

06/22/2023

David W. Slayton, Executive Officer / Clerk of Court

By: R. Aspiras Deputy

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

EFRAIN PEREZ, individually, and on behalf
of other members of the general public
similarly situated and on behalf of aggrieved
employees pursuant to the Private Attorneys
General Act ("PAGA");

Plaintiff,

v.

ARJO INC. D/B/A ARJOHUNTLEIGH INC.,
a Delaware corporation; and DOES 1 through
100, inclusive;

Defendants.

Case No.: 22STCV01261

Assigned for All Purposes to:
Honorable William F. Highberger
Department 10

CLASS ACTION

**PROPOSED ORDER OF FINAL
APPROVAL AND JUDGMENT**

Hearing Date: June 22, 2023

Hearing Time: 11:00 a.m.

Hearing Place: Department 10

Complaint Filed: January 12, 2022

Trial Date: None Set

1 The Court, having read the papers filed regarding Plaintiff Efrain Perez’s (“Plaintiff”)
2 Motion for Final Approval of Class Action Settlement, and considering the papers submitted in
3 support of the motion, including the Class Action and PAGA Settlement Agreement and Class
4 Notice (“Settlement Agreement,” “Settlement,” or “Agreement”), hereby **FINDS AND**
5 **ORDERS:**

6 Plaintiff and Defendant Arjo Inc. (“Defendant”) entered the Settlement Agreement on or
7 about January of 2023 to settle this lawsuit.

8 The Court entered an order dated February 2, 2023 preliminarily approving the settlement
9 of this lawsuit (“Preliminary Approval Order”), consistent with the Code of Civil Procedure
10 section 382 and California Rule of Court 3.769, ordering notice to be sent to Class Members,
11 providing Class Members with an opportunity to object to the Settlement or exclude themselves
12 from the Class, and scheduling a Final Approval Hearing.

13 The Court held a Final Approval Hearing on June 22, 2023 to determine whether to give
14 final approval to the Settlement of this lawsuit.

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

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

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1 3. Final Class Certification. The Court finds the Class satisfies all applicable
2 requirements of Code of Civil Procedure section 382, California Rule of Court 3.769, and due
3 process. The Court certifies the Class consisting of all persons employed by Defendant in
4 California and classified as an hourly, non-exempt employee who worked for Defendant during
5 the period from July 16, 2017 to October 22, 2022 (“Class,” “Class Members,” and “Class
6 Period”). There are one hundred thirty-three (133) Class Member who did not submit valid and
7 timely Requests for Exclusion from the Settlement (“Participating Class Members”).¹

8 4. Adequacy of Representation. Class Counsel fully and adequately represented the
9 Class for the purposes of entering and implementing the Settlement and satisfied the requirements
10 of Code of Civil Procedure section 382.

11 5. Class Notice. The Court finds the Court Approved Notice of Class Action
12 Settlement and Hearing Date for Final Court Approval (“Class Notice”) and its distribution to
13 Class Members were implemented pursuant to the Settlement and this Court’s Preliminary
14 Approval Order. The Court also finds the Class Notice:

15 a. constitutes notice reasonably calculated to apprise Class Members of: (i)
16 pendency of this lawsuit; (ii) material terms and provisions of the Settlement Agreement and their
17 rights; (iii) their right to object to any aspect of the Settlement Agreement; (iv) their right to
18 exclude themselves from the Settlement Agreement; (v) their right to receive settlement
19 payments; (vi) their right to appear at the Final Approval Hearing; and (vii) binding effect of the
20 orders and judgment in this lawsuit on all Participating Class Members;

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

23 c. constitutes the best practicable notice to Class Members under the
24 circumstances of this lawsuit; and

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

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27 ¹ The Class Data contained information for one hundred thirty-four (134) Class Members,
28 and the Administrator received one (1) request for exclusion. Thus, there are one hundred
thirty-three (133) Participating Class Members.

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

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

17 8. Enforcement of Settlement. Nothing in this Order and Judgment shall preclude
18 any action to enforce the terms and provisions of the Settlement Agreement.

19 9. Release by Participating Class Members Who Are Not Aggrieved Employees.
20 Effective on the date when Arjo fully funds the entire Gross Settlement Amount and funds all
21 employer payroll taxes owed on the Wage Portion of the Individual Class Payments, all
22 Participating Class Members, on behalf of themselves and their respective former and present
23 representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released
24 Parties from the Released Class Claims.

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1 a. Release by Non-Participating Class Members Who Are Aggrieved Employees.

