

1 **BLUMENTHAL NORDREHAUG BHOWMIK**
2 **DE BLOUW LLP**

3 Norman B. Blumenthal (State Bar #068687)

4 Kyle R. Nordrehaug (State Bar #205975)

5 Aparajit Bhowmik (State Bar #248066)

6 2255 Calle Clara

7 La Jolla, CA 92037

8 Telephone: (858)551-1223

9 Facsimile: (858) 551-1232

10 Website: www.bamlawca.com

11 Attorneys for Plaintiffs

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF SANTA CLARA

14 TAMIKA WALKER and SHANNON PEETE,
15 individuals, on behalf of themselves and on
16 behalf of all persons similarly situated,

17 Plaintiffs,

18 v.

19 DJO, LLC, a Limited Liability Company; and
20 DOES 1 through 50, inclusive,

21 Defendants.

CASE NO.: **22CV400335**

**[PROPOSED] FINAL APPROVAL
ORDER AND JUDGMENT**

Hearing Date: April 18, 2024 _____
Hearing Time: 1:30 p.m.

Judge: Hon. Charles F. Adams
Dept.: 7

Action Filed: July 13, 2022
Trial Date: Not set

1 The motion of Plaintiffs Tamika Walker and Shannon Peete (“Plaintiffs”) for an order
2 finally approving the class action settlement of this action between Plaintiff and Defendant DJO,
3 LLC (“Defendant”) came on for hearing on April 18, 2024 before the Honorable Charles F.
4 Adams.

5 The motion is GRANTED, as set forth below.

6 **I.**

7 **FINDINGS**

8 Based on the oral and written argument and evidence presented in connection with the
9 motion, the Court makes the following findings:

10 1. All terms used herein shall have the same meaning as defined in the Class Action
11 and PAGA Settlement Agreement (the “Agreement”).

12 2. This Court has jurisdiction over the subject matter of this litigation pending before
13 the California Superior Court for the County of Santa Clara, and over all Parties to this litigation,
14 including the Class.

15 3. Based on a review of the papers submitted by Plaintiff and a review of the
16 applicable law, the Court finds that the Gross Settlement Amount in the increased amount of
17 \$1,950,515.97 as a result of the escalator, and the terms set forth in the Agreement are fair,
18 reasonable, and adequate.

19 4. The Court further finds that the Settlement was the result of arm’s length
20 negotiations conducted after Class Counsel had adequately investigated the claims and became
21 familiar with the strengths and weaknesses of those claims. In particular, the amount the
22 Settlement, the significant risks relating to certification, liability, and damages issues, and the
23 assistance of an experienced mediator in the settlement process, among other factors, support the
24 Court’s conclusion that the Settlement is fair, reasonable, and adequate.

25 **Preliminary Approval of the Settlement**

26 5. On August 11, 2023, the Court granted preliminary approval of the Agreement. At
27 this same time, the Court approved conditional certification of the Class for settlement purposes
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1 only. The Court also approved the form and method of the Class Notice, appointed Plaintiffs as
2 the Class Representatives, appointed Norman B. Blumenthal, Kyle R. Nordrehaug, Aparajit
3 Bhowmik, Nicholas J. DeBlouw, and Christine T. LeVu of Blumenthal Nordrehaug Bhowmik De
4 Blouw LLP as Class Counsel for the Class, and appointed ILYM Group as the Administrator.

5 **Notice to the Class**

6 6. In compliance with the Preliminary Approval Order, the Class Notice was mailed
7 by first class mail to members of the Class at their last known addresses on or about January 11,
8 2024. Mailing of the Class Notice to their last known addresses was the best notice practicable
9 under the circumstances and was reasonably calculated to communicate actual notice of the
10 litigation and the proposed settlement to the Class. The Class Notice given to the Class Members
11 fully and accurately informed the Class Members of all material elements of the proposed
12 Settlement and of their opportunity to object to or comment thereon or to seek exclusion from the
13 Settlement; was valid, due, and sufficient notice to all Class Members; and complied fully with the
14 laws of the State of California, the United States Constitution, due process and other applicable
15 law. The Class Notice fairly and adequately described the Settlement and provided Class
16 Members adequate instructions and a variety of means to obtain additional information.

