

**FILED**  
Superior Court of California  
County of Los Angeles  
**09/12/2022**

Sherri R. Carter, Executive Officer / Clerk of Court  
By: A. Morales Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES**

JOSEPH JIMENEZ, individually, and on behalf  
of other members of the general public similarly  
situated;

Plaintiff,

v.

MAKITA U.S.A., INC., a California  
corporation; and DOES 1 through 100,  
inclusive;

Defendants.

Case No.: 20STCV21732

Assigned for All Purposes to:  
Honorable Lawrence P. Riff  
Department 7

**CLASS ACTION**

**AMENDED ~~PROPOSED~~ ORDER OF  
FINAL APPROVAL AND JUDGMENT**

Hearing Date: September 12, 2022  
Hearing Time: 11:00 a.m.  
Hearing Place: Department 7

Complaint Filed: June 4, 2020  
FAC Filed: September 20, 2021  
Trial Date: None Set

1 The Court, having read the papers filed regarding Plaintiff Justin Jimenez’s (“Plaintiff”)  
2 Motion for Final Approval of Class Action Settlement, and considering the papers submitted in  
3 support of the motion, including the Second Amended Joint Stipulation and Settlement  
4 Agreement (“Settlement Agreement,” “Settlement,” or “Agreement”), hereby FINDS AND  
5 ORDERS as follows:

6 Plaintiff and Defendant Makita U.S.A., Inc. (“Defendant”) entered the Settlement  
7 Agreement on or about April 15, 2022, to settle this class action lawsuit.

8 The Court entered an Order dated April 19, 2022 preliminarily approving the settlement  
9 of this class action lawsuit (“Preliminary Approval Order”), consistent with the Code of Civil  
10 Procedure section 382 and California Rule of Court 3.769, ordering notice to be sent to Class  
11 Members, scheduling a Final Approval Hearing on August 30, 2022, and providing Class  
12 Members with an opportunity to object to the Settlement or exclude themselves from the Class.

13 Hours before the Final Approval Hearing on August 30, 2022, the Court issued a  
14 tentative ruling asking the Parties to provide a supplemental declaration confirming the total  
15 workweeks and how the increase to the Gross Settlement Amount was calculated pursuant to the  
16 Escalator Clause in the Settlement Agreement being triggered. The Parties submitted a  
17 supplemental declaration from the Settlement Administrator right before the Final Approval  
18 Hearing that contained the above-requested information. The Court held a Final Approval  
19 Hearing on August 30, 2022, to determine whether to give final approval to the Settlement of this  
20 class action lawsuit. During the Final Approval Hearing, the Court continued the hearing to  
21 September 12, 2022 to review the supplemental declaration from the Settlement Administrator  
22 and to give the Parties time to draft and file an updated Order of Final Approval and Judgment.

23 1. Incorporation of Other Documents. This Amended Order of Final Approval and  
24 Judgment (“Order and Judgment”) incorporates the Settlement Agreement. Unless otherwise  
25 provided herein, all capitalized terms in this Order and Judgment shall have the same meaning as  
26 set forth in the Settlement Agreement.

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1           2.     Jurisdiction. Because adequate notice has been disseminated and the Class been  
2 given the opportunity to request exclusion, the Court has personal jurisdiction with respect to the  
3 claims of all Class Members. The Court also has subject matter jurisdiction over this lawsuit,  
4 including jurisdiction to approve the Settlement, and grants final certification of the Class.

5           3.     Final Class Certification. The Court finds the Class satisfies all applicable  
6 requirements of Code of Civil Procedure section 382, California Rule of Court 3.769, and due  
7 process. The Court certifies the Class consisting of all hourly-paid or non-exempt employees  
8 employed directly by Defendant within the State of California during the time period from June  
9 4, 2016, to May 31, 2021, excluding those persons that have signed release agreements (“Class”  
10 and “Class Period”). There are one hundred twenty-seven (127) Class Members who did not  
11 submit a valid and timely request to exclude themselves from the class action Settlement  
12 (“Participating Class Members”).<sup>1</sup>

13           4.     Adequacy of Representation. As Class Counsel, Douglas Han, Shunt Tatavos-  
14 Gharajeh, and Chancellor Nobles of Justice Law Corporation have fully and adequately  
15 represented the Class for purposes of entering and implementing the Settlement and have  
16 satisfied the requirements of Code of Civil Procedure section 382.

