

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT AND CLASS ACTION SETTLEMENT HEARING

Lindell vs. Synthes USA, Synthes USA Sales LLC, Synthes Spine Company LP

United States District Court for the Eastern District of California, Case No. 11-cv-02053-LJO-BAM

**THIS NOTICE CONTAINS IMPORTANT LEGAL INFORMATION THAT MAY AFFECT YOU
YOU ARE NOT BEING SUED**

TO: ALL PERSONS IN THE CERTIFIED CLASSES OF SALES CONSULTANTS WHO WORKED FOR SYNTHES USA, SYNTHES USA LLC, and/or SYNTHES SPINE COMPANY LP BETWEEN DECEMBER 17, 2007 AND JULY 14, 2016.

1. Why Did I Receive This Notice?

A proposed \$5 million settlement has been reached in a lawsuit that may affect your rights. This notice explains the lawsuit, the proposed settlement, your legal rights, what payments are available, and how to get them.

The lawsuit is against Synthes USA, Synthes USA Sales LLC, and Synthes Spine Company (collectively “Synthes”). Troy Lindell, the Plaintiff, filed this lawsuit on behalf of himself and all others similarly situated, alleging that Synthes violated California law by (1) failing to reimburse commission-only Sales Consultants for all work-related business expenses, and (2) taking unlawful deductions from earned commissions.

According to Synthes’ records, you worked as a Sales Consultant in California at some time between December 17, 2007 and July 14, 2016 (“Class Period”), and you are a Class Member in this lawsuit.

2. What Are My Legal Rights and Options Under the Settlement?

Do Nothing	If you do nothing, you will receive a payment under the Settlement. You will receive a check if the Court finally approves the Settlement. You will release all claims covered by the Settlement. You do not have to do anything to receive a payment.
Exclude Yourself or “Opt Out”	If you “opt out,” you will NOT receive any money and you will not release your claims against Synthes. To request to be excluded from the Settlement, you <u>must</u> mail a written, signed request to be excluded from the Settlement to the Settlement Administrator, at the address below, on or before _____, 2016. Any request for exclusion not postmarked on or before _____, 2016 will be void unless the Court agrees to review the late exclusion.
Object to the Settlement	Any Class Member may object to the Settlement. If you wish to object, you must do so in writing and must state the basis for your objection(s). To object, you <u>must</u> prepare and complete your objection, <u>sign it</u> and submit it to the Clerk of the Court either by mailing to the Robert E. Coyle United States Courthouse, 2500 Tulare Street, Fresno, CA 93721, or by delivering it in person to Room 1501, on the First Floor of the same address. At the same time, you must mail copies to the Settlement Administrator, to Plaintiffs’ counsel at one of the addresses below and to Synthes’ Counsel at Blank Rome LLP, 130 N. 18th Street, Philadelphia, PA 19103. Any objection not filed or postmarked on or before _____, 2016 will be void unless the Court agrees to review the late objection.

3. Am I A Class Member?

The Class Members are those individuals covered by the Court’s March 2014 order certifying two Classes of Synthes Sales Consultants, as modified by the Court’s order:

QUESTIONS? Call 1-XXX-XXX-XXX

1. **An Expense Class** of all Sales Consultants who have been, are, or will be employed by Synthes in California any time from December 13, 2007 until July 14, 2016, and who were subject to either of the following straight commission compensation policies:
 - o The policy that Sales Consultants from the Trauma and Spine Sales Divisions who receive straight commission are not eligible for an automobile allowance or in-territory business expense reimbursements; and
 - o The policy that Sales Consultants from the Craniomaxillofacial Sales Division receive a predetermined salary of \$30,000, plus a higher level of commission with no expenses;
2. **A Deductions Class** of all Sales Consultants who have been, are, or will be employed by Synthes in California anytime from December 13, 2007 through July 14, 2016 and at some point had a deduction assessed against them.

The Court also appointed the Attorneys as Class Counsel, and ordered notice to all Class Members on September 11, 2014.

4. Background of the Settlement

The claims in this case are highly contested. Synthes denies that it committed any wrongdoing. The Attorneys representing Plaintiff and the Class Members have conducted extensive discovery and reached this proposed Settlement after many filings in court, extensive exchanges of information, and arm's-length negotiations including two day-long sessions with a professional mediator.

