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13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **IN AND FOR THE COUNTY OF SANTA CLARA**

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

19 Plaintiffs,

20 vs.

21 DJO, LLC, a Limited Liability Company;
22 and DOES 1 through 50, inclusive,

23 Defendants.

Case No. 22CV400335

**DECLARATION OF KYLE NORDREHAUG
IN SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF CLASS
SETTLEMENT**

Hearing Date: August 10, 2023
Hearing Time: 1:30 p.m.

Judge: Hon. Sunil R. Kulkarni
Dept: 1

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

1 I, Kyle Nordrehaug, declare as follows:

2 1. I am a partner of the law firm of Blumenthal Nordrehaug Bhowmik De Blouw LLP,
3 counsel of record for Plaintiffs Tamika Walker and Shannon Peete (“Plaintiffs”) in this matter. As
4 such, I am fully familiar with the facts, pleadings and history of this matter. The following facts are
5 within my own personal knowledge, and if called as a witness, I could testify competently to the
6 matters stated herein.

7 2. This declaration is being submitted in support of Plaintiffs’ unopposed motion for
8 preliminary approval of the proposed class action settlement with Defendant DJO, LLC
9 (“Defendant”), which motion seeks entry of an order: (1) preliminarily approving the proposed
10 settlement of this class action with Defendant; (2) for settlement purposes only, conditionally
11 certifying the Class, which is comprised of “all individuals who currently or previously have
12 worked for Defendant in California, including both Defendant's employees and temporary workers
13 employed by third-party staffing agencies and assigned to work for Defendant, in non-exempt
14 positions at any time during the Class Period” of August 2, 2018 to July 11, 2023; (3) provisionally
15 appointing Plaintiffs as the representatives of the Class; (4) provisionally appointing Norman B.
16 Blumenthal, Kyle R. Nordrehaug, Aparajit Bhowmik, Nicholas J. DeBlouw, and Christine T. LeVu
17 of Blumenthal Nordrehaug Bhowmik De Blouw LLP as Class Counsel for the Class; (5) approving
18 the form and method for providing class-wide notice; (6) directing that notice of the proposed
19 settlement be given to the Class; (7) appointing ILYM Group as the Administrator; and
20 (8) scheduling a final approval hearing date proposed for January 18, 2024 to consider Plaintiffs’
21 motion for final approval of the settlement and entry of the Judgment, and Plaintiffs’ motion for
22 approval of attorneys' fees and expenses. Attached hereto as Exhibit #1 is a copy of the fully
23 executed Class Action and PAGA Settlement Agreement (“Agreement”) along with exhibits
24 thereto. The form of the Agreement is based upon the Los Angeles County Superior Court model
25 form for a class and PAGA settlement. This Declaration incorporates by reference the definitions in
26 the Agreement, and all terms defined therein shall have the same meaning as set forth in the
27 Agreement.

1 Fairness of Settlement

2 3. As consideration for this Settlement, the Gross Settlement Amount is One Million
3 Five Hundred Thousand Dollars (\$1,500,000) to be paid by Defendant, as set forth in the
4 Agreement. The Gross Settlement Amount will settle all issues pending in the Action between the
5 Parties and will be made in settlement of the Released Class Claims. The Gross Settlement Amount
6 includes all payments of Individual Class Payments to the Participating Class Members,
7 Administration Expenses Payment, Class Counsel Fees Payment, Class Counsel Litigation
8 Expenses Payment, Class Representative Service Payments, and the PAGA Penalties. The Gross
9 Settlement Amount does not include the employer's share of payroll taxes which will be separately
10 paid by Defendant. The Settlement is all-in with no reversion to Defendant and no need to submit a
11 claim form.

12 4. The relief provided in the Settlement will benefit all members of the Class. The
13 Settlement does not grant preferential treatment to Plaintiffs or segments of the Class in any way.
14 Payments to the Class Members are all determined under a neutral methodology. Each
15 Participating Class Member will receive the same opportunity to participate in and receive payment
16 through a neutral formula that is based upon the Workweeks worked by that individual.

17 5. On February 2, 2023, the Parties participated in an all-day mediation session
18 presided over by Mark Rudy, Esq., a respected and experienced mediator of wage and hour class
19 actions. In preparation for the mediation, Defendant provided Class Counsel with necessary
20 information for the members of the Class, including payroll data and information concerning the
21 composition of the Class. Plaintiffs analyzed the data with the assistance of damages expert, Berger
22 Consulting, and prepared and submitted a mediation brief and damage valuation to the Mediator.
23 Following this all-day mediation, the Parties agreed to this Settlement based upon the Mediator's
24 proposal, which was memorialized in the form of a Memorandum of Understanding. The final
25 settlement terms were negotiated and set forth in the Agreement now presented for this Court's
26 approval. Importantly, Plaintiffs and Class Counsel believe that this Settlement is fair, reasonable
27 and adequate.

6. Based upon 458 Class Members who collectively worked and estimated 37,000 Workweeks (Agreement at ¶4.1), the Gross Settlement Amount provides a value of \$3,275 per Class Member and \$40 per Workweek and after deductions, the Net Settlement Amount provides an average recovery of \$1,732 per Class Member and a recovery of \$20.44 per Workweek. The calculations to compensate for the amount due to the Class Members at the time this Settlement was negotiated were calculated by Plaintiffs' expert, Berger Consulting, in advance of mediation. Class Counsel analyzed the data for putative class members and determined the potential maximum damages for the class claims. For the Class, the maximum value of the claim for unpaid overtime wages due to the alleged miscalculation of the regular rate was \$79,744, the maximum potential damages for underpaid meal period premiums were estimated to be \$83,359, the maximum potential rest period damages were estimated to be \$794,390 based upon one missed rest period per week, and the maximum potential damages for failure to provide expense reimbursement were calculated to be \$46,250. In total, the damages for the Class were calculated to have a maximum potential total value of \$1,003,743. In addition, Plaintiff calculated that the maximum value of the potential waiting time penalties were \$434,270, and the maximum value of the potential wage statement penalties were \$496,450.¹ Defendant vigorously disputed Plaintiffs' calculations and exposure theories. Consequently, the Gross Settlement Amount represents more than the potential maximum damages at issue for the Class in this case, assuming these amounts could all be proven in full at trial.² The above maximum calculations should then be adjusted in consideration for both the risk of class certification and the risk of establishing class-wide liability on all claims. Given the amount

¹ While Plaintiffs alleged claims for statutory penalties pursuant to Labor Code Sections 203 and 226, at mediation Plaintiffs recognized that these claims were subject to additional, separate defenses asserted by Defendant, including, a good faith dispute defense as to whether any premium wages for meal or rest periods or other wages were owed given Defendant's position that Plaintiffs and Class Members were properly compensated. *See Nordstrom Commission Cases*, 186 Cal. App. 4th 576, 584 (2010) ("There is no willful failure to pay wages if the employer and employee have a good faith dispute as to whether and when the wages were due.").

² Because the PAGA claim does not provide a recovery to the Class, Plaintiffs did not include the PAGA claim in this discussion of the class claim valuation. The PAGA claim is addressed in below at ¶ 33.

1 of the Settlement as compared to the potential value of the claims, the Settlement is most certainly
2 fair and reasonable.

3
4 Procedural History of the Litigation

5 7. On May 19, 2022, Plaintiffs filed with the LWDA and served on Defendant a
6 notice under Labor Code section 2699.3 identifying the alleged Labor Code violations to recover
7 civil penalties on behalf of Aggrieved Employees for various Labor Code violations ("PAGA
8 Notice"). A true and correct copy of the PAGA Notice is attached hereto as Exhibit #3. On July
9 13, 2022, Plaintiffs filed a complaint against Defendant in the Superior Court of the State of
10 California, County of Santa Clara ("Class Action") (Case No. 22CV400335). This class action
11 Complaint asserted class claims against Defendant for: (1) unfair competition in violation of Cal.
12 Bus & Prof. Code §§ 17200, et seq.; (2) failure to pay minimum wages in violation of California
13 Labor Code §§ 1194, 1197 & 1197.1; (3) failure to pay overtime wages in violation of California
14 Labor Code §§ 510, 1194 & 1198; (4) failure to provide required meal periods in violation of
15 California Labor Code §§ 226.7 and 512; (5) failure to provide required rest periods in violation of
16 Cal. Labor Code §§ 226.7 and 512; (6) failure to provide accurate itemized wage statements in
17 violation of California Labor Code § 226; (7) failure to reimburse employees for required expenses
18 in violation of California Labor Code § 2802; (8) failed to provide wages when due in violation of
19 California Labor Code §§ 201, 202 and 203; and, (9) failed to pay sick pay wages in violation of
20 California Labor Code §§ 201-204, 203, 246.

21 8. On August 2, 2022, a Representative Action Complaint against Defendant in the
22 Superior Court of the State of California, County of Santa Clara, asserting a single cause of action
23 for violation of the Labor Code Private Attorneys General Act, Cal. Labor Code §§ 2698, et seq.
24 ("PAGA"), Case No. 22CV401621 ("PAGA Action") based upon the same alleged violations as in
25 the class action.

26 9. On May 11, 2023, Plaintiffs filed a First Amended Class and Representative Action
27
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1 Complaint which asserted together all claims alleged in the Class Action and PAGA Action. The
2 First Amended Class and Representative Action Complaint is the Operative Complaint in the
3 Action.

4 10. Over the course of litigation, the Parties engaged in the investigation of the claims,
5 including production of documents, class data, and other information, allowing for the full and
6 complete analysis of liabilities and defenses to the claims in the Action. Plaintiffs performed
7 extensive informal discovery, which included the production and analysis of hundreds of pages of
8 documents. The information for mediation obtained by Plaintiff included: (1) data concerning the
9 class composition; (2) payroll data for the class and time punch data covering 68,960 shifts; (3)
10 Defendant's wage and hour policies and job descriptions; (4) the employment file for the Plaintiffs;
11 and, (5) samples of wage statements provided by Defendant. As such, Class Counsel received the
12 data and information for the Class, which was sufficient for Plaintiffs' expert to prepare the
13 valuations of the claims for the Class.

14 11. Class Counsel has extensive experience in litigating wage and hour class actions in
15 California. The Parties have vigorously litigated the Action since inception. During the course of
16 litigation, the Parties each performed analysis of the merits and value of the claims. Plaintiffs and
17 Defendant have engaged in substantial research and investigation in connection with the Action.
18 Class Counsel has thoroughly analyzed the value of the claims during the prosecution of this Action
19 and utilized an expert to perform an analysis of the data and valuation of the claims.

20 12. Plaintiffs and Defendant agreed to discuss resolution of the Action through a
21 mediation. Prior to mediation, the Parties engaged in the above investigation and the exchange of
22 documents and information in connection with the Action. On February 2, 2023, the Parties
23 participated in an all-day mediation presided over by Mark Rudy, a respected and experienced
24 mediator of wage and hour class actions. Following the mediation, each side, represented by its
25 respective counsel, were able to agree to settle the Action based upon a mediator's proposal which
26 was memorialized in a memorandum of understanding. The Parties then negotiated the final terms
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1 of the settlement as set forth in the Agreement. At all times, the negotiations were arm's length and
2 contentious.

3 13. Although a settlement has been reached, Defendant denies any liability or
4 wrongdoing of any kind associated with the claims alleged in the Actions and further deny that, for
5 any purpose other than settlement, the Action is appropriate for class and/or representative
6 treatment. Defendant contends, among other things, that it has properly compensated the Class
7 Members and complied at all times with the California Labor Code, applicable Wage Order, and all
8 other laws and regulations. Further, Defendant contends that class certification is inappropriate for
9 any reason other than for settlement. Plaintiffs contend that Defendant violated California wage
10 and hour laws. Plaintiffs further contend that the Action is appropriate for class certification on the
11 basis that the claims meet the requisites for class certification. Without admitting that class
12 certification is proper, Defendant has stipulated that the above Class may be certified for settlement
13 purposes only. (Agreement at ¶ 2.8.) The Parties agree that certification for settlement purposes is
14 not an admission that class certification is proper. Further, the Agreement is not admissible in this
15 or any other proceeding as evidence that the Class could be certified absent a settlement. Solely for
16 purposes of settling the Action, the Parties stipulate and agree that the requisites for establishing
17 class certification with respect to the Class are satisfied.

18 14. Class Counsel has conducted a thorough investigation into the facts of the class
19 action. Over the course of more than a year, Class Counsel diligently evaluated the Class
20 Members' claims against Defendant. Prior to the settlement negotiations, counsel for Defendant
21 provided Class Counsel with all necessary information for the Class and the claims alleged. In
22 addition, Class Counsel previously negotiated settlements with other employers in actions involving
23 nearly identical issues and analogous defenses. Based on the foregoing data and their own
24 independent investigation, evaluation and experience, Class Counsel believes that the settlement
25 with Defendant on the terms set forth in the Agreement is fair, reasonable, and adequate and is in
26 the best interest of the Class in light of all known facts and circumstances, including the risk of
27 significant delay, defenses asserted by Defendant, and potential appellate issues.