17           5.     Notice Packet. The Court finds the Notice of Class and Representative Action  
18 Settlement (“Class Notice”) and the Election Not To Participate In (“Opt Out From”) Class  
19 Action Settlement Form (“Exclusion Form”) (collectively, known as the “Notice Packet”) and its  
20 distribution to Class Members have been implemented pursuant to the Settlement and this  
21 Court’s Preliminary Approval Order. The Court also finds the Notice Packet:

22                 a.     constitutes notice reasonably calculated to apprise Class Members of: (i)  
23 the pendency of the class action lawsuit; (ii) the material terms and provisions of the Settlement  
24 and their rights; (iii) their right to object to any aspect of the Settlement; (iv) their right to  
25 exclude themselves from the Settlement; (v) their right to claim an Individual Settlement Share;

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28 <sup>1</sup> Phoenix mailed Notice Packets to one hundred twenty-eight (128) Class Members and  
received one (1) request for exclusion. Thus, there are one hundred twenty-seven (127)  
Participating Class Members.

(vi) their right to appear at the Final Approval Hearing; and (vii) the binding effect of the orders and judgment in the class action lawsuit on all Participating Class Members;

b. constitutes notice that fully satisfied the requirements of Code of Civil Procedure section 382, California Rule of Court 3.769, and due process;

c. constitutes the best practicable notice to Class Members under the circumstances of the class action lawsuit; and

d. constitutes notice reasonable, adequate, and sufficient to Class Members.

6. Final Settlement Approval. The terms and provisions of the Settlement Agreement have been entered in good faith and are the product of arm's-length negotiations by experienced counsel who have done a meaningful investigation of the claims. The Settlement Agreement and all its terms and provisions are fully and finally approved as fair, reasonable, adequate, and in the best interests of the Parties. The Parties are hereby directed to implement the Settlement Agreement according to its terms and provisions.

7. Binding Effect. The terms and provisions of the Settlement and this Order and Judgment are binding on Plaintiff, the Participating Class Members, and the Eligible Aggrieved Employees, as well as their spouses, heirs, registered domestic partners, executors, administrators, successors, and assigns. The terms and provisions of the Settlement and this Order and Judgment shall have res judicata and other preclusive effect in all pending and future claims, lawsuits, or other proceedings maintained by or on behalf of any such persons, to the extent those claims, lawsuits, or other proceedings involve matters that were or could have been raised in the class action lawsuit and are encompassed by the Participating Class Members' Released Claims and Eligible Aggrieved Employee's Private Attorneys General Act of 2004 ("PAGA") Released Claims. The Settlement will have no binding effect upon, and provide no res judicata preclusion to, those Class Members who have submitted timely requests for exclusion.

8. Release of Claims. As of the Effective Final Settlement Date, in exchange for the consideration set forth in this Agreement, Plaintiff and the Participating Class Members release the Released Parties from the Released Claims for the Class Period.

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1 a. PAGA Release. As of the Effective Final Settlement Date, the California Labor  
2 and Workforce Development Agency (“LWDA”) and each Eligible Aggrieved  
3 Employee, including Plaintiff, individually and on behalf of their heirs, executors,  
4 administrators, representatives, attorneys, successors and assigns are voluntarily  
5 and knowingly barred from bringing any action for the PAGA Released Claims  
6 during the PAGA Period. The release of the PAGA Released Claims is effective,  
7 regardless of whether the Eligible Aggrieved Employee submits a timely and  
8 valid request for exclusion. The release does not include claims that as a matter of  
9 law cannot be released and does not include claims for retaliation, discrimination,  
10 wrongful termination, and individual claims for the recovery of workers’  
11 compensation benefits.