In addition to certifying the Classes, the Court has (1) denied Synthes' motion for decertification of the Classes; (2) granted Plaintiff's motion for summary judgment on the deductions claim from December 13, 2007 to December 30, 2012; (3) denied Synthes' and Plaintiff's cross-summary judgment motions on the expense claims from December 13, 2007 to December 30, 2012; and (4) granted Synthes' summary judgment motion against Plaintiff and the Classes for the expense reimbursement claim from January 2013 to the present.

After years of hard-fought litigation, Plaintiff and the Attorneys believe that the Settlement reached is in the best interests of the Class Members, considering the risks, costs, and time involved in further litigation, trial and possible appeals.

5. What Are the Terms of the Proposed Settlement?

Synthes has agreed to pay a total of \$5 million (\$5,000,000.00) to settle this case. This money will be divided among all Class Members. It will also be used to make payments to the Attorneys for Plaintiff and the Class Members for fees and costs of litigation, the State of California Labor Workforce Development Agency for its share of penalties under the Private Attorneys' General Act, the Plaintiff for his service to the Classes, and the Settlement Administrator for calculating and distributing payments to Class Members. Synthes will pay \$5 million regardless of how many Class Members participate or cash their checks.

6. What Will My Share of the Settlement Be?

Class Members will be paid from the Net Settlement Fund. The Net Settlement Fund is the \$5 million total Settlement minus the payments described above: (1) fees to the settlement administrator (estimated not to exceed \$20,000); (2) the costs of litigation, as approved by the Court in an amount not to exceed \$200,000; (3) a \$37,500 payment to the Labor Workforce and Development Agency; (4) and attorneys' fees up to the amount approved by the Court, not to exceed 30% of the Settlement.

63% of the Net Settlement Fund will be allocated to the Expense Class. Of that amount, 90% will be allocated to the Expense Class for the Class Period from December 13, 2007 through December 31, 2012; and 10% will be allocated for the Class Period from January 1, 2013 through July 14, 2016. Each Expense Class Member will receive a share of the settlement based on their total days of employment as a straight-commission Sales

QUESTIONS? Call 1-XXX-XXX-XXX

Consultant during each time period, as compared to the total number of days of employment for each time period of all Expense Class Members who do not opt out.

According to Synthes' records, prior to January 1, 2013 you were [not employed] [employed] as a straight-commission Sales Consultant from ____ to ____ [and from ____ to ____] for a total of ____ days] as an Expense Class Member.

From January 1, 2013 to July 14, 2016, you were [not employed] [employed] as a straight-commission Sales Consultant from ____ to ____ [and from ____ to ____] for a total of ____ days] as an Expense Class Member.

37% of the Net Settlement Fund will be allocated to the Deductions Class. Of that amount 60% will be allocated to damages from deductions taken and 40% will be allocated to compensate former employees of Synthes for their claims for waiting time penalties for unpaid wages as a result of deductions taken. Each Deductions Class Member will receive a share of the settlement based on the amount of deductions taken as compared to the total amount of all deductions taken, before and after January 1, 2013, from Deductions Class Members who do not opt out, and whether they are a current or a former employee as of the last date of the Class Period (July 14, 2016). Deductions taken prior to January 1, 2013 shall be given 25% higher weight in the distribution due to their greater success in the litigation and interest.

According to Synthes' records, you were subject to a total of \$____ in deductions between December 13, 2007 and December 31, 2012 and \$____ in deductions between January 1, 2013 and July 14, 2016, and, as of July 14, 2016, were a [current/former] employee.

More detail on how the Settlement will be distributed can be obtained from papers filed with the Court or from the Attorneys (whose addresses are below).

7. When Will I Receive My Payment and What Do I Have to Do?

Class Members who do not opt out will receive payments within 30 days after both final court approval of the Settlement and when all rights to appeal or review are exhausted or any appeal or review has been resolved in favor of the Settlement.

You must cash your check within 180 days of when the check is issued. The check will be void after 180 days, and the Settlement provides that money will be redistributed to other class members in certain circumstances.

8. What If I Dispute Synthes' Records of My Dates of Employment as a Straight Commission-Sales Consultant, Deductions Taken, or Whether I Was a Current or Former Employee as of July 14, 2016?

