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*Counsel for Defendants
 Synthes USA, Synthes USA Sales LLC, and
 Synthes Spine Company, LP*

17 **UNITED STATES DISTRICT COURT**

18 **FOR THE EASTERN DISTRICT OF CALIFORNIA**

19 TROY M. LINDELL, ON BEHALF OF
 HIMSELF AND ALL OTHERS
 20 SIMILARLY SITUATED,

21 Plaintiff,

22 v.

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

24 Defendants.

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

**STIPULATION AND ORDER TO SEND
 LETTER IN LIEU OF CLASS NOTICE FOR
 NON-CLASS MEMBERS**

26 WHEREAS, on September 13, 2016, the Court issued Findings and Recommendations
 27 Granting Plaintiff's Motion for Preliminary Approval of Class Action Settlement (ECF No. 257),
 28 with an attached Class Notice (ECF No. 257-1);

1 WHEREAS, the Findings and Recommendations provided for Class Notice to include the
2 final data from which each member of the classes' distribution would be calculated (ECF No. 257
3 ¶ 8);

4 WHEREAS, the Findings and Recommendations provide a method for each member of
5 the classes to challenge this final data (ECF No. 257 ¶ 10);

6 WHEREAS, following the Court's order, Defendants Synthes USA, Synthes USA Sales
7 LLC, and Synthes Spine Company LP ("Synthes") collected the final data from which
8 distribution will be calculated;

9 WHEREAS, this final data indicates that 39 individuals previously identified on the class
10 list neither worked under the expense policies at issue during the class period (*see* ECF No. 257 ¶
11 3.a) nor had any deductions assessed against them during the class period (*see id.* ¶ 3.b), and thus
12 are not properly members of the classes;

13 WHEREAS, Defendants represent that they erred on the side of overinclusivity with the
14 class list in order to avoid potential class members slipping through the cracks;

15 WHEREAS, these 39 individuals were mailed class notice following class certification
16 indicating that they were members of one or both classes (*see* ECF No. 165-1) and thus may
17 believe themselves to be members of one or both classes;

18 WHEREAS, the Parties wish to avoid confusion on the part of these individuals and allow
19 them the opportunity to challenge the determination that they are not a class member in the event
20 that they believe they should properly be considered members of one or both classes, in a manner
21 substantially similar to the data challenge set forth *supra* and in the Findings and
22 Recommendations (ECF No. 257 ¶ 10);

23 WHEREAS, the Parties wish to clarify to these individuals that, as they are not members
24 of the classes, they are not releasing any claims as a result of this settlement;

25 IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned counsel
26 on behalf of the respective Parties, that the 39 individuals identified as not being a part of either
27 of the classes be sent a letter drawing attention to the fact that they are not a member of either
28 class and providing a method for them to challenge this determination if they believe it to be

1 incorrect. A proposed letter is attached hereto as Exhibit A. The Parties note that this change
2 reduces the total number of class members to 187 from 226, and therefore raises the anticipated
3 average distribution per class member from over \$14,000 to over \$17,000.¹

4 Respectfully Submitted,

5 DATED: October 11, 2016

FEINBERG, JACKSON, WORTHMAN &
WASOW LLP

6 By: /s/ Darin Ranahan
Darin Ranahan

7 Attorneys for Plaintiff and the Certified
8 Classes

9 DATED: October 11, 2016

BLANK ROME LLP

10 By: /s/ Anthony B. Haller
Anthony B. Haller

11 Attorney for Defendants
12 SYNTHES USA, SYNTHES USA SALES
13 LLC, SYNTHES SPINE COMPANY, LP

14 **ORDER**

15 The Court has reviewed the parties' stipulation outlined above and adopts the stipulation
16 *except* that the 39 individuals identified as not part of the classes who were previously included
17 on the class list shall have **thirty (30) days** to postmark a written challenge to the determination
18 that they are not a class member. The attached Exhibit A shall be modified accordingly. The
19 class notice approved on September 13, 2016, need not be sent to these individuals.

20 IT IS SO ORDERED.

21 Dated: October 13, 2016

22 /s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE

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