2 Effective on the date when Arjo fully funds the entire Gross Settlement Amount
3 and funds all employer payroll taxes owed on the Wage Portion of the Individual
4 Class Payments, all Non-Participating Class Members who are Aggrieved
5 Employees are deemed to release, on behalf of themselves and their respective
6 former and present representatives, agents, attorneys, heirs, administrators,
7 successors, and assigns, the Released Parties from the Released PAGA Claims.

8 b. Plaintiff's Release. Effective on the date when Arjo fully funds the entire Gross
9 Settlement Amount and funds all employer payroll taxes owed on the Wage
10 Portion of the Individual Class Payments, Plaintiff and his or her respective former
11 and present spouses, representatives, agents, attorneys, heirs, administrators,
12 successors, and assigns generally, release and discharge Released Parties from all
13 claims, transactions, or occurrences. Plaintiff also expressly waives and
14 relinquishes the provisions, rights, and benefits, if any, of section 1542 of the Civil
15 Code.

16 c. Released Parties. The Released Parties include Defendant and all of its past,
17 present, and/or future owners, officers, directors, shareholders, members,
18 employees, agents, principals, heirs, representatives, accountants, auditors, assigns,
19 attorneys, consultants, insurers, reinsurers, parent companies, and their respective
20 successors and predecessors in interest, assigns, subsidiaries, joint ventures,
21 parents and affiliates, if any.

22 10. Class Representative Service Payment. The Court finds the Class Representative
23 Service Payment of \$10,000, to be paid by Defendant to Plaintiff out of the Gross Settlement
24 Amount, to be reasonable and appropriate. Class Representative Service Payment is to be paid
25 pursuant to the terms and provisions set forth in the Agreement.

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

7 b. The Court reviewed Plaintiff's declaration outlining his involvement. Given the
8 risks inherent in the services as the class representative, duration of the case and
9 time involved, and benefits created for the Class, the Court approves the payment
10 of the Class Representative Service Payment of \$10,000 to Plaintiff.

11 11. Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment.

12 The Court finds the Class Counsel Fees Payment of \$385,000, to be paid out of the Gross
13 Settlement Amount by Defendant to Class Counsel, to be reasonable and appropriate. In addition,
14 the Court finds the Class Counsel Litigation Expenses Payment as reimbursement for actual
15 litigation costs incurred of \$12,697.77, to be paid by Defendant to Class Counsel out of the Gross
16 Settlement Amount, to be reasonable and appropriate. Such fees and costs are to be paid pursuant
17 to the terms and provisions set forth in the Settlement Agreement. Defendant shall not be required
18 to pay for any other attorneys' fees and expenses, costs, or disbursements incurred by Class
19 Counsel or any other counsel representing Plaintiff or Class Members. Defendant shall also not be
20 required to pay for any other attorneys' fees and expenses, costs, or disbursements incurred by
21 Plaintiff or Class Members in connection with or related in any manner to this lawsuit, Settlement
22 Agreement, settlement administration, and/or Released Class Claims and Released PAGA Claims.

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- 1 a. The Court has an independent right and responsibility to review the Class Counsel
2 Fees Payment 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 Class Counsel Fees Payment of \$385,000 is thirty-five percent (35%)
5 of the common fund created for the benefit of the Class and is supported by use of
6 the percentage-fee method. (See *Laffitte v. Robert Half International, Inc.* (2016)
7 1 Cal.5th 480, 504.) Considering the exceptional results achieved, financial risk
8 undertaken, novel and difficult nature of this litigation, skills required, percentage
9 fees award in previous and other cases, and contingent fees charged in the
10 marketplace, the Court finds the Class Counsel Fees Payment is consistent with the
11 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 \$15,000 in litigation costs. The Court finds Class
15 Counsel expended \$12,697.77 in litigation costs, and such costs were reasonable.
16 Thus, the Court approves the payment of the Class Counsel Litigation Expenses
17 Payment of \$12,697.77 from the common fund for the reimbursement of Class
18 Counsel's litigation costs.

19 12. Administration Expenses Payment. The Court finds Administration Expenses
20 Payment of \$9,000, to be paid by Defendant to the Administrator out of the Gross Settlement
21 Amount, to be reasonable and appropriate. The Administration Expenses Payment are to be paid
22 pursuant to terms and provisions set forth in the Settlement Agreement.

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1 a. The Court reviewed the declaration of Andy Roberts from CPT Group, Inc., the
2 Court-approved Administrator. The Court finds notice was provided to the Class
3 pursuant to the Preliminary Approval Order, constitutes the best practicable notice
4 to the Class, and satisfied due process. Thus, the Court approves the payment of
5 the Administration Expenses Payment of \$9,000 for the Administrator's services in
6 administering the Settlement.