1
2 Settlement Terms and Plan of Allocation

3 15. The Gross Settlement Amount is One Million Five Hundred Thousand Dollars
4 (\$1,500,000). (Agreement at ¶ 1.22.) Under the Settlement, the Gross Settlement Amount consists
5 of the following elements: (1) payment of the Individual Class Payments to the Participating Class
6 Members; (2) Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment; (3)
7 Administration Expenses Payment; (4) the Class Representative Service Payments to Plaintiffs; and
8 (5) the PAGA Penalties payment. (Agreement at ¶ 1.22.) The Gross Settlement Amount does not
9 include Defendant's share of payroll taxes. (Agreement at ¶ 3.1.) The Gross Settlement Amount
10 shall be all-in with no reversion to Defendant. (Agreement at ¶ 3.1.)

11 16. Within thirty (30) days after Final Approval of the Settlement, Defendant shall
12 deposit the Gross Settlement Amount with the Administrator. (Agreement at ¶ 4.3.) The
13 distribution of Individual Class Payments to Participating Class Members along with the other
14 Court-approved distributions shall be made by the Administrator within fourteen (14) days after
15 Defendant fully funds the Gross Settlement Amount. (Agreement at ¶ 5.1.)

16 17. The amount remaining in the Gross Settlement Amount after the deduction of
17 Court-approved amounts for Individual PAGA Payments, the LWDA PAGA Payment, Class
18 Representative Service Payments, Class Counsel Fees Payment, Class Counsel Litigation Expenses
19 Payment, and the Administration Expenses Payment (called the "Net Settlement Amount") shall be
20 allocated to Class Members as their Individual Class Payments. (Agreement at ¶¶ 1.28 and 3.2.)
21 From the Net Settlement Amount, the Individual Class Payment for each Participating Class
22 Member will be calculated by (a) dividing the Net Settlement Amount by the total number of
23 Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying
24 the result by each Participating Class Member's Workweeks. (Agreement at ¶ 3.2(e).) Workweeks
25 will initially be based on Defendant's records; however, Class Members will have the right to
26 challenge the number of Workweeks.

27 18. Class Members may choose to opt-out of the Settlement by following the directions
28

1 in the Class Notice. (Agreement at ¶ 8.5, Ex. A.) All Class Members who do not “opt out” will be
2 deemed Participating Class Members who will be bound by the Settlement and will be entitled to
3 receive an Individual Class Payment. (Agreement at ¶ 8.5(c).) All Aggrieved Employees,
4 including those who submit an opt-out request, will still be paid their allocation of the PAGA
5 Penalties and will remain subject to the release of the Released PAGA Claims regardless of their
6 request for exclusion. (Agreement at ¶¶ 6.3 and 8.5(d).) Finally, the Class Notice will advise the
7 Class Members of their right to object to the Settlement and/or dispute their Workweeks.
8 (Agreement at ¶¶ 8.6 and 8.7, Ex. A.)

9 19. A Participating Class Member must cash his or her Individual Class Payment check
10 within 180 days after it is mailed. (Agreement at ¶ 5.2.) Any settlement checks not cashed within
11 180 days will be voided and any funds represented by such checks to the California Controller's
12 Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue"
13 subject to the requirements of California Code of Civil Procedure Section 384 (b). (Agreement at ¶
14 5.4.)

15 20. Subject to Court approval, the Parties have agreed on ILYM Group to administer the
16 settlement in this action ("Administrator"). (Agreement at ¶ 1.2.) The Administrator will be paid
17 for settlement administration in an amount not to exceed \$15,000. (Agreement at ¶ 3.2(c).)

18 21. Subject to Court approval, the Agreement provides for Class Counsel to be awarded
19 a sum not to exceed one-third of the Gross Settlement Amount, as the Class Counsel Fees Payment.
20 (Agreement at ¶ 3.2(b).) Class Counsel will also be allowed to apply separately for an award of
21 Class Counsel Litigation Expenses Payment in an amount not to exceed \$21,500. (Agreement at ¶
22 3.2(b).) Subject to Court approval, the Agreement provides for a payment of no more than \$10,00
23 each to the Plaintiffs as the Class Representative Service Payments. (Agreement at ¶ 3.2(a).)

24 22. Subject to Court approval, One Hundred Fifty Thousand Dollars (\$150,000) will be
25 paid from the Gross Settlement Amount for PAGA penalties under the California Private Attorneys
26 General Act, Cal. Labor Code Section 2698, *et seq.* (“PAGA”). Pursuant to the express
27 requirements of Labor Code § 2699(i), the PAGA Payment shall be allocated as follows: 75%
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1 (\$112,500) shall be allocated to the Labor Workforce Development Agency ("LWDA") as its share
2 of the civil penalties and 25% (\$37,500) allocated to the Individual PAGA Payments to the
3 Aggrieved Employees based on the number of their respective PAGA Pay Periods. (Agreement at ¶
4 3.2(d).) As set forth in the accompanying proof of service, the LWDA has been served with this
5 motion and the Agreement.

6
7 Risks of Continued Litigation and Standards for Approval

8 23. Plaintiffs and Class Counsel recognize the expense and length of continuing to
9 litigate and trying this Action against Defendant and then litigating possible appeals which could
10 take several years. Class Counsel has also taken into account the uncertain outcome and risk of
11 litigation, especially in complex class actions such as this Action. Class Counsel is also mindful of
12 and recognizes the inherent problems of proof under, and alleged defenses to, the claims asserted in
13 the Action. Based upon their evaluation, Plaintiffs and Class Counsel have determined that the
14 Settlement set forth in the Agreement is in the best interest of the Class Members.

15 24. Here, a number of defenses asserted by Defendant present serious threats to the
16 claims of the Plaintiffs and the other Class Members. Defendant asserted that Defendant's practices
17 complied with all applicable Labor laws. Defendant argued that all work time was properly
18 recorded and paid for and that there was no miscalculation of the regular rate. Defendant contends
19 that its meal and rest period policies fully complied with California law, and Defendant did not fail
20 to provide the opportunity for legally required rest breaks. As to meal periods, Defendant
21 established that it paid meal period premiums for any missed meal periods, and Defendant
22 contended that it did not underpay such meal period premiums paid to the Class. As to expense
23 reimbursement, Defendant contended that it did not fail to provide reimbursement for necessary
24 business expenses and that claimed expenses were incurred voluntarily and/or for the convenience
25 of employees and is therefore not required reimbursement. Defendant argued that the decisions in
26 *Brinker v. Superior Court*, 53 Cal. 4th 1004 (2012), *Lockheed Martin Corp. v. Superior Ct.*, 29 Cal.
27 4th 1096, 1108 (2003), and *Salazar v. See's Candy Shops Inc.*, 64 Cal.App.5th 85 (2021), weakened
28

1 Plaintiffs' claims, on liability, value, and class certifiability as to the meal and rest period claims.
2 Defendant also argues that based on its facially lawful practices, it acted in good faith and without
3 willfulness, which if accepted would negate the claims for waiting time penalties and/or inaccurate
4 wage statements. If successful, Defendant's defenses could eliminate or substantially reduce any
5 recovery to the Class. While Plaintiffs believes that these defenses could be overcome, Defendant
6 maintains these defenses have merit and therefore present a serious risk to recovery by the Class.

7 25. There was also a significant risk that, if the Action was not settled, Plaintiffs would
8 be unable to obtain class certification and thereby not recover on behalf of any employees other
9 than himself. Defendant argued that the individual experience of each putative class member varied
10 with respect to the claims. Defendant could also contest class certification by arguing injury and
11 good faith were case-by-case determinations that precluded class certification. Plaintiffs are aware
12 of other cases where class certification of similar claims was denied. *See e.g. Cacho v. Eurostar,*
13 *Inc.*, 43 Cal. App. 5th 885 (2019) (denying certification of rest break claims). Finally, even if class
14 certification was successful, as demonstrated by the California Supreme Court decision in *Duran v.*
15 *U.S. Bank National Assn.*, 59 Cal. 4th 1 (2014), there are significant hurdles to overcome for a class
16 wide recovery even where the class has been certified. While other cases have approved class
17 certification in wage and hour claims, class certification in this action would have been hotly
18 disputed and was by no means a foregone conclusion.

19 26. This settlement is therefore certainly entitled to preliminary approval. Were this
20 case to go to trial, the Plaintiffs and the other class members would need to prove, among other
21 things, that wages were owed on a class-wide basis. This was and is a substantial risk.

22 27. Plaintiffs will apply to the Court for Class Representative Service Payments in
23 consideration for their service and for the risks undertaken on behalf of the class. (Agreement at ¶
24 3.2(a).) Plaintiffs performed their duties admirably by working with Class Counsel. Declarations
25 of the Plaintiffs are presented in support. For purposes of this preliminary approval stage, the
26 requested service award of \$10,000 is well within the accepted range of awards for purposes of
27 preliminary approval. *See e.g. Mathein v. Pier 1 Imps. (U.S.), Inc.*, 2018 U.S. Dist. LEXIS 71386
28

1 (E.D. Cal. 2018) (awarding \$12,500 where average class member payment was \$351); *Holman v.*
2 *Experian Info. Solutions, Inc.*, 2014 U.S. Dist. LEXIS 173698 (N.D. Cal. 2014) (approving \$10,000
3 service award where class member recovery was \$375); *Rausch v. Hartford Fin. Servs. Grp.*, 2007
4 U.S. Dist. LEXIS 14740, 2007 WL 671334 (D. Or. 2007) (approving award of \$10,000 where class
5 member recoveries were as little as \$150); *Louie v. Kaiser Foundation Health Plan, Inc.*, 2008 WL
6 4473183, *7 (S.D.Cal. Oct. 06, 2008) (awarding \$25,000 service award to each of six plaintiffs in
7 overtime class action); *Glass v. UBS Fin. Servs.*, 2007 WL 221862, *16-17 (N.D.Cal. Jan. 27 2007)
8 (awarding \$25,000 service award in overtime class action and a pool of \$100,000 in enhancements
9). As explained in *Glass*, service awards are routinely awarded to class representatives to
10 compensate the employees for the time and effort expended on the case, for the risk of litigation, for
11 the fear of suing an employer and retaliation there from, and to serve as an incentive to vindicate the
12 statutory rights of all employees. 2007 WL 221862 at *16-17. Below, I provided a long list of
13 similar Court-approved service awards.

14 28. The stage of the proceedings at which this Settlement was reached also militates in
15 favor of preliminary approval and ultimately, final approval of the Settlement. Class Counsel has
16 conducted a thorough investigation into the facts of the class action. Class Counsel began
17 investigating the Class Members' claims before the Action was filed. Class Counsel engaged in an
18 investigation of the claims and conducted a review and analysis of the relevant documents and data.
19 Class Counsel was also experienced with the claims at issue here, as Class Counsel previously
20 litigated and settled similar claims in other actions. Accordingly, the agreement to settle did not
21 occur until Class Counsel possessed sufficient information to make an informed judgment regarding
22 the likelihood of success on the merits and the results that could be obtained through further
23 litigation.

24 29. Based on the foregoing data and their own independent investigation and evaluation,
25 Class Counsel is of the opinion that the Settlement with Defendant for the consideration and on the
26 terms set forth in the Agreement is fair, reasonable, and adequate and is in the best interest of the
27 Class in light of all known facts and circumstances, including the risk of significant delay, defenses
28

1 asserted by Defendant, and numerous potential appellate issues. There can be no doubt that
2 Counsel for both parties possessed sufficient information to make an informed judgment regarding
3 the likelihood of success on the merits and the results that could be obtained through further
4 litigation.

5
6 Class Certification Issues

7 30. Plaintiffs contend that the proposed settlement meets all of the requirements for class
8 certification under California Code of Civil Procedure § 382 as demonstrated below, and therefore,
9 the Court may appropriately approve the Class as defined in the Agreement. This Court should
10 conditionally certify the Class for settlement purposes only, defined as follows:

11 All individuals who currently or previously have worked for Defendant in California,
12 including both Defendant's employees and temporary workers employed by
13 third-party staffing agencies and assigned to work for Defendant, in non-exempt
positions at any time during the Class Period.

14 (Agreement at ¶ 1.5.)

15 The "Class Period" is from August 2, 2018 to July 11, 2023. (Agreement at ¶ 1.13.)

16 a. **Numerosity** - Here, Plaintiffs assert that the 458 individuals who comprise
17 the Class can be identified based on Defendant's records and are sufficiently numerous for class
18 certification.

19 b. **Common Issues Predominate** - Here, Plaintiff contends that common
20 questions of law and fact are present, and specifically the common questions of whether
21 Defendant's practices were lawful, whether Defendant properly calculated overtime wages, whether
22 Defendant properly paid meal period premiums, whether the Defendant failed to provide all legally
23 required rest periods to class members, whether Defendant failed to provide required expense
24 reimbursement, and whether Class Members are entitled to damages and penalties as a result of
25 these practices. Plaintiffs contend that certification of this Class is appropriate because Defendant
26 allegedly engaged in uniform practices with respect to the Class Members. As a result, these
27 common questions of liability could be answered on a class wide basis.