If you believe the information shown above is incorrect as to your dates of employment as a straight-commission Sales Consultant, deductions taken, or whether you were a current or former employee as of July 14, 2016, you may challenge it with any documents or other supporting evidence sent to the Settlement Administrator. Any challenge must be postmarked by no later than [15 days from mailing of class notice], 2016.

The Settlement Administrator will presume that Synthes' records are correct but may change your calculations after considering your evidence. The Settlement Administrator's decision on your time worked is final and binding, meaning that it cannot be appealed.

9. What If I Have Questions?

If you have questions, please contact the Attorneys for the Plaintiff and the Class Members or the Settlement Administrator. The Plaintiff's and Class Members' Attorneys are:

**FEINBERG, JACKSON, WORTHMAN &
WASOW LLP**

Todd Jackson
Catha Worthman
Darin Ranahan
383 4th Street, Suite 201
Oakland, CA 94607
(510) 269-7998

LANG, RICHERT AND PATCH

Charles Taylor
Ana de Alba
Fig Garden Financial Center
5200 N. Palm Avenue, Fourth Floor
Fresno, CA 93704
(559)-228-6700

The Settlement Administrator is a company hired by the Parties to administer the Settlement. The Settlement Administrator's contact information is:

Synthes Settlement Administrator
c/o Settlement Services, Inc.
P.O. Box 1657
Tallahassee, FL 32302-1657
Phone: (866) 385-6216

10. How Will the Attorneys and the Representatives for the Class Be Paid?

The Attorneys will request Court approval for payment of attorneys' fees of up to 30% of the total Settlement Amount, plus reimbursement of actual litigation costs up to \$200,000. The Court decides whether or not to award attorneys' fees. The Attorneys' fees are for legal services provided, and to be provided, to the Class.

The Attorneys will also ask the Court to approve a class representative service award of \$10,000 to the named Plaintiff for his time and willingness to accept the risks of bringing this case. If approved, this award would be in addition to the amount he is owed under the settlement as a Class Member.

11. Notice of Hearing on Final Approval and Objections to Class Action Settlement.

A Final Fairness Hearing will be held before the Honorable Barbara A. McAuliffe on _____ 2016, at 9:00 a.m. in Courtroom 8 of the Robert E Coyle United States Courthouse, 2500 Tulare Street, Fresno, CA 93721, to determine whether the proposed Settlement is fair, reasonable, and adequate. The hearing may be continued without further notice.

You do not need to appear at this hearing unless you wish to object to the Settlement. If you have sent a written objection, you may appear at the hearing if you choose to do so.

12. What Is Being Released as Part of the Settlement?

If the Court gives the settlement final approval, the Class Members who have not opted out will fully release Synthes from all claims based on the facts alleged in this case asserted on behalf of the classes in the lawsuit, including, without limitation, (a) the claims for unpaid business expenses under California Labor Code § 2802 and unlawful wage deductions under Labor Code §§ 221, 223, and 300 as well as the Private Attorney General Act penalties under Labor Code § 2698 *et seq.* and the violations of the Unfair Competition Law (Business & Professions Code § 17200) that arise from the claims under Labor Code §§ 2802, 221, 223, 300 and (b) to the extent permitted by law, claims for waiting time penalties under Labor Code §§ 201-03. Claims for benefits arising under the Employee Retirement Income Security Act ("ERISA") are not being released.

In addition to releasing the claims just mentioned against Synthes, Class Members who do not opt out will also release these claims against Synthes' former and current parents ("parent" is a legal term referring to a relationship between two companies), subsidiaries, affiliated corporations, officers, directors, employees, partners, shareholders and agents; and any other successors, assigns, or legal representatives.

13. Getting More Information about the Settlement

This Notice contains a summary of the basic terms of the settlement. For the precise terms, you may review the Settlement Agreement and pleadings at <http://www.feinbergjackson.com>.

IMPORTANT:

1. **If you move or change your address, send the Settlement Administrator your new address. It is your responsibility to keep a current address on file with the Settlement Administrator to ensure receipt of your Settlement Payment.**
2. **It is strongly recommended that you keep a copy of any challenge, request for exclusion and/or objection that you submit, and proof of timely mailing and/or faxing, until after the Final Approval hearing.**