17 7. The Response Deadline for opting out of the Class or submitting written objections
18 to the Settlement was March 11, 2024, which Response Deadline was extended by 14 days in the
19 event of a re-mailing. There was an adequate interval between notice and the deadline to permit
20 Class Members to choose what to do and act on their decision. A full opportunity has been
21 afforded to the Class Members to participate in this hearing, and all Class Members and other
22 persons wishing to be heard have been heard. Class Members also have had a full and fair
23 opportunity to exclude themselves from the proposed Settlement and Class. Accordingly, the
24 Court determines that all Class Members who did not timely and properly submit a request for
25 exclusion in accordance with the Agreement are bound by the Settlement and this Final Approval
26 Order and Judgment.

1 **Fairness Of Settlement**

2 8. The Agreement is entitled to a presumption of fairness. *Dunk v. Ford Motor Co.*
3 48 Cal.App.4th 1794, 1801 (1996).

4 a. The settlement was reached through arm's-length bargaining between the
5 parties during an all-day mediation before Mark Rudy, a respected and experienced mediator of
6 wage and hour class actions. There has been no collusion between the parties in reaching the
7 proposed settlement.

8 b. Plaintiffs' investigation and discovery have been sufficient to allow the
9 Court and counsel to act intelligently.

10 c. Counsel for both Parties are experienced in similar employment class action
11 litigation. All counsel recommended approval of the Agreement.

12 d. [There were no objectors/the percentage of objectors and requests for
13 exclusion is small. No objections were received. No requests for exclusion were received].

14 9. The consideration to be given to the Class Members under the terms of the
15 Agreement is fair, reasonable and adequate considering the strengths and weaknesses of the claims
16 asserted in this action and is fair, reasonable and adequate compensation for the release of Class
17 Members' claims, given the uncertainties and significant risks of the litigation and the delays
18 which would ensue from continued prosecution of the action.

19 10. The Agreement is approved as fair, adequate and reasonable and in the best
20 interests of the Class Members.

21 **Attorneys' Fees and Costs**

22 11. A Class Counsel Fees Payment award of \$650,171.99, and Class Counsel
23 Litigation Expenses Payment award of \$21,500 are reasonable, in light of the contingent nature of
24 Class Counsel's fee, the hours worked by Class Counsel, and the results achieved by Class
25 Counsel. The requested award has been supported by Class Counsel's lodestar and billing
26 statement.

27 **Class Representative Service Payments**

1 12. The Agreement provides for a Class Representative Service Payments of not more
2 than \$10,000 to each of the Plaintiffs, subject to the Court's approval. The Court finds that the
3 Class Representative Service Payments in the amount of \$10,000 to each of the Plaintiffs is
4 reasonable in light of the risks and burdens undertaken by the Plaintiffs in the litigation, for the
5 time and effort in bringing and prosecuting this matter on behalf of the Class, and for the
6 execution of the release.

7 **Administration Expenses Payment**

8 13. The Administrator shall calculate and administer the payment to be made to the
9 Participating Class Members, transmit payment for attorneys' fees and costs to Class Counsel,
10 transmit the Class Representative Service Payments to the Plaintiffs, distribute the PAGA
11 Penalties, issue any required tax reporting forms, calculate withholdings and perform the other
12 remaining duties set forth in the Agreement. The Administrator has documented \$12,430.88 for
13 the Administration Expenses Payment, and this amount is reasonable in light of the work
14 performed by the Administrator.

15 **PAGA Penalties**

16 14. The PAGA Penalties amount of \$150,000 is approved and shall be paid out of the
17 Gross Settlement Amount, 75% of which shall be allocated and paid to the LWDA and 25% of
18 which shall be distributed to the Aggrieved Employees as Individual PAGA Payments. The
19 Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the
20 Aggrieved Employees' 25% share of PAGA Penalties (\$37,500) by the total number of PAGA
21 Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b)
22 multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. The Aggrieved
23 Employees are all individuals who currently or previously have worked for Defendant in
24 California, including both Defendant's employees and temporary workers employed by third-party
25 staffing agencies and assigned to work for Defendant, in non-exempt positions at any time during
26 the PAGA Period which is August 2, 2021 through July 11, 2023. All Aggrieved Employees will
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1 be sent their share of the PAGA Penalties and will be subject to the release of the Released PAGA
2 Claims as set forth below, whether or not they opt out of the Class Settlement.