28 c. **Typicality** - In the instant case, Plaintiffs contend that there can be little

1 doubt that the typicality requirement is satisfied. The Plaintiffs worked for Defendant in a non-
2 exempt position during the Class Period. Plaintiffs contend that, like every other member of the
3 Class, they were subject to the same practices and policies of Defendant and was subject to the same
4 defenses. Thus, Plaintiffs assert that the claims of the Plaintiffs and the Class Members arise from
5 the same course of conduct by the Defendant, involve the same employment policies and practices
6 of Defendant, and are based on the same legal theories.

7 d. **Adequacy** - Plaintiffs contend that the Class Members are adequately
8 represented here because Plaintiffs and representing counsel (a) do not have any conflicts of interest
9 with other class members, and (b) will prosecute the case vigorously on behalf of the class. First,
10 Plaintiffs are well aware of their duties as the representatives of the Class and have actively
11 participated in the prosecution of this case to date. Plaintiffs effectively communicated with Class
12 Counsel, provided documents and information to Class Counsel, and participated in the
13 investigation and resolution of the Action. The personal involvement of the Plaintiffs was essential
14 to the prosecution of the Action and the monetary settlement reached. Second, Plaintiffs retained
15 competent counsel who are experienced in employment class actions and who have no conflicts.
16 Third, there is no antagonism between the interests of the Plaintiffs and those of the Class. Both the
17 Plaintiffs and the Class Members seek monetary relief under the same set of facts and legal theories.

18
19 31. Class Counsel's Adequacy of Representation and Absence of Conflict: Blumenthal
20 Nordrehaug Bhowmik De Blouw LLP is experienced in prosecuting class action lawsuits and can
21 competently represent the Class. Other lawyers at my firm and I have extensive class litigation
22 experience. We have handled a number of class actions and complex cases and have acted both as
23 counsel and as lead and co-lead counsel in a variety of these matters. We have successfully
24 prosecuted and obtained significant recoveries in numerous class action lawsuits and other lawsuits
25 involving complex issues of law and fact. My firm is particularly experienced in wage and hour
26 employment law class actions, including claims for misclassification, overtime, expense
27 reimbursement, unlawful deduction of wages, and missed rest and meal periods. Blumenthal
28 Nordrehaug Bhowmik De Blouw LLP has been involved as class counsel in over hundreds of wage

1 and hour class actions. Blumenthal Nordrehaug Bhowmik De Blouw LLP has been found to be
2 adequate counsel by the courts throughout California. We have been approved as experienced class
3 counsel by both state and federal courts in California in contested class certification proceedings. A
4 true and correct copy of the resume of my firm is attached hereto as Exhibit #2. The Class in this
5 settlement is defined as “all individuals who currently or previously have worked for Defendant in
6 California, including both Defendant’s employees and temporary workers employed by third-party
7 staffing agencies and assigned to work for Defendant, in non-exempt positions at any time during
8 the Class Period.” I have reviewed my firm’s cases and representation of other plaintiffs and there
9 is no conflict or representation which would prevent my firm from representing the interests of the
10 Class this case. My firm only represents employees, and not employers. My firm has never
11 represented Defendant nor any affiliate of the Defendant. My firm’s only interest in the subject
12 matter of this litigation is to ensure a recovery to the Class and to maximize that recovery. Finally,
13 our allegiance to the Class and the claims of the Class is not inconsistent with our allegiance to
14 pursue the claims on behalf of other employees and classes as the claims are all against different
15 and distinct employers. I can think of no conflict that would arise in our representation of the Class
16 and our adequate representation of the Class is evidenced by the successful prosecution of the class
17 claims to reach an excellent recovery for the Class. Moreover, neither the Plaintiffs nor Class
18 Counsel have any affiliation with the Administrator for this settlement. Thus, the adequacy
19 requirement for my firm is satisfied.

20 32. The Class Notice, drafted jointly and agreed upon by the Parties through their
21 respective counsel and to be approved by the Court, includes all relevant information. (See Exhibit
22 “A” to the Agreement.) The Class Notice will include a Spanish translation. (Agreement at ¶
23 1.11.) The Class Notice will include, among other information: (i) information regarding the Action;
24 (ii) the impact on the rights of the Class Members if they do not opt out, including a description of
25 the applicable release; (iii) information to the Class Members regarding how to opt out and how to
26 object to the Settlement; (iv) the estimated Individual Class Payment for each of the Class
27 Members; (iii) the amount of attorneys’ fees and expenses to be sought; (v) the amount of the
28 Plaintiffs’ service award request; and (vi) the anticipated expenses of the Administrator. The Class

1 Notice will state that the Class Members shall have sixty (60) days from the date that the Notice is
2 mailed to them (the "Response Deadline") to request exclusion (opt-out) or to submit an objection,
3 which Response Deadline shall be extended by 14 days in the event of a re-mailing. (Agreement at
4 ¶¶ 1.43, 8.5, 8.7.) Class Members shall be given the opportunity to object to the Settlement and/or
5 requests for attorneys' fees and expenses and to appear at the Final Approval Hearing. (Agreement
6 at ¶ 8.7.) Class Members who do not submit a timely and proper request to opt-out will
7 automatically receive a payment of their Individual Class Payment. This notice program was
8 designed to meaningfully reach the Class Members and it advises them of all pertinent information
9 concerning the Settlement.

10
11 33. The PAGA Claim -

12 a. **Approval of PAGA Settlements.** The decision in *O'Connor v. Uber*, 201
13 F.Supp.3d 1110, 1133 (N.D. Cal. 2016), and the LWDA's Response therein is illustrative. The
14 LWDA first states that "when viewing the monetary relief allocated to PAGA claims under a
15 settlement, the LWDA recognizes that the PAGA sum need not necessarily be viewed through the
16 same lens as the relief obtained by absent class members on other claims (i.e., the percentage of
17 recovery-to-exposure on the PAGA claims need not necessarily equal the percentage of recovery on
18 the other claims)." (LWDA Response at p.3). The LWDA also indicated that the payment of
19 money to the aggrieved employees furthers the purposes of PAGA and that the Court considers that
20 primary consideration. "The LWDA recognizes that this Court does not review the PAGA
21 allocation in isolation, but rather reviews the settlement as a whole, to determine whether it is
22 fundamentally fair, reasonable and adequate, with primary consideration for the interests of absent
23 class members." (LWDA Response at p.4).

24 b. **Valuation of the PAGA Claim.** For mediation, Plaintiff calculated the
25 value of the alleged PAGA claim as to Aggrieved Employees for civil penalties to be between
26 \$280,015 and \$560,300 for a single violation in every one of the estimated 5,603 pay periods at
27 issue in the PAGA Period, depending on whether the violation was \$50 per pay period as in the case
28 of Labor Code § 558(a)(1) or the standard amount of \$100 per pay period for violation of Labor

1 Code § 1198. This valuation assumed that PAGA civil penalties would be awarded at the maximum
2 rate per pay period but without stacking.³ The PAGA allocation in the Settlement is \$150,000.
3 This allocation is justified by several important considerations. First, the PAGA claim was subject
4 to the same risks as the underlying class claims. Second, Defendant asserted additional defenses to
5 the PAGA claim, not only as to liability but also as to the amount of the penalties. Defendant could
6 also argue that no penalties prior to the PAGA notification should be awarded, and I am aware of
7 one Court which has so ruled. These additional defenses present a risk to the PAGA claim and the
8 potential that some or all of the PAGA penalties sought may not be awarded. Second, in
9 *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504 (2018), the court affirmed a judgment which
10 only provided for a PAGA penalty of \$5 per violation. Therefore, at trial, any PAGA penalties
11 awarded could be significantly less than Plaintiffs' calculation even where Plaintiff prevailed on the
12 PAGA claim. Even if we assume that violations for all 5,603 pay periods were established, using
13 the valuation from *Carrington* results in a potential recovery of only \$28,015 under PAGA. This
14 means that the PAGA allocation in the Agreement is a reasonable percentage of this potential
15 PAGA recovery. Fourth, the interests of PAGA are also served by the Class recovery under the
16 reasoning of the LWDA in *O'Connor v. Uber*.

17 c. **Comparable PAGA Settlements.** In reaching the settlement of the PAGA
18 claim, Class Counsel was also aware of what allocations other Courts have approved for similar
19 PAGA settlements as compared to the total settlement amount. A class settlement that allocates
20 approximately 2% of the total settlement value to resolve the PAGA claims applicable to the class
21 is also supported by what has been approved in other wage-and-hour class settlements. Indeed,
22 Courts typically approve PAGA settlement amounts in the range of between 0.27 to 2 percent of the
23 total settlement. See *Davis v. Brown Shoe Co.*, 2015 U.S. Dist. LEXIS 149010 (E.D. Cal. 2015)
24 (PAGA Payment of \$5,000 in a \$1.5 million class settlement); *Zamora v. Ryder Integrated*

25
26 ³ Stacking is where more than one civil penalty is imposed in a pay period for the same conduct.
27 The valuation of between \$166,450 and \$332,900 is the civil penalty amount without stacking. If
28 stacking is permitted, then the valuation increases with each additional penalty added to each pay
period. Plaintiff, however, is not aware of any PAGA award which permitted stacking and in the
cases cited herein, only one penalty per pay period was assessed.

1 *Logistics, Inc.*, 2014 U.S. Dist. LEXIS 184096 (S.D. Cal. 2014) (\$7,500 payment to LWDA for
2 PAGA on a \$1.5 million class settlement); *Lusby v. Gamestop Inc.*, 2015 U.S. Dist. LEXIS 42637
3 (N.D. Cal. 2015) (PAGA Payment of \$5,000 in a \$500,000 class settlement); *Cruz v. Sky Chefs,*
4 *Inc.*, 2014 U.S. Dist Lexis 17693 (N.D. Cal. 2014) (approving payment of \$10,000 to the LWDA
5 for PAGA out of \$1,750,000 class settlement); *Chu v. Wells Fargo Investments, LLC*, 2011 WL
6 672645, *1 (N.D. Cal. 2011) (approving PAGA payment of \$7,500 to the LWDA out of \$6.9
7 million common-fund settlement); *Franco v. Ruiz Food Products, Inc.*, 2012 WL 5941801, *13
8 (E.D. Cal. 2012) (approving PAGA payment of \$7,500 to the LWDA out of \$2.5 million
9 common-fund settlement); *Hopson v. Hanesbrands Inc.*, 2009 WL 928133, *9 (N.D. Cal. 2009)
10 (approving PAGA allocation that was .49% of \$408,420.32 gross settlement); *Garcia v. Gordon*
11 *Trucking, Inc.*, 10-cv-00324-AWI-SKO, Dkt. 149-3, 165 (E.D. Cal.) (approving a class settlement
12 of \$3,700,000, with \$10,000 allocated to the PAGA claim); *McKenzie v. Federal Express Corp.*,
13 CV 10-02420 GAF (PLAx), Dkt. 139 & 141 (C.D. Cal.) (court approved a settlement in an amount
14 of \$8.25 million, with \$82,500 allotted to the PAGA claim); *DeStefan v Frito-Lay,*
15 8:10-cv-00112-DOC (C.D. Cal.) (court approved a class settlement of \$2 million, with \$10,000
16 allocated to PAGA); *Martino v. Ecolab Inc.*, No. 3:14CV04358 (N.D. Cal. 2017) (\$100,000 allotted
17 as PAGA penalties or 0.48% of \$21,000,000 settlement amount); *East v. Comprehensive*
18 *Educational Services Inc.*, Fresno Superior Court Case No. 11-CECG-04226 (2015) (\$10,000
19 allotted as PAGA penalties or 0.13% of \$7,595,846 settlement amount); *Bararsani v. Coldwell*
20 *Banker Residential Brokerage Company*, Los Angeles Superior Court Case No. BC495767 (2016)
21 (\$10,000 allotted as PAGA penalties or 0.22% of \$4,500,000 settlement amount); *Moppin v. Los*
22 *Robles Medical Center*, No. 5:15CV01551 (C.D. Cal. 2017) (\$15,000 allotted as PAGA penalties or
23 0.40% of \$3,775,000 settlement amount); *Scott-George v. PVH Corporation*. No., 2:13CV00441
24 (E.D. Cal. 2017) (\$15,000 allotted as PAGA penalties or 0.46% of \$3,250,000 settlement amount);
25 *Nehrlich v. RPM Mortgage Inc.*, Orange County Superior Court Case No.
26 30-2013-00666783-CU-OE-CXC (2017) (\$10,000 allotted as PAGA penalties or 0.40% of
27 \$2,500,000 settlement amount); *Rubio v. KTI Incorporated*, San Bernardino Superior Court Case
28 No. CIVDS-14-06132 (2015) (\$1,000 allotted as PAGA penalties or 0.18% of \$550,000 settlement

1 amount); *Gray v. Mountain View Child Care Inc.*, San Bernardino Superior Court Case No.
2 CIVDS-14-02285 (2016) (\$2,500 allotted as PAGA penalties or 0.37% of \$675,000 settlement
3 amount); *Perez v. West Coast Liquidators Inc. d/b/a Big Lots*, San Bernardino Superior Court Case
4 No. CIVDS-14-17863 (2016) (\$3,000 allotted as PAGA penalties or 0.33% of \$900,000 settlement
5 amount); *Penaloza vs. PPG Industries Inc.*, Los Angeles Superior Court No. BC471369 (2013)
6 (\$5,000 allotted as PAGA penalties or 0.38% of \$1,300,000 settlement amount); *Mejia v. DHL*
7 *Express (USA) Inc.*, No. 2:15CV00890 (C.D. Cal. 2017) (\$5,000 allotted as PAGA penalties or
8 0.34% of \$1,450,000 settlement amount).