12 b. Plaintiff’s Release of Claims and General Release. As of the Effective Final  
13 Settlement Date, and in exchange for the Class Representative Enhancement  
14 Payment to Plaintiff of \$5,000, in recognition of his work and efforts in obtaining  
15 the benefits for the Class and undertaking the risk for the payment of costs if this  
16 matter had not successfully resolved, Plaintiff provides a general release of claims  
17 for himself and his spouse, heirs, successors, and assigns. Plaintiff’s general  
18 release of claims also includes a waiver of Civil Code section 1542.

19 c. Released Parties. The Released Parties include Defendant and its past or present  
20 officers, directors, shareholders, employees, agents, principals, heirs,  
21 representatives, accountants, auditors, consultants, insurers and reinsurers, and  
22 their respective successors and predecessors in interest, subsidiaries, affiliates,  
23 parents, and attorneys.

24 9. Enforcement of Settlement. Nothing in this Order and Judgment shall preclude  
25 any action to enforce the terms and provisions of the Settlement Agreement.

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1           10.   Class Representative Enhancement Payment.   The Court finds the Class  
2 Representative Enhancement Payment of \$5,000, to be paid by Defendant to Plaintiff out of the  
3 Gross Settlement Amount, to be reasonable and appropriate. Class Representative Enhancement  
4 Payment is to be paid pursuant to the terms and provisions set forth in the Agreement.

5           a.   The rationale for making enhancement payments is class representatives should  
6               be compensated for the expense and risk they incurred in conferring a benefit on  
7               other Class Members. Criteria courts may consider include: (1) risks commencing  
8               suit; (2) notoriety and personal difficulties; (3) amount of time and effort spent;  
9               (4) duration of the litigation; and (5) personal benefit (or lack thereof).

10          b.   The Court reviewed Plaintiff's declaration outlining his involvement. Given the  
11               risks inherent in his services as the Class Representative, duration of the case and  
12               time involved, and benefits created for the Class, the Court approves the payment  
13               of the Class Representative Enhancement Payment of \$5,000 to Plaintiff.

14           11.   Attorney Fee Award and Cost Award.   The Court finds the Attorney Fee Award  
15 of \$226,142, to be paid out of the Gross Settlement Amount by Defendant to Class Counsel, to  
16 be reasonable and appropriate. The Court finds the Cost Award as reimbursement for actual  
17 litigation costs incurred of \$18,200.84, to be paid by Defendant to Class Counsel out of the  
18 Gross Settlement Amount, to be reasonable and appropriate. Such fees and costs are to be paid  
19 pursuant to the terms and provisions set forth in the Settlement. Defendant shall not be required  
20 to pay for any other attorneys' fees and expenses, costs, or disbursements incurred by Class  
21 Counsel or any other counsel representing Plaintiff, Class Members, or Eligible Aggrieved  
22 Employees. Defendant shall also not be required to pay for any other attorneys' fees and  
23 expenses, costs, or disbursements incurred by Plaintiff, Class Members, or Eligible Aggrieved  
24 Employees in connection with or related in any manner to the class action and PAGA lawsuit,  
25 the Settlement, the Settlement administration, and/or the Participating Class Members' Released  
26 Claims and Eligible Aggrieved Employees' PAGA Released Claims.

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1 a. The Court has an independent right and responsibility to review the requested  
2 Attorney Fee Award and only award so much as it determines reasonable. (See  
3 *Garabedian v. Los Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123,  
4 127-28.) The Attorney Fee Award requested by Class Counsel of \$226,142 is  
5 thirty-five percent (35%) of the common fund created for the benefit of the Class  
6 and is supported by use of the percentage-fee method.<sup>2 3</sup> (See *Laffitte v. Robert*  
7 *Half International, Inc.* (2016) 1 Cal.5th 480, 504.) Considering the exceptional  
8 results achieved, financial risk undertaken, novel and difficult nature of this  
9 litigation, skills required, percentage fees award in previous and other cases, and  
10 contingent fees charged in the marketplace, the Court finds the requested Attorney  
11 Fee Award is consistent with the marketplace, is reasonable, and is approved.

12 b. The Court reviewed the declaration of Douglas Han regarding the costs expended  
13 in prosecuting this case. Under the terms of the Settlement, Class Counsel may  
14 seek reimbursement of up to \$25,000 in litigation costs. The Court finds Class  
15 Counsel expended \$18,200.84 in litigation costs, and such costs were reasonable.  
16 Thus, the Court approves the payment of the Cost Award of \$18,200.84 from the  
17 common fund for the reimbursement of Class Counsel's litigation costs.