3 **II.**

4 **ORDERS**

5 Based on the foregoing findings, and good cause appearing, IT IS HEREBY ORDERED:

6 1. The certification of the Class for the purposes of settlement is confirmed. The Class
7 is defined as follows:

8 All individuals who currently or previously have worked for Defendant in
9 California, including both Defendant's employees and temporary workers
10 employed by third-party staffing agencies and assigned to work for Defendant, in
11 non-exempt positions at any time during the Class Period (August 2, 2018 through
July 11, 2023).

12 2. All persons who meet the foregoing definition are members of the Class, except
13 for those individuals who timely submitted a valid request for exclusion ("opt out") from the
14 Class. There were no individuals who requested exclusion.

15 3. The Agreement is hereby finally approved as fair, reasonable, adequate, and in the
16 best interest of the Class.

17 4. Class Counsel are awarded Class Counsel Fees Payment in the amount of
18 \$650,171.99 and Class Counsel Litigation Expenses Payment in the amount of \$21,500. Class
19 Counsel shall not seek or obtain any other compensation or reimbursement from Defendant,
20 Plaintiffs or members of the Class.

21 5. The payment of the Class Representative Service Payments in the amount of
22 \$10,000 to each of the Plaintiffs is approved.

23 6. The payment of \$12,430.88 to the Administrator as the Administration Expenses
24 Payment is approved.

25 7. The PAGA Penalties are approved and shall be allocated as set forth in the
26 Agreement.
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1 8. A Participating Class Member must cash his or her Individual Class Payment check
2 within 180 days after the issuance of the checks. An Aggrieved Employee must cash his or her
3 Individual PAGA Payment check within 180 days after the issuance of the checks. If such checks
4 are not cashed within 120 days after the initial mailing of the checks, the Administrator will also
5 send the affected Participating Class Member and/or Aggrieved a reminder notice informing him
6 or her that unless the check is cashed in the next 60 days, it will expire and become non-
7 negotiable, and offer to replace the check if it was lost or misplaced but not cashed. If the check
8 remains uncashed by the expiration of the 180 period, the funds from such uncashed checks shall
9 be paid to the California Controller's Unclaimed Property Fund in the name of the individual who
10 failed to cash their check.

11 9. The Agreement and this Settlement are not an admission by Defendant, nor is this
12 Final Approval Order and Judgment a finding, of the validity of any claims in the Action or of any
13 wrongdoing by Defendant or that this Action is appropriate for class treatment (other than for
14 settlement purposes). Neither this Final Approval Order and Judgment, the Agreement, nor any
15 document referred to herein, nor any action taken to carry out the Agreement is, may be construed
16 as, or may be used as an admission by or against Defendant of any fault, wrongdoing or liability
17 whatsoever. The entering into or carrying out of the Agreement, and any negotiations or
18 proceedings related thereto, shall not in any event be construed as, or deemed to be evidence of, an
19 admission or concession with regard to the denials or defenses by Defendant. Notwithstanding
20 these restrictions, Defendant may file in the Action or in any other proceeding this Final Approval
21 Order and Judgment, the Agreement, or any other papers and records on file in the Action as
22 evidence of the Settlement to support a defense of res judicata, collateral estoppel, release, or other
23 theory of claim or issue preclusion or similar defense as to the Released Class Claims and the
24 Released PAGA Claims.

25 10. Notice of entry of this Final Approval Order and Judgment shall be given to all
26 Parties by Class Counsel on behalf of Plaintiffs and all Class Members. The Final Approval Order
27 and Judgment shall be posted on Class Counsel's website as set forth in the Class Notice to the
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1 Class. It shall not be necessary to send notice of entry of this Final Approval Order and Judgment
2 to individual Class Members.