9
10 34. Attorneys' Fees - The Class Counsel Fees Payment is capped at one-third of the
11 Gross Settlement Amount. A fee award that is capped at one-third of the common fund is fair and
12 reasonable, and at the time of final approval, my firm will present lodestar to further support the
13 reasonableness of the requested fee award. My firm has been regularly awarded attorney's fees
14 equal to one-third of the common fund in Court-approved wage and hour class settlements. Some
15 of the class action awards obtained by Class Counsel in similar employment actions throughout the
16 state bear out the reasonableness of a fee and costs award equivalent to one-third (1/3) of the total
17 settlement value: On December 4, 2018, in *Panda Express Wage and Hour Cases* (Los Angeles
18 Superior Court, Case No. JCCP 4919) Judge Carolyn Kuhl awarded Class Counsel a one-third fee
19 award in a wage and hour class settlement. On February 1, 2019, in *Solarcity Wage and Hour*
20 *Cases* (San Mateo Superior Court, Case No. JCCP 4945) Judge Marie Weiner awarded Class
21 Counsel a one-third fee award in a wage and hour class settlement. On July 30, 2019, in *Erickson v.*
22 *John Muir Health*, (Contra Costa Superior Court Case No. MSC18-00307) Judge Edward Weil
23 awarded Class Counsel a one-third fee award in a wage and hour class settlement. On December
24 18, 2019, in *Velasco v. Lemonade Restaurant Group*, (Los Angeles Superior Court Case No.
25 BC672235) Judge William Highberger awarded Class Counsel a one-third fee award in a wage and
26 hour class settlement. On January 31, 2020, in *El Pollo Loco Wage and Hour Cases* (Orange
27 County Superior Court Case No. JCCP 4957) Judge William Claster awarded Class Counsel a one-
28 third award in a wage and hour class settlement. On October 23, 2020, in *Ontiveros v. Baker*

1 *Concrete*, (Santa Clara Superior Court Case No. 18CV328679) Judge Brian Walsh awarded Class
2 Counsel a one-third fee award in a wage and hour class settlement. On December 3, 2020, in
3 *Blackshear v. California Fine Wine & Spirits* (Sacramento Superior Court Case No. 34-2018-
4 00245842) Judge Christopher Krueger awarded BNBD a one-third fee award in a wage and hour
5 class settlement. On June 2, 2021, in *Pacia v. CIM Group, L.P.* (Los Angeles Superior Court Case
6 No. BC709666), Judge Amy D. Hogue awarded Class Counsel a one-third fee award in a wage and
7 hour class settlement. On September 24, 2021, in *Prologistics Wage and Hour Cases* (Los Angeles
8 Superior Court Case No. JCCP 4881), Judge William Claster awarded Class Counsel a one-third fee
9 award in a wage and hour class settlement. On November 8, 2021, in *Securitas Wage and Hour*
10 *Cases* (Los Angeles Superior Court Case No. JCCP4837) Judge David Cunningham awarded a
11 one-third fee award in a wage and hour class settlement. On March 17, 2022, in *See's Candies*
12 *Wage and Hour Cases* (Los Angeles Superior Court Case No. JCCP5004) Judge Maren Nelson
13 awarded a one-third fee award in a wage and hour class action settlement. On April 12, 2022, in
14 *O'Donnell v. Okta, Inc.*, (San Francisco Superior Court Case No. CGC-20-587665) Judge Richard
15 Ulmer awarded a one-third fee award in a wage and hour class action settlement. On May 23, 2022,
16 in *Ettegui v. WB Studio Enterprises Inc.*, (United States District Court, Central District of
17 California Case No. 2:20-cv-08053-MCS-JDE) Judge Mark C. Scarsi awarded a one-third fee
18 award in a wage and hour class action settlement. On June 30, 2022, in *Armstrong, et al. v.*
19 *Prometric LLC* (Los Angeles Superior Court Case No. 20STCV29967), Judge Maren E. Nelson
20 awarded a one-third fee award in a wage and hour class action. On July 13, 2022, in *Crum v. S&D*
21 *Carwash Management LLC*, (Sacramento Superior Court Case No. 2019-00251338), Judge
22 Christopher E. Krueger awarded a one-third fee award in a wage and hour class action settlement.
23 On August 10, 2022, in *Spears, et al. v. Health Net of California, Inc.*, (Sacramento Superior Court
24 Case No. 34-2017-00210560-CU-OE-GDS), Judge Christopher E. Krueger awarded a one-third fee
25 award in a wage and hour class action settlement. On September 7, 2022, in *Lucchese, et al. v.*
26 *Kone, Inc.*, (San Francisco Superior Court Case No. CGC-20-588225), Judge Richard B. Ulmer, Jr.
27 awarded a one-third fee award in a wage and hour class action settlement. On November 4, 2022, in
28 *Infinity Energy Wage and Hour Cases* (San Diego Superior Court, Case No. JCCP5139), Judge

1 Keri Katz awarded a one-third fee award in a wage and hour class action settlement. On February
2 1, 2023, in *Hogan v. AECOM Tecnical Services, Inc.* (Los Angeles Superior Court Case No.
3 19STCV40072), Judge Stuart Rice awarded a one-third fee award in a wage and hour class
4 settlement. On February 28, 2023, in *Farthing v. Milestone Technologies* (San Francisco Superior
5 Court Case No. CGC-21-591251), Judge Richard B. Ulmer, Jr. awarded a one-third fee award in a
6 wage and hour class action settlement. On March 2, 2023, in *Leon v. Calaveras Materials* (Kings
7 County Superior Court Case No. 21C-0105), Judge Melissa D'Morias awarded a one-third fee
8 award in a wage and hour class settlement. On June 20, 2023, in *Gonzalez v. Pacific Western Bank*
9 (San Bernardino County Superior Court Case No. CIVSB2127657) Judge David Cohn awarded a
10 one-third fee award in a wage and hour class settlement, On June 30, 2023, in *Aguirre v. Headlands*
11 *Ventures* (Sacramento County Superior Court Case No. 34-2021-00297290), Judge Jill Talley
12 approved a one-third fee award in a wage and hour class settlement. A fee award equal to one-third
13 of the common fund is therefore reasonable in light of the fees that have been awarded in other
14 similar cases.

15
16 35. Class Representative Service Payment - The reasonableness of the requested service
17 award is also established by reference to the amounts that other California courts have found to be
18 reasonable in wage and hour class action settlements: *Zamora v. Balboa Life & Casualty, LLC*,
19 Case No. BC360036, Los Angeles County Superior Court (Mar. 7, 2013)(awarding \$25,000 service
20 award); *Aguiar v. Cingular Wireless, LLC*, Case No. CV 06-8197 DDP (AJWx)(C.D. Cal. Mar. 17,
21 2011)(awarding \$14,767 service award); *Magee v. American Residential Services, LLC*, Case No.
22 BC423798, Los Angeles County Superior Court (Apr. 21, 2011)(awarding \$15,000 service award);
23 *Mares v. BFS Retail & Commercial Operations, LLC*, Case No. BC375967, Los Angeles County
24 Superior Court (June 24, 2010)(awarding \$15,000 service award); *Baker v. L.A. Fitness Int'l, LLC*,
25 Case No. BC438654, L.A. County Superior Court (Dec. 12, 2012)(awarding \$10,000 service
26 awards to three named plaintiffs); *Blue v. Coldwell banker Residential Brokerage Co.*, Case No.
27 BC417335, Los Angeles County Superior Court (Mar. 21, 2011)(awarding \$10,000 service award);
28 *Buckmire v. Jo-Ann Stores, Inc.*, Case No. BC394795, Los Angeles County Superior Court (June,

1 11, 2010)(awarding \$10,000 service awards); *Coleman v. Estes Express Lines, Inc.*, Case No.
2 BC429042, Los Angeles County Superior Court (Oct. 3, 2013)(awarding \$10,000 service award);
3 *Ethridge v. Universal Health Services, Inc.*, Case No. BC391958, Los Angeles County Superior
4 Court (May 27, 2011)(awarding \$10,000 service award); *Hickson v. South Coast Auto Ins.*
5 *Marketing, Inc.*, Case No. BC390395, Los Angeles County Superior Court (Mar. 27,
6 2012)(awarding \$10,000 service award); *Hill v. sunglass Hut Int'l, Inc.*, Case No. BC422934, Los
7 Angeles County Superior Court (July 2, 2012)(awarding \$10,000 service award); *Kambamba v.*
8 *Victoria's Secret Stores, LLC*, Case No. BC368528, Los Angeles County Superior Court, (Aug. 19,
9 2011)(awarding \$10,000 service award together with additional compensation for their general
10 release); *Nevarez v. Trader Joe's Co.*, Case No. BC373910, Los Angeles County Superior Court
11 (Jan. 29, 2010)(awarding \$10,000 service award); *Ordaz v. Rose Hills Mortuary, L.P.*, Case No.
12 BC386500, Los Angeles County Superior Court, (Mar. 19, 2010)(awarding \$10,000 service award);
13 *Sheldon v. AHMC Monterey Park Hosp. LP*, Case No. BC440282, Los Angeles County Superior
14 Court (Feb. 22, 2013)(awarding \$10,000 service award); *Silva v. Catholic Mortuary Services, Inc.*,
15 Case No. BC408054, Los Angeles County Superior Court (Feb. 8, 2011)(awarding \$10,000
16 enhancement award); *Weisbarth v. Banc West Investment Services, Inc.*, Case No. BC422202, Los
17 Angeles County Superior Court (May 24, 2013)(awarding \$10,000 service award); *Lazar v. Kaiser*
18 *Foundation Health Plan*, Case No. 14-cv-273289, Santa Clara County Superior Court (Dec. 28,
19 2015) (awarding \$10,000 service award); *Acheson v. Express, LLC*, Case No. 109CV135335, Santa
20 Clara County Superior Court (Sept. 13, 2011)(awarding \$10,000 service award); *Bejarano v.*
21 *Amerisave Mortgage Corp.*, Case No. EDCV 08-00599 SGL (Opx)(C.D. Cal. June 22,
22 2010)(awarding \$10,000 service award); *Carbajal v. Sally Beauty Supply LLC*, Case No. CIVVS
23 1004307, San Bernardino County Superior Court (Aug. 6, 2012)(awarding \$10,000 service award);
24 *Contreras v. Serco Inc.*, Case No. 10-cv-04526-CAS-JEMx (C.D. Cal. Sep. 10, 2012)(awarding
25 \$10,000 service award); *Guerro v. R.R. Donnelley & Sons Co.*, Case No. RIC 10005196, Riverside
26 County Superior Court (July 16, 2013)(awarding \$10,000 service award); *Kisliuk v. ADT Security*
27 *Services Inc.*, Case No. CV08-03241 DSF (RZx)(C.D. Cal. Jan. 10, 2011)(awarding \$10,000
28 service award); *Morales v. BCBG Maxazria Int'l Holdings, Inc.*, Case No. JCCP 4582, Orange

1 County Superior Court (Jan. 24, 2013)(awarding \$10,000 service award); *Barrett v. Doyon Security*
2 *Services, LLC*, Case No. BS900199, BS900517, San Bernardino County Superior Court (Apr. 23,
3 2010)(awarding \$10,000 service award); *Zirpolo v. UAG Stevens Creek II*, Santa Clara Superior
4 Court Case no. 17CV313457 (July 10, 2018) (awarding \$10,000 service award); *Taylor v. TIC - The*
5 *Inductrial Complanly*, U.S.D.C. Central District of California Case No. EDCV 16-186-VAP (Aug.
6 1, 2018) (awarding \$10,000 service award).

7
8 36. Potentially Related Other Actions - I am unaware of any other related cases pending
9 against Defendant which would be impacted by this settlement. I have searched the LWDA
10 database which evidences that there are no other currently pending PAGA notices served against
11 Defendant (other than PAGA notice served in this case).

12
13 37. Administration - After seeking bids from qualified administrators, the estimate from
14 ILYM Group is was selected, as it provided for an estimate of \$12,430.88 to perform the settlement
15 administration for a Class of up 925, with any difference between the actual expenses and the
16 budget of \$15,000 to be retained in the Net Settlement Amount for distribution to the Class. I have
17 used ILYM Group successfully as the administrator in more than twenty class settlements in the last
18 few years and know them to be competent and experienced. My firm has no relationship or
19 connection with ILYM Group, and thus no conflict of interest exists. Attached hereto as Exhibit #4
20 is a true and correct copy of the Declaration of Michael Sutherland of ILYM Group which includes
21 the estimate for administration from ILYM Group.

22
23 Service on the LWDA:

24 38. At the same time as the filing and service of this declaration, I am also serving the
25 LWDA with the entire motion for preliminary approval which includes the Class Action and PAGA
26 Settlement Agreement. This service is verified by the accompanying proof of service.