18 12. Administration Costs. The Court finds Administration Costs of \$5,250, to be paid  
19 by Defendant to the Settlement Administrator out of the Gross Settlement Amount, to be  
20 reasonable and appropriate. The Administration Costs are to be paid pursuant to terms and  
21 provisions set forth in the Settlement Agreement.

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24 <sup>2</sup> The Escalator Clause in the Agreement was triggered that increased the Gross Settlement  
25 Amount from \$610,000 to \$646,120. Since the Attorney Fee Award is thirty-five percent  
(35%) of the Gross Settlement Amount, the Attorney Fee Award also increased from  
\$213,500 to \$226,142.

26 <sup>3</sup> The Escalator Clause in the Agreement indicates if the actual workweeks exceeds 20,500,  
27 the Gross Settlement Amount shall be increased by \$30.00 per workweek. The total number  
28 of workweeks is 21,704. The increased Gross Settlement Amount of \$646,120 (\$610,000 +  
\$36,120) was calculated as follows: 1,204 workweeks [the total number of actual workweeks  
(21,704) less the represented workweeks (20,500)] x \$30.00 per workweek = \$36,120.

1 a. The Court reviewed the declaration of Kevin Lee from Phoenix Class Action  
2 Settlement Administrators (“Phoenix”), the Settlement Administrator. The Court  
3 finds notice was provided to the Class pursuant to the Preliminary Approval  
4 Order, the notice constitutes the best practicable notice to the Class, and the notice  
5 satisfied due process. Consequently, Phoenix discharged its duties to provide  
6 notice to the Class. Thus, the Court approves the payment of the Administration  
7 Costs of \$5,250 for Phoenix’s services in administering the Settlement.

8 13. PAGA Payment. The Court finds the PAGA Payment of \$50,000, seventy-five  
9 percent (75%) of which (\$37,500) will be distributed to the LWDA out of the Gross Settlement  
10 Amount and twenty-five percent (25%) of which (\$12,500) shall be distributed to Eligible  
11 Aggrieved Employees, on a pro rata basis, to be reasonable and appropriate. The PAGA Payment  
12 is to be paid pursuant to the terms and provisions set forth in the Settlement Agreement.

13 14. Funding of the Settlement. No later than five (5) business days after the date the  
14 Final Approval of the Settlement can no longer be appealed or, if there are no objectors and no  
15 plaintiff in intervention at the time the Court grants Final Approval of the Settlement, the date  
16 the Court enters judgment granting Final Approval of the Settlement, Defendant shall deposit the  
17 Gross Settlement Amount of \$646,120 needed to pay the entire Gross Settlement Amount, as  
18 well as Defendant’s share of employer-side payroll taxes, by wiring the funds to the Settlement  
19 Administrator. Within fourteen (14) calendar days after the Settlement Administrator’s receipt of  
20 the Gross Settlement Amount, the Settlement Administrator shall calculate and disburse all  
21 payments due under the Settlement Agreement.

22 15. Fairness of the Settlement. As noted in the Preliminary Approval Order, the  
23 Settlement is entitled to a presumption of fairness. In his moving papers, Plaintiff contends the  
24 Settlement was the product of arm’s-length negotiations following extensive litigation,  
25 discovery, and exchange of documentation. The negotiations were facilitated with the aid of  
26 mediator Steve Serratore, who is an experienced and well-respected class action mediator.

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1 a. The fairness of the Settlement is demonstrated by there being no objections to and  
2 only one (1) request for exclusion from the Settlement. The Class Member who  
3 requested exclusion is Shelley Hyatt.

4 b. The fairness of the Settlement is also illustrated by the *average* Individual  
5 Settlement Share being approximately \$2,689.19, and the *highest* Individual  
6 Settlement Share being about \$4,134.33.

7 16. Uncashed Checks. Participating Class Members and Eligible Aggrieved  
8 Employees must cash or deposit their Individual Settlement Share and Individual PAGA  
9 Payment checks within one hundred eighty (180) calendar days after the checks are mailed to  
10 them. Uncashed settlement checks will be paid to the *cy pres* recipient Legal Aid At Work.