3 11. If the Agreement does not become final and effective in accordance with the terms
4 of the Agreement, then this Final Approval Order and Judgment, and all orders entered in
5 connection herewith, shall be rendered null and void and shall be vacated, and the Parties shall
6 revert to their respective positions as of before entering into the Agreement, and expressly reserve
7 their respective rights regarding the prosecution and defense of this Action, including all available
8 defenses and affirmative defenses, and arguments that any claim in the Action could not be
9 certified as a class action and/or managed as a representative action.

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11 **IT IS HEREBY ORDERED, ADJUDICATED AND DECREED THAT:**

12 1. The Court hereby enters final judgment in this case in accordance with the terms of
13 the Settlement, the Preliminary Approval Order, and this Final Approval Order and Judgment.

14 2. Except as set forth in the Agreement and this Final Approval Order and Judgment,
15 Plaintiff, and all members of the Class, shall take nothing in the Action.

16 3. Pursuant to California Code of Civil Procedure section 664.6, and without affecting
17 the finality of this Judgment in any way, the Court shall retain jurisdiction to construe, interpret,
18 implement and enforce the Agreement, to hear and resolve any contested challenge to a claim for
19 settlement benefits, and to supervise and adjudicate any dispute arising from or in connection with
20 the distribution of settlement benefits.

21 4. The Parties are authorized to agree to and to adopt such amendments, modifications
22 and expansions of the Agreement and all exhibits attached thereto which are consistent with this
23 Final Approval Order and Judgment and do not limit the rights of the Parties or Class Members
24 under the Agreement, subject to Court approval.

25 5. Each party shall bear its own attorneys' fees and costs, except as otherwise
26 provided in the Agreement and in this Final Approval Order and Judgment.

1 6. As of the Effective Date and upon full finding of the Gross Settlement Amount and
2 all employer payroll taxes owed on the Wage Portion of the Individual Class Payments by
3 Defendant, all Participating Class Members, on behalf of themselves and their respective former
4 and present representatives, agents, attorneys, heirs, administrators, successors, and assigns,
5 hereby release all Released Parties from all Released Class Claims. The “Released Class Claims”
6 are all class claims pled, or that could have been pled, in the Operative Complaint and PAGA
7 Notice, based on the factual allegations contained therein which occurred during the Class Period.
8 Except as expressly set forth in this Agreement, Participating Class Members do not release any
9 other claims, including claims for vested benefits, wrongful termination, violation of the
10 California Fair Employment and Housing Act, unemployment insurance, disability, social
11 security, workers’ compensation, or claims based on facts occurring outside the Class Period. The
12 “Released Parties” are Defendant, its parent, subsidiaries, and each of their respective former and
13 present directors, officers, members, shareholders, owners, attorneys, insurers, predecessors,
14 successors, and assigns.

15 7. As of the Effective Date and upon full funding of the Gross Settlement Amount and
16 all employer payroll taxes owed on the Wage Portion of the Individual Class Payments by
17 Defendant, all Aggrieved Employees and the LWDA are deemed to release, on behalf of
18 themselves and their respective former and present representatives, agents, attorneys, heirs,
19 administrators, successors, and assigns, all Released Parties from all Released PAGA Claims. The
20 “Released PAGA Claims” are all PAGA claims pled, or that could have been pled, in the
21 Operative Complaint and PAGA Notice, based on the factual allegations contained therein which
22 occurred during the PAGA Period as to the Aggrieved Employees. The Released PAGA Claims
23 do not include other underlying wage and hour claims, claims for wrongful termination,
24 discrimination, unemployment insurance, disability and worker’s compensation, or PAGA claims
25 outside of the PAGA Period.

26 8. As of the Effective Date and upon full funding of the Gross Settlement Amount and
27 all employer payroll taxes owed on the Wage Portion of the Individual Class Payments by
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1 Defendant, Plaintiffs and their respective former and present spouses, representatives, agents,
2 attorneys, heirs, administrators, successors, and assigns generally, release, waive, and discharge
3 Released Parties from any and all claims as set forth fully in the Agreement.

4 **LET JUDGMENT BE FORTHWITH ENTERED ACCORDINGLY. IT IS SO ORDERED.**

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6 Dated: _____

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HON. CHARLES F. ADAMS
JUDGE, SUPERIOR COURT OF CALIFORNIA

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FINAL APPROVAL ORDER AND JUDGMENT