1 I declare under penalty of perjury under the laws of the State of California that the foregoing
2 is true and correct. Executed this 17th day of July, 2023, at La Jolla, California.

3
4 /s/ Kyle Nordrehaug
Kyle Nordrehaug

CLASS ACTION AND PAGA SETTLEMENT AGREEMENT

This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between plaintiffs Tamika Walker and Shannon Peete (“Plaintiffs”) and defendant DJO, LLC (“Defendant”). The Agreement refers to Plaintiffs and Defendant collectively as the “Parties,” or individually as “Party.”

1. DEFINITIONS

In addition to other terms defined in this Agreement, the terms below have the following meaning in this Agreement:

- 1.1. “Action” means Plaintiffs’ lawsuit alleging wage and hour violations against Defendant, entitled *Tamika Walker and Shannon Peete, individuals, on behalf of themselves and on behalf of all persons similarly situated, Plaintiffs, vs. DJO, LLC, a Limited Liability Company; and DOES 1 through 50, inclusive, Defendants*, Case No. 22CV400335, commenced on July 13, 2022, and pending in the Superior Court of the State of California, County of Santa Clara.
- 1.2. “Administrator” means ILYM Group, Inc., the neutral entity the Parties have agreed to appoint to administer the Settlement.
- 1.3. “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with Preliminary Approval.
- 1.4. “Aggrieved Employees” means all individuals who currently or previously have worked for Defendant in California, including both Defendant’s employees and temporary workers employed by third-party staffing agencies and assigned to work for Defendant, in non-exempt positions at any time during the PAGA Period.
- 1.5. “Class” means all individuals who currently or previously have worked for Defendant in California, including both Defendant’s employees and temporary workers employed by third-party staffing agencies and assigned to work for Defendant, in non-exempt positions at any time during the Class Period.
- 1.6. “Class Counsel” means Norman B. Blumenthal, Kyle R. Nordrehaug, Aparajit Bhowmik, Nicholas J. DeBlouw, and Christine T. LeVu of Blumenthal Nordrehaug Bhowmik De Blouw LLP.
- 1.7. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean

the amounts to be paid to Class Counsel for fees and expenses, respectively, as approved by the Court, to compensate Class Counsel for their legal work in connection with the Action, including their pre-filing investigation, their filing of the Action, all related litigation activities, all Settlement work, all post-Settlement compliance procedures, and related litigation expenses billed in connection with the Action.

- 1.8. “Class Data” means Class Member identifying information in Defendant’s possession including, for each Class Member, their name, last-known mailing address, last known telephone number, Social Security number, email address (if known and available to Defendant), number of Workweeks worked during the Class Period, and number of PAGA Pay Periods worked during the PAGA Period.
- 1.9. “Class Member” means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non- Participating Class Member who qualifies as an Aggrieved Employee).
- 1.10. “Class Member Address Search” means the Administrator’s investigation and search for current Class Member mailing addresses using all reasonably available sources, methods, and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Class Members by use of available email addresses, phone numbers, social security numbers, credit reports, LinkedIn and Facebook.
- 1.11. “Class Notice” means the COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to Class Members in English with a Spanish translation, if applicable, in the form, without material variation, attached as Exhibit A and incorporated by reference into this Agreement.
- 1.12. “Class Notice Packet” means the Class Notice to be provided to the Class Members by the Administrator in the form set forth as Exhibit A to this Agreement (other than formatting changes to facilitate printing by the Administrator).
- 1.13. “Class Period” means the period from August 2, 2018, through the earlier of the date of Preliminary Approval of the Settlement, or July 11, 2023.
- 1.14. “Class Representative” means Tamika Walker and Shannon Peete, the named Plaintiffs in the Operative Complaint in the Action.
- 1.15. “Class Representative Service Payment” means the service payment made to the Plaintiffs as Class Representatives to compensate them for initiating the Action, performing work in support of the Action, undertaking the risk of liability for Defendant’s expenses, and for the general release of all claims by Plaintiffs.

- 1.16. “Court” means the Superior Court of California, County of Santa Clara.
- 1.17. “Defendant” means DJO, LLC.
- 1.18. “Defense Counsel means Seth L. Neulight, Sam Parrish, and Philip Lamborn of Nixon Peabody, LLP.
- 1.19. “Effective Date” means the date by when both of the following actions have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no Participating Class Member objects to the Settlement, the day the Court enters Judgment; (b) if one or more Participating Class Members objects to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur.
- 1.20. “Final Approval” means the Court’s order granting final approval of the Settlement substantially in the form attached hereto as Exhibit C to this Agreement and incorporated by reference into this Agreement.
- 1.21. “Final Approval Hearing” means the Court’s hearing on the Motion for Final Approval of the Settlement to determine whether to approve finally and implement the terms of this Agreement and enter the Judgment.
- 1.22. “Gross Settlement Amount” means One Million Five Hundred Thousand Dollars (\$1,500,000) which is the total amount to be paid by Defendant as provided by this Agreement except as provided in Paragraph 9 below. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payments, and the Administration Expenses Payment. This Gross Settlement Amount is an all-in amount without any reversion to Defendant, and excludes any employer payroll taxes, if any, due on the portion of the Individual Class Payments allocated to wages which shall not be paid from the Gross Settlement and shall be the separate additional obligation of Defendant.
- 1.23. “Individual Class Payment” means the Participating Class Member’s pro rata share of the Net Settlement Amount calculated according to the number of Workweeks worked by the Participating Class Member during the Class Period.
- 1.24. “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of 25% of the PAGA Penalties calculated according to the number of PAGA Pay Periods worked by the Aggrieved Employee during the PAGA Period.
- 1.25. “Judgment” means the judgment entered by the Court based upon Final Approval of the

Settlement substantially in the form attached hereto as Exhibit C to this Agreement and incorporated by reference into this Agreement.

- 1.26. “LWDA” means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).
- 1.27. “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).
- 1.28. “Net Settlement Amount” means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The Net Settlement Amount is to be paid to Participating Class Members as Individual Class Payments.
- 1.29. “Non-Participating Class Member” means a Class Member who opts out of the Class Settlement by submitting a valid and timely Request for Exclusion to the Administrator.
- 1.30. “Operative Complaint” means the First Amended Class and Representative Action Complaint filed in the Action.
- 1.31. “PAGA Pay Period” means any Pay Period during which an Aggrieved Employee worked for Defendant for at least one day during the PAGA Period.
- 1.32. “PAGA Period” means the period from August 2, 2021, through the earlier of Preliminary Approval of the Settlement, or July 11, 2023.
- 1.33. “PAGA” means the California Labor Code Private Attorneys General Act (Labor Code §§ 2698. et seq.).
- 1.34. “PAGA Notice” means the Plaintiff’s letter to Defendant and the LWDA, dated May 19, 2022, providing notice pursuant to California Labor Code section 2699.3, subd.(a).
- 1.35. “PAGA Penalties” means the total amount of PAGA civil penalties of \$150,000 to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$37,500) and 75% to the LWDA (\$112,500) in full and final settlement of the PAGA claims.
- 1.36. “Participating Class Member” means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.
- 1.37. “Plaintiffs” mean Tamika Walker and Shannon Peete, the named plaintiffs in the Action.

- 1.38. “Preliminary Approval” means the Court’s Order Granting Preliminary Approval of the Settlement, substantially in the form attached hereto as Exhibit B to this Agreement and incorporated by this reference.
- 1.39. “Released Class Claims” means all class claims pled, or that could have been pled, in the Operative Complaint and PAGA Notice, based on the factual allegations contained therein which occurred during the Class Period. Except as expressly set forth in this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the California Fair Employment and Housing Act, unemployment insurance, disability, social security, workers’ compensation, or claims based on facts occurring outside the Class Period.
- 1.40. “Released PAGA Claims” means all PAGA claims pled, or that could have been pled, in the Operative Complaint and PAGA Notice, based on the factual allegations contained therein which occurred during the PAGA Period as to the Aggrieved Employees. The Released PAGA Claims do not include other underlying wage and hour claims, claims for wrongful termination, discrimination, unemployment insurance, disability and worker’s compensation, or PAGA claims outside of the PAGA Period.
- 1.41. “Released Parties” means: Defendant, its parent, subsidiaries, and each of their respective former and present directors, officers, members, shareholders, owners, attorneys, insurers, predecessors, successors, and assigns.
- 1.42. “Request for Exclusion” means a Class Member’s submission of a written request to be excluded from the Class Settlement signed by the Class Member.
- 1.43. “Response Deadline” means sixty (60) calendar days after the Administrator mails the Class Notice Packet to Class Members and Aggrieved Employees, and shall be the last date on which Class Members may: (a) submit Requests for Exclusion from the Settlement, or (b) submit an Objection to the Settlement. Class Members to whom Class Notice Packets are re-sent after having been returned undeliverable to the Administrator shall have an additional 14 calendar days beyond the Response Deadline has expired.
- 1.44. “Settlement” means the disposition of the Action and all related claims effectuated by this Agreement and the Judgment.
- 1.45. “Workweek” means any week during the Class Period in which a Class Member actively worked for Defendant as a Class Member for at least one day.

2. RECITALS

- 2.1 On July 13, 2022, Plaintiffs commenced this Action by filing a Complaint against

Defendant in the Superior Court of the State of California, County of Santa Clara, Case No. 22CV400335 (hereinafter “Class Action”). Plaintiffs’ Complaint asserted claims that Defendant: (a) violated California Business and Professions Code § 17200 et seq.; (b) failed to pay minimum wages in violation of California Labor Code §§ 1194, 1197, and 1197.1; (c) failed to pay overtime wages in violation of California Labor Code § 510, et seq.; (d) failed to provide required meal periods in violation of California Labor Code §§ 226.7 & 512 and the applicable IWC Wage Order; (e) failed to provide required rest periods in violation of California Labor Code §§ 226.7 & 512 and the applicable IWC Wage Order; (f) failed to provide accurate itemized wage statements in violation of California Labor Code § 226; (g) failed to reimburse employees for required expenses in violation of California Labor Code § 2802; (h) failed to provide wages when due in violation of California Labor Code §§ 201, 202 and 203; and, (i) failed to pay sick pay wages in violation of California Labor Code §§ 201-204, 203, 246.

- 2.2 On August 2, 2022, Plaintiffs filed a Representative Action Complaint against Defendant in the Superior Court of the State of California, County of Santa Clara, asserting a single cause of action for violation of the Labor Code Private Attorneys General Act, Cal. Labor Code §§ 2698, et seq. (“PAGA”), Case No. 22CV401621 (hereinafter “PAGA Action”).
- 2.3 On February 2, 2023, the Parties participated in an all-day mediation presided over by Mark Rudy, a respected mediator of wage and hour representative and class actions. Following the mediation, each side, represented by their respective counsel, agreed to settle the Action based upon a mediator’s proposal which was memorialized in the form of a Memorandum of Understanding. This Agreement replaces and supersedes the Memorandum of Understanding and any and all other written or verbal agreements, understandings, or representations between the Parties.
- 2.4 On May 11, 2023, Plaintiffs filed a First Amended Class and Representative Action Complaint which asserted together all claims alleged in the Class Action and PAGA Action.
- 2.5 The First Amended Class and Representative Action Complaint is the Operative Complaint in the Action.
- 2.6 Defendant denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in the Operative Complaint, denies any liability for the causes of action alleged therein, and denies that Plaintiffs or any putative class members or alleged aggrieved employees are entitled to damages, penalties, or any relief.
- 2.7 Prior to mediation, Plaintiffs obtained from Defendant documents and information to investigate the claims such that Plaintiffs’ investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th

116, 129-130 (“*Dunk/Kullar*”).

- 2.8 This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission by Defendant that the claims in the Action of Plaintiffs or the Class have merit or that Defendant bears any liability to Plaintiffs or the Class on those claims or any other claims, or as an admission by Plaintiffs that Defendant’s defenses in the Action have merit. The Parties agree to certification of the Class for purposes of this Settlement only. If for any reason the Settlement does not become effective, Defendant reserves the right to contest certification of any class or subclass for any reason and reserves all available defenses to the claims alleged in the Action.
- 2.9 The Parties, Class Counsel and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

3. MONETARY TERMS

- 3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 9 below, Defendant promises to pay \$1,500,000 and no more as the Gross Settlement Amount. This amount is all-inclusive of all payments contemplated in this resolution, excluding any employer-side payroll taxes on the portion of the Individual Class Payments allocated to wages which shall be separately paid by Defendant to the Administrator. Defendant has no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendant.
- 3.2. Payments from the Gross Settlement Amount. Subject to the terms and conditions of this Agreement, the Administrator will make the following payments out of the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval.
- (a) To Plaintiffs: Class Representative Service Payment to the Class Representatives of not more than \$10,000 each (in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representatives are entitled to receive as Participating Class Members). Defendant will not oppose Plaintiffs’ request for a Class Representative Service Payment that does not exceed this amount. As part of the motion for the Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiffs will seek Court approval for any Class Representative Service Payments no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Representative Service Payment less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the Class Representative Service Payment

using IRS Form 1099. Plaintiffs assume full responsibility and liability for all taxes owed on the Class Representative Service Payment.