11 17. Modification of Settlement Agreement. The Participating Class Members are  
12 hereby authorized, upon approval of the Court, to agree to and adopt amendments to or  
13 modifications of the Settlement Agreement by an express written instrument signed by counsel  
14 for all Parties or their successors-in-interest. Such amendments or modifications shall be  
15 consistent with this Order and Judgment and cannot limit the rights of Participating Class  
16 Members under the Settlement Agreement.

17 18. Final Accounting and Compliance. The Court sets a final accounting and  
18 compliance date for April 11, 2023 at 11:00 a.m. in Department 7. Within five (5) court days  
19 before this hearing, Plaintiff shall file a status report regarding compliance. Pursuant to Code of  
20 Civil Procedure section 384, the status report shall specify the total amount paid to Class  
21 Members and the residual of the unclaimed settlement funds that will be paid to the entity  
22 identified as the recipient within the Settlement Agreement (and paragraph 16 above), along with  
23 a proposed amended judgment to facilitate this payment.

24 19. Retention of Jurisdiction. The Court has jurisdiction to enter this Order and  
25 Judgment. This Court expressly retains jurisdiction for the administration, interpretation,  
26 effectuation, and/or enforcement of the Settlement and of this Order and Judgment, and for any  
27 other necessary purpose, including, without limitation:

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- 1 a. enforcing the terms and provisions of the Settlement and resolving any disputes,  
2 claims, or causes of action in the class action that, in whole or in part, are related  
3 to or arise out of the Settlement or this Order and Judgment;  
4 b. entering such additional orders as may be necessary or appropriate to protect or  
5 effectuate this Order and Judgment approving the Settlement, and permanently  
6 enjoining Plaintiff from initiating or pursuing related proceedings, or to ensure the  
7 fair and orderly administration of the Settlement; and  
8 c. entering any other necessary or appropriate orders to protect and effectuate this  
9 Court's retention of continuing jurisdiction.

10 The Motion for Final Approval of Class Action Settlement, Attorney Fee Award, Cost  
11 Award, and Class Representative Enhancement Payment is GRANTED. The Settlement  
12 Administrator is directed to carry out the terms of the Settlement Agreement forthwith.

13 THE PARTIES ARE HEREBY ORDERED TO COMPLY WITH THE TERMS OF  
14 THE SETTLEMENT AGREEMENT. PURSUANT TO CALIFORNIA RULES OF COURT  
15 3.769, THE COURT HEREBY ENTERS FINAL JUDGMENT BASED UPON THE TERMS  
16 OF THIS ORDER AND SETTLEMENT AGREEMENT AND, WITHOUT AFFECTING THE  
17 FINALITY OF THIS MATTER, RETAINS EXCLUSIVE AND CONTINUING  
18 JURISDICTION TO ENFORCE THIS ORDER, THE SETTLEMENT AGREEMENT, AND  
19 THE JUDGMENT THEREON.

20  
21 IT IS SO ORDERED.

22 09/12/2022

23 DATED: \_\_\_\_\_



A handwritten signature in black ink, appearing to read "Lawrence P. Riff", is written over a horizontal line.

Lawrence P. Riff / Judge

24 HONORABLE LAWRENCE P. RIFF  
25 SUPERIOR COURT JUDGE  
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On September 12, 2022, I served the foregoing document described as

|                         |                                          |
|-------------------------|------------------------------------------|
| for the following case: | <b>Jimenez v. Makita U.S.A., Inc.</b>    |
| LWDA/Court Case No.:    | <b>LWDA-CM-791526-20</b>                 |
|                         | <b>Court Case No.: 20STCV21732</b>       |
|                         | <b>Los Angeles County Superior Court</b> |

**State of California  
Labor & Workforce Development Agency  
800 Capitol Mall, MIC-55  
Sacramento, California 95814**

Pursuant to California Senate Bill No. 836, I caused the documents described above to be electronically submitted by and through the procedure stated on the website of the State of California Labor and Workforce Development Agency.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

*An Am*

## PROOF OF SERVICE