7 13. PAGA Penalties. The Court finds the PAGA Penalties of \$100,000, seventy-five
8 percent (75%) of which (\$75,000) will be paid to the California Labor and Workforce
9 Development Agency out of the Gross Settlement Amount and twenty-five percent (25%) of
10 which (\$25,000) will be allocated to Aggrieved Employees, on a pro rata basis, to be reasonable
11 and appropriate. The PAGA Penalties is to be paid pursuant to the terms and provisions set forth
12 in the Settlement Agreement.

13 14. Funding the Settlement. Defendant shall fully fund the Gross Settlement Amount
14 and fund the amounts necessary to fully pay Defendant's share of payroll taxes by transmitting
15 the funds to the Administrator no later than thirty (30) days after the Effective Date. Within
16 fourteen (14) days after Defendant funds the Gross Settlement Amount, the Administrator will
17 mail checks for all the settlement payments.

18 15. Fairness of the Settlement. As noted in the Preliminary Approval Order, the
19 Settlement is entitled to a presumption of fairness. In the moving papers, Plaintiff contends the
20 Settlement was the product of arm's-length negotiations following extensive litigation, discovery,
21 and exchange of documentation. The negotiations were facilitated with the aid of Jason Marsili,
22 an experienced and well-respected mediator.

23 a. The fairness of the Settlement is demonstrated by there being no objections to and
24 only one (1) request for exclusion from the Settlement. Class Members who
25 requested exclusion was Sean Ardinazo.

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b. The fairness of the Settlement is further illustrated by the gross *average* Individual Class Payment being approximately \$4,385.73, and the gross *highest* Individual Class Payment being about \$10,986.86.

16. Uncashed Checks. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. Uncashed settlement checks will be canceled and transmitted to the California Controller's Unclaimed Property Fund in the name of the Participating Class Members.

17. Modification of Settlement. The Participating Class Members are authorized, upon approval of the Court, to agree to and adopt amendments to or modifications of the Settlement by an express written instrument signed by all Parties or their representatives and approved by the Court. The Parties may mutually agree to adopt non-substantive amendments or modifications to the Settlement without seeking approval from the Court. Such amendments or modifications shall be consistent with this Order and Judgment and cannot limit the rights of Participating Class Members under the Settlement.

18. Final Accounting and Compliance. The Court sets a nonappearance case review at 9 am for February 23, 2024 in Department 10. Within five (5) court days before this hearing, Plaintiff shall file a compliance status report. Pursuant to Code of Civil Procedure section 384, the compliance status report shall specify the total amount paid to Participating Class Members and the residual of the unclaimed settlement funds that will be paid to the entity identified as the recipient of such funds in the Settlement Agreement.

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

a. enforcing the terms and provisions of the Settlement and resolving any disputes, claims, or causes of action in this lawsuit that, in whole or in part, are related to or arise out of the Settlement or this Order and Judgment;

- 1 b. entering such additional orders as may be necessary or appropriate to protect or
2 effectuate this Order and Judgment approving the Settlement, and permanently
3 enjoining Plaintiff from initiating or pursuing related proceedings, or to ensure the
4 fair and orderly administration of the Settlement; and
5 c. entering any other necessary or appropriate orders to protect and effectuate this
6 Court's retention of continuing jurisdiction.

7 The Motion for Final Approval of Class Action Settlement, Class Counsel Fees Payment,
8 Class Counsel Litigation Expenses Payment, and Class Representative Service Payment is
9 GRANTED. The Administrator is directed to carry out the terms of the Settlement Agreement
10 forthwith.

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

18 **IT IS SO ORDERED.**

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20 DATED: 06/22/2023



HONORABLE WILLIAM F. HIGHBERGER
SUPERIOR COURT JUDGE

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PROOF OF SERVICE
1013A(3) CCP

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 751 N. Fair Oaks Avenue, Suite 101, Pasadena, CA 91103 and my electronic service address is shanneyan@justicelawcorp.com

On June 22, 2023, I served the foregoing document described as

ORDER OF FINAL APPROVAL AND JUDGMENT

for the following case: **Perez v. Arjo Inc. d/b/a ArjoHuntleigh Inc.**
LWDA/Court Case No.: **LWDA Case No.: CM- 825922-21**
Court Case No.: 22STCV01261
Los Angeles County Superior Court

on interested parties in this action by electronically submitting as follows:

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

[X] BY ELECTRONIC SUBMISSION

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.

[X] STATE

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

Executed on June 22, 2023, at Pasadena, California.



Sophia Hanneyan