- (b) To Class Counsel: A Class Counsel Fees Payment of not more than one-third (1/3) of the Gross Settlement Amount, which is currently estimated to be \$500,000, and a Class Counsel Litigation Expenses Payment of not more than \$21,500. Defendant will not oppose requests for these payments provided that they do not exceed these amounts. Plaintiffs and/or Class Counsel will file a motion for the Class Counsel Fees Payment and Class Litigation Expenses Payment no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to Class Counsel or any other Plaintiffs' Counsel arising from any claim to any portion of any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more IRS 1099 Forms. Class Counsel assumes full responsibility and liability for all taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds Defendant harmless, and indemnifies Defendant, from and against any dispute, claim, or controversy regarding any division or sharing of any of these payments, or any taxes, penalties, liquidated damages, or assessments found to be due on these payment.
- (c) To the Administrator: An Administration Expenses Payment not to exceed \$15,000, except for a showing of good cause and as approved by the Court. To the extent the Court approves an Administration Expenses Payment in an amount less than \$15,000, the Administrator will retain the remainder in the Net Settlement Amount for distribution to Participating Class Members.
- (d) To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$150,000 to be paid from the Gross Settlement Amount, with 75% (\$112,500) allocated to the LWDA PAGA Payment, and 25% (\$37,500) allocated to the Individual PAGA Payments.
 - i. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$37,500) by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any and all taxes owed on their Individual PAGA Payments.

- ii. If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.
- (e) To Each Participating Class Member: An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks.
 - i. Tax Allocation of Individual Class Payments. 20% of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. 80% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for non-wages, expense reimbursement, interest, and penalties (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any and all employee taxes owed on their Individual Class Payment.
 - ii. Effect of Non-Participating Class Members on Calculation of Individual Class Payments. Non-Participating Class Members will not receive any Individual Class Payments. The Administrator will retain amounts equal to their Individual Class Payments in the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis.

4. SETTLEMENT FUNDING

- 4.1. Class Workweeks. Based on its records, Defendant has estimated that the Class consists of approximately 458 Class Members who collectively worked a total of approximately 37,000 Workweeks during the Class Period.
- 4.2. Class Data. Not later than 45 days after the Court grants Preliminary Approval of the Settlement, Defendant will deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. Defendant has a continuing duty to immediately notify Class Counsel if it discovers that the Class Data omitted Class Member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which Defendant must send the Class Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.

- 4.3. Funding of the Gross Settlement Amount. Defendant shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Defendant's share of payroll taxes, by transmitting the funds to the Administrator no later than 30 days after the Final Approval of the Settlement.

5. PAYMENTS FROM THE GROSS SETTLEMENT AMOUNT

- 5.1. Within 14 days after Defendant funds the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payments.
- 5.2. The Administrator will issue checks for the Individual Class Payments and/or Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the "void date," which is 180 days after the date of mailing, when the check will be voided. Before checks are mailed, the Administrator shall update address information through the National Change of Address database. The Administrator will cancel all checks not cashed by the void date. The Administrator will send checks for Individual Class Payments to all Participating Class Members (including those for whom Class Notice was returned undelivered). The Administrator will send checks for Individual PAGA Payments to all Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved Employees (including those for whom Class Notice was returned undelivered). The Administrator may send Participating Class Members a single check combining the Individual Class Payment and the Individual PAGA Payment. Before mailing any checks, the Administrator must update the recipients' mailing addresses using the National Change of Address Database. If a Participating Class Member's or Aggrieved Employee's check is not cashed within 120 days after its last mailing to the affected individual, the Administrator will also send the individual a notice informing him or her that unless the check is cashed by the void date, it will expire and become non-negotiable, and offer to replace the check if it was lost or misplaced but not cashed.
- 5.3. The Administrator must conduct a Class Member Address Search for all other Class Members whose checks are returned undelivered without USPS forwarding address. Within seven (7) days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Class Member Address Search. The Administrator need not take further steps to deliver checks to Class Members whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Class Member whose original check was lost or misplaced, requested by the Class Member prior to the void date.
- 5.4. For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall

transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Class Member, thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b).

5.5. The payment of Individual Class Payments and Individual PAGA Payments shall not obligate Defendant to confer any additional benefits or make any additional payments to Class Members (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

6. **RELEASE OF CLAIMS.** Effective on the date when Defendant fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiffs, Participating Class Members, Aggrieved Employees and the LWDA will release claims against all Released Parties as follows:

6.1. Plaintiffs' General Release. Plaintiffs and their respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release, waive, and discharge Released Parties from any and all cause of action or claims for relief of any kind whatsoever (whether based in tort, contract, statute, regulation, or ordinance), whether known or unknown, suspected or unsuspected, that occurred at any time during the Class Period, including but not limited to: (a) any and all claims that were, or reasonably could have been, alleged, based on the facts contained, in the Operative Complaint and (b) any and all PAGA claims that were, or reasonably could have been, alleged based on facts contained in the Operative Complaint or Plaintiffs' PAGA Notice and (c) any and all claims arising from or related to Plaintiffs' employment with DJO, LLC, or the separation of their employment with DJO, LLC ("Plaintiffs' Release"). Plaintiffs' Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, or workers' compensation benefits that arose at any time, or based on occurrences outside the Class Period. Plaintiffs acknowledge that Plaintiffs may discover facts or law different from, or in addition to, the facts or law that Plaintiffs now know or believes to be true but agrees, nonetheless, that Plaintiffs' Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiffs' discovery of them.

(a) Plaintiffs' Waiver of Rights Under Civil Code Section 1542. For purposes of Plaintiffs' Release, each of the Plaintiffs expressly waives and relinquishes the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

- 6.2. Release by Participating Class Members. All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, hereby release all Released Parties from all Released Class Claims.
- 6.3. Release of PAGA Claims. All Aggrieved Employees and the LWDA are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, all Released Parties from all Released PAGA Claims.
7. **MOTION FOR PRELIMINARY APPROVAL.** The Parties agree to jointly prepare and file a motion for preliminary approval (“Motion for Preliminary Approval”) that complies with the Court’s procedures and instructions.
- 7.1. Plaintiffs’ Responsibilities. Plaintiffs will prepare and deliver to Defense Counsel all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice, and memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under Labor Code Section 2699, subd. (f)(2)); (ii) a draft proposed Order Granting Preliminary Approval and Approval of PAGA Settlement; (iii) a draft proposed Class Notice; (iv) a signed declaration from the Administrator attaching its “not to exceed” bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Class Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Class Members; and the nature and extent of any financial relationship with Plaintiff, Class Counsel or Defense Counsel; (v) a signed declaration from Plaintiffs confirming willingness and competency to serve and disclosing all facts relevant to any actual or potential conflicts of interest with Class Members, and/or the Administrator; (v) a signed declaration from each Class Counsel firm attesting to its competency to represent the Class Members; its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699, subd. (l)(2)); (vi) a redlined version of the parties’ Agreement showing all modifications made to the Model Agreement ready for filing with the Court; and (vii) all facts relevant to any actual or potential conflict of interest with Class Members, the Administrator. In their Declarations, Plaintiffs and Class Counsel Declaration shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.
- 7.2. Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the Motion for Preliminary Approval no later than 30 days after the full execution of this Agreement; obtaining a prompt hearing date for the Motion for Preliminary Approval; and for appearing in Court to advocate in favor of the

Motion for Preliminary Approval. Class Counsel is responsible for delivering the Court's Preliminary Approval to the Administrator.

- 7.3. Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for Preliminary Approval and/or the supporting declarations and documents, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant Preliminary Approval or conditions Preliminary Approval on any material change to this Agreement, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns.

8. SETTLEMENT ADMINISTRATION

- 8.1. Selection of Administrator. The Parties have jointly selected ILYM Group, Inc. to serve as the Administrator and verified that, as a condition of appointment, ILYM Group, Inc. agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Administrator's duties will include preparing, printing, and mailing the Class Notice Packet to all Class Members; conducting a National Change of Address search to update Class Member addresses before mailing the Class Notice Packets; re-mailing Class Notice Packets that are returned to the Class Member's new address; setting up a toll-free telephone number and email and a fax number to receive communications from Class Members; receiving and reviewing for validity completed Requests for Exclusion; providing the Parties with weekly status reports about the delivery of Class Notice Packets and receipt of Requests for Exclusion, objections and disputes; calculating Individual Class Payments and Individual PAGA Payments; issuing the checks to effectuate the payments due under the Settlement; issuing the tax reports required under this Settlement; and otherwise administering the Settlement pursuant to this Agreement. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.
- 8.2. Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports state and federal tax authorities.
- 8.3. Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation section 468B-1.

8.4. Notice to Class Members.

- (a) No later than three (3) business days after receipt of the Class Data, the Administrator shall notify Class Counsel that the list has been received and state the number of Class Members, PAGA Members, Workweeks, and PAGA Pay Periods in the Class Data.
- (b) Using best efforts to perform as soon as possible, and in no event later than 14 days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service (“USPS”) mail, the Class Notice with Spanish translation, if applicable, substantially in the form attached to this Agreement as Exhibit A. The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member, and the number of Workweeks and PAGA Pay Periods (if applicable) used to calculate these amounts. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database.
- (c) Not later than seven (7) days after the Administrator’s receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. The Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a second time.
- (d) The deadlines for Class Members’ written objections, Challenges to Workweeks and/or Pay Periods, and Requests for Exclusion will be extended an additional 14 days beyond the Response Deadline provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice.
- (e) If the Administrator, the Parties, Defense Counsel or Class Counsel is contacted by or otherwise discovers any persons who believe they should have been included in the Class Data and should have received Class Notice, the Parties will expeditiously meet and confer in person or by telephone, and in good faith, in an effort to agree on whether to include them as Class Members. If the Parties agree, such persons will be Class Members entitled to the same rights as other Class Members, and the Administrator will send, via email or overnight delivery, a Class Notice requiring them to exercise options under this Agreement not later than 14 days after receipt of Class Notice, or the deadline dates in the Class Notice, whichever dates are later.

8.5. Requests for Exclusion (Opt-Outs).

- (a) Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than the Response Deadline (plus an additional 14 days for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class Member or his/her representative that reasonably communicates the Class Member's election to be excluded from the Settlement and includes the Class Member's name, address, and email address or telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline.
- (b) The Administrator may not reject a Request for Exclusion as invalid because it fails to contain all the information specified in the Class Notice. The Administrator shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the person as a Class Member and the Class Member's desire to be excluded. The Administrator's determination shall be final and not appealable or otherwise susceptible to challenge. If the Administrator has reason to question the authenticity of a Request for Exclusion, the Administrator may demand additional proof of the Class Member's identity. The Administrator's determination of authenticity shall be final and not appealable or otherwise susceptible to challenge.
- (c) Every Class Member who does not submit a timely and valid Request for Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all benefits and bound by all terms and conditions of the Settlement, including the Participating Class Members' Releases under Paragraph 6.2 of the Agreement, regardless of whether the Participating Class Member actually receives the Class Notice or objects to the Settlement.
- (d) Every Class Member who submits a valid and timely Request for Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment or have the right to object to the Class Action components of the Settlement. Because future PAGA claims are subject to claim preclusion upon entry of the Judgment, Non-Participating Class Members who are Aggrieved Employees are deemed to release the claims identified in Paragraph 6.3 of this Agreement and are eligible for an Individual PAGA Payment. If a Class Member submits both a Request for Exclusion and an objection, only the Request for Exclusion will be accepted and the objection will be void.

8.6. Challenges to Calculation of Workweeks and PAGA Pay Periods. Each Class Member shall have until the Response Deadline (plus an additional 14 days for Class Members whose Class Notice is re-mailed) to challenge the number of Class Workweeks and PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice. The Class Member may

challenge the allocation by communicating with the Administrator via fax, email, or U.S. Mail. The Administrator must encourage the challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Workweeks contained in the Class Notice are correct so long as they are consistent with the Class Data. The Administrator's determination of each Class Member's allocation of Workweeks and/or PAGA Pay Periods shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall promptly provide copies of all challenges to calculation of Workweeks and/or PAGA Pay Periods to Defense Counsel and Class Counsel and the Administrator's determination as to the challenges.

8.7. Objections to Settlement.

- (a) Only Participating Class Members may object to the Class Action components of the Settlement and/or this Agreement, including contesting the fairness of the Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Class Representative Service Payment.
- (b) Participating Class Members may send written objections to the Administrator, by fax, email, or mail. In the alternative, or in addition to a written objection, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A Participating Class Member who elects to send a written objection to the Administrator must do so not later than the Response Deadline (plus an additional 14 days for Class Members whose Class Notice was re-mailed).
- (c) Non-Participating Class Members have no right to object to any of the Class Action components of the Settlement. If a Class Member submits both a Request for Exclusion and an objection, only the Request for Exclusion will be accepted and the objection will be void.

8.8. Administrator Duties. The Administrator has a duty to perform or observe all tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

- (a) Website, Email Address and Toll-Free Number. The Administrator will establish and maintain and use an internet website to post information of interest to Class Members including the date, time and location for the Final Approval Hearing and copies of the Settlement Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Class Notice, the Motion for Final Approval, the Motion for Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and Class Representative Service Payment, the Final Approval and the Judgment. The Administrator will also maintain and monitor an email address and a toll-free telephone number to receive Class Member calls, faxes and emails.

