On April 6, 2023, the Court issued a tentative ruling ordering the Parties to
12 modify portions of the Settlement Agreement (and exhibits), as well as provide supplemental
13 information for the Court’s review, and continued the Motion for Preliminary Approval of
14 Class Action Settlement hearing to July 14, 2023.

15 4. Thereafter, the Parties met and conferred and agreed to modify certain portions
16 of the Settlement Agreement (and exhibits) consistent with the Court’s order and hereby submit
17 this Amendment to the Joint Stipulation of Class Action and PAGA Settlement.

18 **STIPULATION**

19 **1. Section I(T) previously read as follows:**

20 **Exclusion Form:** The Election Not to Participate In (“Opt Out” From) Class Action
21 Settlement, substantially similar to the form attached hereto as Exhibit B, subject to Court
22 approval.

23 **Section I(T) shall now read as follows:**

24 **Exclusion Form:** The Request for Exclusion Form, substantially similar to the form
25 attached hereto as **Exhibit B**, subject to Court approval.

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1 **2. Section II(G) previously read as follows:**

2 **Plaintiff's Claims.** Plaintiff asserts Defendants' defenses are without merit. Neither this
3 Agreement nor any documents referred to or contemplated herein, nor any action taken to carry
4 out this Agreement is, may be construed as, or may be used as an admission, concession or
5 indication by or against Plaintiff, Class Members, or Class Counsel as to the merits of any
6 claims or defenses asserted, or lack thereof, in the Case. However, if this Settlement is finally
7 approved by the Court, none of Plaintiff, Class Members, or Class Counsel will oppose
8 Defendants' efforts to use this Agreement to prove that Plaintiff and Class Members have
9 resolved and are forever barred as a matter of law from re-litigating the Released Claims.

10 **Section II(G) shall now read as follows:**

11 **Plaintiff's Claims.** Plaintiff asserts Defendants' defenses are without merit. Neither
12 this Agreement nor any documents referred to or contemplated herein, nor any action taken to
13 carry out this Agreement is, may be construed as, or may be used as an admission, concession,
14 or indication by or against Plaintiff, Class Members, or Class Counsel as to the merits of any
15 claims or defenses asserted, or lack thereof, in the Case. However, if this Settlement is finally
16 approved by the Court, neither Plaintiff nor Class Counsel will oppose Defendants' efforts to
17 use this Agreement to prove that Plaintiff and Class Members have resolved and are forever
18 barred as a matter of law from re-litigating the Released Claims.

19 **3. Section III(L) previously read as follows:**

20 **Release of Claims by All Participating Class Members.** As of the Effective Final
21 Settlement Date and upon fulfillment of the payment obligations under Section III(H)(2) of this
22 Agreement, all Participating Class Members will be bound by a release of all claims and causes
23 of action falling under the definition of Released Claims occurring during the Class Period.
24 Participating Class Members agree not to sue or otherwise make a claim against any of the
25 Released Parties for any of the Released Claims.

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Section III(L) shall now read as follows:

Release of Claims by All Participating Class Members. As of the Effective Final Settlement Date and upon fulfillment of the payment obligations under Section III(H)(2) of this Agreement, all Participating Class Members will be bound by a release of all claims and causes of action falling under the definition of Released Claims occurring during the Class Period.

4. Section III(M) previously read as follows:

Release of PAGA Claims by All Eligible Aggrieved Employees. As of the Effective Final Settlement Date and upon fulfillment of the payment obligations under Section III(H)(2) of this Agreement, the LWDA, and any other representative, proxy, or agent thereof, including, but not limited to, any and all Eligible Aggrieved Employees, including Plaintiff, are hereby voluntarily and knowingly barred as a matter of law from bringing any and all claims against the Released Parties seeking civil penalties under Labor Code section 2698, *et seq.* (PAGA), based on or arising out of the Labor Code violations alleged in Plaintiff’s notice letter to the LWDA and the Complaint occurring during the PAGA Period. The release of the PAGA claims is effective regardless of whether the Eligible Aggrieved Employee submits a valid and timely Exclusion Form.

Section III(M) shall now read as follows:

Release of PAGA Claims by All Eligible Aggrieved Employees. As of the Effective Final Settlement Date and upon fulfillment of the payment obligations under Section III(H)(2) of this Agreement, the LWDA, and any other representative, proxy, or agent thereof, including Plaintiff, are hereby voluntarily and knowingly barred as a matter of law from bringing any and all claims against the Released Parties seeking civil penalties under Labor Code section 2698, *et seq.* (PAGA), based on or arising out of the Labor Code violations alleged in Plaintiff’s notice letter to the LWDA and the Complaint occurring during the PAGA Period. The release of the PAGA claims is effective regardless of whether the Eligible Aggrieved Employee submits a valid and timely Exclusion Form.

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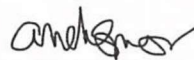
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5. Section III(P)(23) is removed from the Settlement Agreement.

Pursuant to the Court’s tentative ruling, Section III(P)(23) of the Settlement Agreement (“Class Size Escalator”) is removed from the Settlement Agreement and will not have any effect on the Settlement Agreement.

1 Dated: 06/06/2023

ANDREA MARQUEZ



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4 Dated: 06/20/2023

NIHON KOHDEN AMERICA, INC.

DocuSigned by:


Name: Kurt Stitche
Title: General Counsel & Vice President, Compliance

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8 Dated: _____

VACO LLC

Name:
Title:

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12 **APPROVED AS TO FORM**

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15 Dated: 6/6/23

JUSTICE LAW CORPORATION



Douglas Han, Esq.
Attorneys for Plaintiff Andrea Marquez, on behalf of
herself and all others similarly situated

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20 Dated: _____


**WILSON, ELSER, MOSKOWITZ, EDELMAN &
DICKER, LLP**

Diana M. Estrada, Esq.
Attorneys for Defendants Nihon Kohden America, Inc.
and Vaco LLC

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Dated: 06/06/2023

ANDREA MARQUEZ



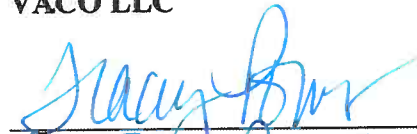
Dated: _____

NIHON KOHDEN AMERICA, INC.

Name:
Title:

Dated: 6/21/2023

VACO LLC


Name: Tracy Bower
Title: Chief People Officer

APPROVED AS TO FORM

Dated: 6/6/23

JUSTICE LAW CORPORATION



Douglas Han, Esq.

Attorneys for Plaintiff Andrea Marquez, on behalf of herself and all others similarly situated

Dated: June 21, 2023

WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER, LLP



Diana M. Estrada, Esq.

Attorneys for Defendants Nihon Kohden America, Inc. and Vaco LLC