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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

TROY M. LINDELL AND MARK POPE, ON
BEHALF OF THEMSELVES AND ALL OTHER
SIMILARLY SITUATED,

Plaintiffs,

vs.

SYNTHES USA, SYNTHES USA SALES LLC,
SYNTHES SPINE COMPANY, LP,

Defendants.

Case No. 1: 11-cv-02053-LJO-BAM

**ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS GRANTING
CLASS CERTIFICATION**

By notice filed on September 20, 2013, plaintiff Troy Lindell (“Plaintiff”) filed a motion to certify two putative classes in this matter. (Doc. 87.) Synthes¹ filed an opposition on November 5, 2013. (Doc. 115.) Plaintiff filed his reply on November 25, 2013. (Doc. 121.) The matter was referred to United States Magistrate Judge Barbara A. McAuliffe pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302. The Court heard oral arguments on the matter on February 24, 2014. (Doc. 138.)

On March 4, 2014, the Magistrate Judge issued Findings and Recommendations that Plaintiff’s Motion for Class Certification be GRANTED. (Doc. 139.) The Findings and Recommendations were served on all parties appearing in the action and contained notice that any objections were to be filed within fifteen (15) days of the date of service of the order. *Id.* at 33: 17-20. On March 24, 2014, Synthes filed objections to the Magistrate Judge’s Findings and

¹ Defendant Synthes is comprised of three related entities: Synthes USA, Synthes USA Sales LLC, and Synthes Spine Company, LP. The Court refers to the Defendants collectively as “Synthes.”

1 Recommendations. (Doc. 140.) Plaintiff filed an opposition on April 10, 2014. (Doc. 144.)
2 Defendants filed a reply on May 5, 2014. (Doc. 147.)²

3 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this Court has conducted a de
4 novo review of the case. Having carefully reviewed the entire file, including Synthes' objections, the
5 Court concludes that the Magistrate Judge's Findings and Recommendations are supported by the
6 record and proper analysis.

7 This Court is not persuaded by Synthes' objections. Synthes' objections are virtually
8 identical to the arguments considered and properly rejected by the Magistrate Judge's well-reasoned
9 Findings and Recommendations. This Court rejects Synthes' objections for the same reasons stated
10 in the Magistrate Judge's Findings and Recommendations.

11 Accordingly, IT IS HEREBY ORDERED that:

- 12 1. The Findings and Recommendations issued March 4, 2014, are ADOPTED IN FULL;
- 13 2. Plaintiff's Motion for Class Certification is GRANTED;
- 14 3. The following classes are certified:

15 a) An Expense Class of all former, current, and future sales consultants who have been,
16 are, or will be employed by Synthes in California from four years prior to the filing of this action
17 (December 13, 2007) to the date of final disposition, and who are subject to the following straight
18 commission compensation policies:

19 i) The policy that sales consultants from the Trauma and Spine Sales Divisions
20 who receive straight commission are not eligible for an automobile allowance or in-territory
21 business expense reimbursement; and

22 ii) The policy that sales consultants from the CMF Sales Division receive a
23 predetermined base salary of \$30,000, plus a higher level of commission with no expenses;
24 and

25 b) A Deductions Class of all former, current, and future Sales Consultants who have
26 been, are, or will be employed by Synthes in California from four years prior to the filing of this

27 ² Although replies to objections to Findings and Recommendations are not normally permitted, *see* E.D. Cal. Local Rule
28 304(b), Defendants maintain that Plaintiff's opposition contained "many erroneous and misleading arguments that
mischaracterize Synthes' policies, the evidentiary record, and the relevant law on class certification." (Doc. 148 at 2.)
Accordingly, in the interest of fairness, the Court GRANTS Defendants' ex parte application for leave to file a reply
(Doc. 148) and has considered Defendants reply papers in full.

1 action (December 13, 2007) to the date of final disposition, who at some time during Synthes'
2 employ had a deduction assessed against them.

3 4. The Court FURTHER ORDERS that Troy M. Lindell is appointed as Class
4 representative;

5 5. The Court FURTHER ORDERS the law firm of Lewis Feinberg Renaker & Jackson
6 is appointed as Lead Class Counsel, and the law firm of Lang, Richert & Patch is appointed as Class
7 Counsel.

8 6. A Scheduling Conference is set for June 3, 2014, at 8:30 AM, in Courtroom 8, before
9 United States Magistrate Judge Barbara A. McAuliffe. The parties shall file a Joint Scheduling
10 Report at least one week prior to the Scheduling conference.

11
12 IT IS SO ORDERED.

13 Dated: May 6, 2014

/s/ Lawrence J. O'Neill
UNITED STATES DISTRICT JUDGE