- (b) Request for Exclusion (Opt-Outs) and Exclusion List. The Administrator will promptly review on a rolling basis all Requests for Exclusion to ascertain their validity. Not later than seven (7) days after the expiration of the deadline for submitting Requests for Exclusion, the Administrator shall email a list to Class Counsel and Defense Counsel containing (a) the names and other identifying information of Class Members who have timely submitted valid Requests for Exclusion (“Exclusion List”); (b) the names and other identifying information of Class Members who have submitted invalid Requests for Exclusion; (c) copies of all Requests for Exclusion from Settlement submitted (whether valid or invalid).
- (c) Workweek and/or PAGA Pay Period Challenges. The Administrator has the authority to address and make final decisions consistent with the terms of this Agreement on all Class Member challenges over the calculation of Workweeks and/or PAGA Pay Periods. The Administrator’s decision shall be final and not appealable or otherwise susceptible to challenge.
- (d) Weekly Reports. The Administrator must, on a weekly basis, provide written reports to Class Counsel and Defense Counsel that, among other things, tally the number of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for Exclusion (whether valid or invalid) received, objections received, challenges to Workweeks and/or Pay Periods received and/or resolved, and checks mailed for Individual Class Payments and Individual PAGA Payments (“Weekly Report”). The Weekly Reports must include provide the Administrator’s assessment of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and objections received.
- (e) Administrator’s Declaration. Not later than 7 days before the date by which Plaintiffs are required to file the Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its due diligence and compliance with all of its obligations under this Agreement, including, but not limited to, its mailing of Class Notice, the Class Notices returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the total number of Requests for Exclusion from Settlement it received (both valid or invalid), the number of written objections and attach the Exclusion List. The Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator’s declaration(s) in Court.
- (f) Final Report by Administrator. Within ten (10) days after the Administrator disburses all funds of the Gross Settlement Amount, the Administrator will provide Class Counsel and Defense Counsel with a final report detailing its disbursements by employee identification number only of all payments made under this Agreement. At least seven (7) days before any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense Counsel, a

signed declaration suitable for filing in Court attesting to its disbursement of all payments required under this Agreement. Class Counsel is responsible for filing the Administrator's declaration in Court. If a second declaration attesting to the distribution of uncashed checks is required, the Administrator shall provide this second declaration at least seven (7) days before any deadline for a second declaration and Class Counsel shall be responsible for filing the second declaration with the Court.

9. **CLASS SIZE MODIFICATION AND ESCALATOR CLAUSE.** Based on its records, Defendant provided estimated figures as to the Class size as set forth in Paragraph 4.1 above. Should the number of Workweeks increase by more than 10%, Defendant shall, at its option, either (a) increase the Gross Settlement Amount proportionally by 1% for every 1% increase in Workweeks over the 10% threshold, or (b) advance the closing date of the Class Period to an earlier date so the total Workweeks is not greater than 10% more than the estimate set forth in Paragraph 4.1 above.
10. **DEFENDANT'S RIGHT TO WITHDRAW.** If the number of valid Requests for Exclusion identified in the Exclusion List exceeds 3% of the total of all Class Members, Defendant may, but is not obligated, elect to withdraw from the Settlement and return the Parties to their respective positions as of the date of acceptance. The Parties agree that, if Defendant withdraws, the Settlement shall be void ab initio, have no force or effect whatsoever, and that neither Party will have any further obligation to perform under this Agreement. Defendant must notify Class Counsel and the Court of its election to withdraw not later than seven (7) days after the Administrator sends the final Exclusion List to Defense Counsel. Invalid Requests for Exclusion will have no effect on this threshold for an election.
11. **MOTION FOR FINAL APPROVAL.** Unless otherwise ordered by the Court, not later than 16 court days before the calendared Final Approval Hearing, Plaintiffs will file in Court, a Motion for Final Approval of the Settlement that includes a request for approval of the PAGA settlement under California Labor Code section 2699(l), a Proposed Final Approval Order and a proposed Judgment (collectively "Motion for Final Approval"). Plaintiffs shall provide drafts of these documents to Defense Counsel not later than seven (7) days prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel will expeditiously meet and confer and in good faith, to resolve any disagreements concerning the Motion for Final Approval.
 - 11.1. Response to Objections. Each Party retains the right to respond to any objection raised by a Participating Class Member, including the right to file responsive documents in Court no later than five (5) court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.
 - 11.2. Duty to Cooperate. If the Court does not grant Final Approval or conditions Final Approval on any material change to the Settlement (including, but not limited to, the scope of release to be granted by Class Members), the Parties will expeditiously work together

in good faith to address the Court's concerns by revising the Agreement as necessary to obtain Final Approval. The Court's decision to award less than the amounts requested for a Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Administration Expenses Payment shall not constitute a material modification to the Agreement within the meaning of this Paragraph.

- 11.3. Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement under C.C.P. section 664.6 solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing Settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.
- 11.4. Waiver of the Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment reflected set forth in this Settlement, the Parties, their respective counsel, and all Participating Class Members who did not object to the Settlement as provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.
- 11.5. Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material modification of this Agreement (including, but not limited to, the scope of release to be granted by Class Members), this Agreement shall be null and void. The Parties shall nevertheless expeditiously work together in good faith to address the appellate court's concerns and to obtain Final Approval and entry of Judgment, sharing, on an equal basis, any additional Administration Expenses reasonably incurred at the time of remittitur. An appellate decision to vacate, reverse, or modify the Court's award of the Class Representative Service Payment or any payments to Class Counsel shall not constitute a material modification of the Judgment within the meaning of this Paragraph, as long as the Gross Settlement Amount remains unchanged.
12. **AMENDED JUDGMENT.** If any amended judgment is required under California Code of Civil Procedure section 384, the Parties will work together in good faith to jointly submit and a proposed amended Judgment.

13. ADDITIONAL PROVISIONS

- 13.1. No Admission of Liability, Class Certification or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Defendant that any of the allegations in the Operative Complaint have merit, that Defendant has any liability for any claims asserted, or that Plaintiffs or any Class members or Aggrieved Employees are entitled to damages or any relief; nor should it be intended or construed as an admission by Plaintiffs that Defendant's defenses in the Action have merit. The Parties agree that class certification and representative treatment is for purposes of this Settlement only. If, for any reason the Court does not grant Preliminary Approval, Final Approval or Judgment pursuant to this Agreement, Defendant reserves the right to contest certification of any class for any reasons, and Defendant reserves all available defenses to the claims in the Action, and Plaintiffs reserve the right to move for class certification on any grounds available and to contest Defendant's defenses. The Settlement, this Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).
- 13.2. Confidentiality Prior to Preliminary Approval. Plaintiffs, Class Counsel, Defendant and Defense Counsel separately agree that, until the Motion for Preliminary Approval of Settlement is filed, they and each of them will not disclose, disseminate and/or publicize, or cause or permit another person to disclose, disseminate or publicize, any of the terms of the Agreement directly or indirectly, specifically or generally, to any person, corporation, association, government agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses, all of whom will be instructed to keep this Agreement confidential; (2) counsel in a related matter; (3) to the extent necessary to report income to appropriate taxing authorities; (4) in response to a court order or subpoena; or (5) in response to an inquiry or subpoena issued by a state or federal government agency. Each Party agrees to immediately notify each other Party of any judicial or agency order, inquiry, or subpoena seeking such information. Plaintiffs, Class Counsel, Defendant and Defense Counsel separately agree not to, directly or indirectly, initiate any conversation or other communication, before the filing of the Motion for Preliminary Approval, any with third party regarding this Agreement or the matters giving rise to this Agreement except to respond only that "the matter was resolved," or words to that effect. This Paragraph does not restrict Class Counsel's communications with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.
- 13.3. No Solicitation. The Parties separately agree that they and their respective counsel and employees have not and will not solicit any Class Member to opt out of or object to the Settlement, or appeal from the Judgment. Nothing in this Paragraph shall be construed to restrict Class Counsel's ability to communicate with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.

- 13.4. Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding the prior Memorandum of Understanding between the Parties as well as any and all oral or written representations, warranties, covenants, or inducements made to or by any Party.
- 13.5. Attorney Authorization. Class Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiffs and Defendant, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.
- 13.6. Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.
- 13.7. Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.
- 13.8. Tax Advice. Neither Plaintiffs, Class Counsel, Defendant nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.
- 13.9. Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.
- 13.10. Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
- 13.11. Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.
- 13.12. Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.

- 13.13. Confidentiality. To the extent permitted by law, all agreements made, and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.
- 13.14. Use and Return of Class Data. Information provided to Class Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the Class Data provided to Class Counsel by Defendant in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than 90 days after the date when the Court discharges the Administrator's obligation to provide a Declaration confirming the final pay out of all Settlement funds, Plaintiffs shall destroy all paper and electronic versions of Class Data received from Defendant.
- 13.15. Headings. The descriptive heading of any section or Paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
- 13.16. Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.
- 13.17. Notice. All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

To Plaintiffs and the Class:

Norman B. Blumenthal
Kyle R. Nordrehaug
Blumenthal Nordrehaug Bhowmik De Blouw LLP
2255 Calle Clara
La Jolla, CA 92037
Tel.: (858) 551-1223
Fax: (858) 551-1232
E-Mail: norm@bamlawca.com
kyle@bamlawca.com

To Defendant:

Seth L. Neulight
NIXON PEABODY, LLP
One Embarcadero Center, 32nd Floor
San Francisco, CA 94111
Tel.: (415) 984-8200
E-Mail: sneulight@nixonpeabody.com

13.18. Execution in Counterparts. This Agreement may be executed in one or more counterparts electronically (i.e. DocuSign), digitally, or by email (PDF), which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

13.19. Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement, pursuant to CCP section 583.330, the time period to bring a case to trial under CCP section 583.310 shall be tolled and extended during the period of the settlement process, i.e., from the mediation on February 2, 2023 until the earlier of the Effective Date or the date this Agreement shall no longer be of any force or effect.

13.20. Fair Settlement. The Parties, Class Counsel and Defense Counsel believe and warrant that this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at this Agreement through arms-length negotiations, considering all relevant factors.

14. EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel hereby execute this Agreement.

Dated: May 30, 2023

Tamika Walker

Tamika Walker (May 30, 2023 16:46 PDT)

Plaintiff Tamika Walker

Dated: May 30, 2023

Shannon Peete

Shannon Peete (May 30, 2023 12:32 PDT)

Plaintiff Shannon Peete

Dated: June 5, 2023

Jason Maxwell

Jason Maxwell [name]

For Defendant DIO, LLC

Dated: May 31, 2023



Kyle Nordrehaug

Blumenthal Nordrehaug Bhowmik De Blouw LLP
Attorney for Plaintiffs

Dated: June 6, 2023



Seth L. Neulight
Nixon Peabody, LLP
Attorney for Defendant

EXHIBIT A

[NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION AND HEARING DATE FOR
FINAL COURT APPROVAL]

EXHIBIT “A”

**NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION
AND HEARING DATE FOR FINAL COURT APPROVAL**

***Walker v. DJO, LLC, Superior Court of the State of California,
(County of Santa Clara, Case No. 22CV400335)***

The Superior Court for the State of California authorized this Notice.

READ IT CAREFULLY!

It’s not junk mail, spam, an advertisement, or solicitation by a lawyer. You are not being sued.

**YOUR LEGAL RIGHTS MAY BE AFFECTED WHETHER YOU ACT OR DO NOT
ACT. PLEASE READ THIS NOTICE CAREFULLY.**

You may be eligible to receive money from an employee class action lawsuit (“Action”) against Defendant DJO, LLC (“Defendant”) for alleged wage and hour violations. The Action was filed by Plaintiffs Tamika Walker and Shannon Peete (“Plaintiffs”) and seeks payment of (1) wages and other relief for the Class of all individuals who currently or previously have worked for Defendant in California, including both Defendant’s employees and temporary workers employed by third-party staffing agencies and assigned to work for Defendant, in non-exempt positions at any time during the Class Period which is August 2, 2018 through _____ (“Class Members”), and (2) civil penalties under the California Private Attorney General Act (“PAGA”) for all individuals who currently or previously have worked for Defendant in California, including both Defendant’s employees and temporary workers employed by third-party staffing agencies and assigned to work for Defendant, in non-exempt positions at any time during the PAGA Period which is August 2, 2021 through _____ (“Aggrieved Employees”).

The proposed Settlement has two main parts: (1) a Class Settlement requiring Defendant to fund Individual Class Payment payments to Class Members, and (2) a PAGA Settlement requiring Defendant to fund the PAGA Penalties to pay penalties to the California Labor and Workforce Development Agency (“LWDA”) and to Aggrieved Employees.

Based on Defendant’s records, and the Parties’ current assumptions, **your Individual Class Payment is estimated to be <<\$_____>> (less withholding) and your share of the PAGA Penalties is estimated to be <<\$_____>>.** The actual amount you may receive likely will be different and will depend on a number of factors. (If no amount is stated for your share of the PAGA Penalties, then according to Defendant’s records you are not eligible for share of the PAGA Penalties under the Settlement because you didn’t work during the PAGA Period.)

The above estimates are based on Defendant’s records showing that **you worked <<_____>> workweeks** during the Class Period and **you worked <<_____>> pay periods** during the PAGA Period. If you believe that you worked more workweeks and/or pay periods during either period, you can submit a challenge by the deadline date. See Section 5 of this Notice below.

The Court has already preliminarily approved the proposed Settlement and approved this Notice. The Court has not yet decided whether to grant final approval. Your legal rights are affected whether you act or do not act. You will be deemed to have carefully read and understood it. At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement and how much of the Settlement will be paid to Plaintiffs and Plaintiffs' attorneys ("Class Counsel"). The Court will also decide whether to enter a judgment that requires Defendant to make payments under the Settlement and in exchange requires Class Members to give up their rights to assert certain claims against Defendant.

If you worked for Defendant during the Class Period and/or the PAGA Period, you have two basic options under the Settlement:

- (1) **Do Nothing.** You don't have to do anything to participate in the proposed Settlement and be eligible for an Individual Class Payment and/or a share of the PAGA Penalties. As a Participating Class Member, though, you will give up your right to assert Class Period wage claims against Defendant as described below in Section 4 below.
- (2) **Opt-Out of the Class Settlement.** You can exclude yourself from the Class Settlement (opt-out) by submitting the written Request for Exclusion. If you opt-out of the Settlement, you will not receive an Individual Class Payment, however you will preserve your right to personally pursue Class Period wage claims against Defendant. If you are an Aggrieved Employee, you remain eligible for a share of the PAGA Penalties. You cannot opt-out of the PAGA portion of the proposed Settlement.

Defendant will not retaliate against you for any actions you take with respect to the proposed Settlement.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
You Don't Have to Do Anything to Participate in the Settlement	If you do nothing, you will be a Participating Class Member, eligible for an Individual Class Payment and a share of the PAGA Penalties (if any). In exchange, you will give up your right to assert the wage claims against Defendant that are covered by this Settlement (Released Class Claims). Additional information is set forth below.
You Can Opt-out of the Class Settlement but not the PAGA Settlement The Response Deadline is ____.	If you don't want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. If you request exclusion, you will receive no money from the Class Settlement and you will not be bound by the Class Settlement. Once excluded, you will be a Non-Participating Class Member and no longer eligible for an Individual Class Payment. Non-Participating Class Members cannot object to any portion of the proposed Settlement. See Section 7 of

	this Notice. However, you cannot opt-out of the PAGA portion of the proposed Settlement. If you are an Aggrieved Employee and exclude yourself, you will still be paid your share of the PAGA Penalties and will remain subject to the release of the Released PAGA Claims regardless of whether you submit a request for exclusion.
Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement Written Objections Must be Submitted by the Response Deadline (_____)	All Class Members who do not opt-out (“Participating Class Members”) can object to any aspect of the proposed Settlement. The Court’s decision whether to finally approve the Settlement will include a determination of how much will be paid to Class Counsel and Plaintiffs who pursued the Action on behalf of the Class. You are not personally responsible for any payments to Class Counsel or Plaintiffs, but every dollar paid to Class Counsel and Plaintiffs reduces the overall amount paid to Participating Class Members. You can object to the amounts requested by Class Counsel or Plaintiffs if you think they are unreasonable. See Section 8 of this Notice.
You Can Participate in the Final Approval Hearing	The Court’s Final Approval Hearing is scheduled to take place on _____ at _____ [a.m./p.m.], at the Santa Clara County Superior Court, located at 191 North First Street, San Jose, CA 95113, in Department 1 before Judge Sunil R. Kulkarni. This hearing may change as explained below in Section 9. You don’t have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person or by using the Court’s virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing. See Section 9 of this Notice.
You Can Challenge the Calculation of Your Workweeks / Pay Periods Written Challenges Must be Submitted by the Response Deadline (_____)	The amount of your Individual Class Payment and your share of the PAGA Penalties (if any) depend on how many workweeks you worked at least one day during the Class Period and how many pay periods you worked at least one day during the PAGA Period, respectively. The number of Class Period workweeks and number of PAGA Period pay periods you worked according to Defendant’s records is stated on the first page of this Notice. If you disagree with either of these numbers, you must challenge it by _____. See Section 5 of this Notice.

1. Why did I get this Notice?

A proposed class action settlement (the “Settlement”) of the above-captioned action pending in

the Superior Court of the State of California, in and for the County of Santa Clara (the “Court”), has been reached between Plaintiffs and Defendant and has been granted preliminary approval by the Court. You may be entitled to receive money from this Settlement.

You have received this Class Notice because you have been identified as a member of the Class, which is defined as:

All individuals who currently or previously have worked for Defendant in California, including both Defendant’s employees and temporary workers employed by third-party staffing agencies and assigned to work for Defendant, in non-exempt positions at any time during the Class Period.

The “Class Period” is August 2, 2018 through _____.

2. What is this class action lawsuit about?

On July 13, 2022, Plaintiffs filed a class action complaint against Defendant in the Superior Court of the State of California, County of Santa Clara Case No. 22CV400335 (hereinafter “Class Action”). Plaintiffs asserted the following class claims against Defendant: unfair competition, failure to pay minimum wages, failure to pay overtime wages, failure to provide required meal periods and unpaid premiums, failure to provide required rest periods and unpaid premiums, failure to provide accurate itemized wage statements, failure to reimburse employees for required expenses, failure to pay wages when due, and failure to pay sick pay.

On August 2, 2022, Plaintiffs filed a representative action complaint against Defendant in the Superior Court of the State of California, County of Santa Clara, Case No. 22CV401621 (hereinafter “PAGA Action”), asserting a single cause of action for violation of the Private Attorneys General Act (Labor Code §§ 2698. et seq.) (“PAGA”) based upon the above alleged violations. On May 9, 2023, the Court entered an Order which consolidated the Class Action and the PAGA Action and granted leave for Plaintiffs to file a First Amended Consolidated Class and Representative Action Complaint which asserted together all claims alleged in the Class Action and PAGA Action. On May 11, 2023, Plaintiffs filed this First Amended Consolidated Class and Representative Action Complaint in Case No. 22CV400335 which is referred to herein as the “Operative Complaint.” This lawsuit is referred to in this Class Notice as the “Action.”

Defendant denies that it has done anything wrong and disputes all the claims in the Action. Specifically, Defendant contends that Plaintiffs and the Class Members were, at all times, properly compensated for wages under California law; that Plaintiff and the Class Members were provided with meal and rest periods in compliance with California law; that Defendant did not fail to pay to Class Members any wages allegedly due at the time of their termination; that Defendant did not fail to reimburse Class Members for required expenses; that Defendant complied with California wage statement requirements; that Defendant did not violate California Business and Professions Code section 17200 *et seq.*; that Defendant is not liable for any of the penalties sought or that could be sought in the Action; and that this Action cannot be maintained as a class or representative action.

The Court granted preliminary approval of the Settlement on <<INSERT PRELIMINARY

APPROVAL DATE>>. At that time, the Court also preliminarily approved the Plaintiffs to serve as Class Representatives, and the law firm Blumenthal Nordrehaug Bhowmik De Blouw LLP to serve as Class Counsel.

The Court has not ruled on the merits of Plaintiffs' claims. However, to avoid additional expense, inconvenience, and interference with the business operations of Defendant, the Parties concluded that it is in their best interests and the interests of the Class to settle the Action now on the terms summarized in this Class Notice. The Settlement was reached after mediation and arm's-length negotiations between the Parties. The Plaintiffs and Class Counsel think the settlement is in the best interest of all Class Members.

Accordingly, the Settlement constitutes a compromise of disputed claims and should not be construed as an admission of liability on the part of Defendant, who expressly denies all liability.

3. What are the terms of the Settlement?

Gross Settlement Amount. Defendant has agreed to pay an "all in" amount of One Million Five Hundred Thousand Dollars (\$1,500,000) (the "Gross Settlement Amount") to fund the settlement of the Action. The Gross Settlement Amount includes all payments of Individual Class Payments to Class Members, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payments, the Administration Expenses Payment, and the PAGA Penalties for civil penalties under PAGA. Any employer-side payroll taxes on the portion of the Individual Class Payments allocated to wages shall be separately paid by Defendant. Defendant shall fully fund the Gross Settlement Amount no later than 30 days after final approval is granted. Within 14 days after Defendant funds the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payments.

Court Approved Deductions from Gross Settlement Amount. The proposed payments, subject to Court approval, will be deducted from the Gross Settlement Amount before payments of Individual Class Payments are made to Class Members who do not request exclusion ("Participating Class Members"). At the Final Approval Hearing, Plaintiffs and/or Class Counsel will ask the Court to approve the following deductions from the Gross Settlement Amount, the amounts of which will be decided by the Court at the Final Approval Hearing:

- **Administration Expenses Payment.** Payment to the Administrator, estimated not to exceed \$15,000, for expenses, including expenses of notifying the Class Members of the Settlement, processing opt outs, and distributing settlement checks and tax forms.
- **Attorneys' Fees and Costs.** Payment to Class Counsel of reasonable attorneys' fees not to exceed one-third (1/3) of the Gross Settlement Amount, which presently equals \$500,000, and an additional amount to reimburse actual litigation costs incurred by the Plaintiffs not to exceed \$21,500. Class Counsel has been prosecuting the Action on behalf of Plaintiffs and the Class on a contingency fee basis (that is, without being paid any money to date) and has been paying all litigation costs and expenses. The amounts

stated are what Class Counsel will be requesting and the final amounts to be paid will be decided at the Final Approval Hearing.

- Class Representative Service Payments. Class Representative Service Payments in an amount not more than \$10,000 to each Plaintiff, or such lesser amount as may be approved by the Court, to compensate for services on behalf of the Class in initiating and prosecuting the Action, and for the risks Plaintiffs undertook. The amount stated is what Plaintiffs will be requesting and the final amount to be paid will be decided at the Final Approval Hearing.
- PAGA Penalties. A payment of \$150,000 relating to Plaintiffs' claim under PAGA, \$112,500 of which will be paid to the State of California's Labor and Workforce Development Agency ("LWDA"). The remaining \$37,500 will be distributed to the Aggrieved Employees as Individual PAGA Payments. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$37,500) by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment. "PAGA Pay Period" means any Pay Period during which an Aggrieved Employee worked for Defendant for at least one day during the PAGA Period (August 2, 2021 through _____).

Participating Class Members have the right to object to any of these deductions. The Court will consider all objections.

Calculation of Payments to Class Members. After all payments of the court-approved Attorneys' Fees and Costs, the Class Representative Service Payments, the PAGA Penalties, and the Administration Expenses Payment are deducted from the Gross Settlement Amount, the remaining portion, the "Net Settlement Amount", shall be distributed as Individual Class Payments to the Participating Class Members. The Net Settlement Amount is estimated to be at least \$_____. The Administrator will pay an Individual Class Payment from the Net Settlement Amount to each Participating Class Member. The Individual Class Payment for each Participating Class Member will be calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks. "Workweek" means any week during the Class Period in which a Class Member worked for Defendant as a Class Member for at least one day. The number of Workweeks will be based on Defendant's records, however, Class Members may challenge the number of Workweeks as explained below.

If the Settlement is approved by the Court and you do not exclude yourself, you will automatically be mailed a check for your Individual Class Payment to the same address as this Class Notice. You do not have to do anything to receive a payment. If your address has changed, you must contact the Administrator to inform them of your correct address to ensure you receive your payment.

Tax Matters. Twenty Percent (20%) of each Participating Class Member's Individual Class

Payment is in settlement of wage claims (the “Wage Portion”). Accordingly, the Wage Portion is subject to wage withholdings and shall be reported on IRS Form W-2. Eighty Percent (80%) of each Participating Class Member’s Individual Class Payment is in settlement of claims for alleged non-wages, expense reimbursement, interest, and penalties (collectively the “Non-Wage Portion”). The Non-Wage Portion shall not be subject to wage withholdings and shall be reported on IRS Form 1099. The employee portion of all applicable income and payroll taxes will be the responsibility of the Participating Class Members. Neither Class Counsel nor Defendant’s Counsel intend anything contained in this Class Notice to constitute advice regarding taxes or taxability. The tax issues for each Participating Class Member are unique to him/her, and each Participating Class Member may wish to consult a tax advisor concerning the tax consequences of the payments received under the Settlement.

Conditions of Settlement. This Settlement and your receipt of the Individual Class Payment is conditioned upon the Court entering an order granting final approval of the Settlement and entering Judgment.

The Proposed Settlement Will be Void if the Court Denies Final Approval. It is possible the Court will decline to grant Final Approval of the Settlement or decline to enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiff and Defendant have agreed that, in either case, the Settlement will be void: Defendant will not pay any money and Class Members will not release any claims against Defendant.

Need to Promptly Cash Payment Checks. The front of every check issued will show the date when the check expires (the void date). If you don’t cash it by the void date, your check will be automatically cancelled, and the funds represented by such checks remitted to the California Controller's Unclaimed Property Fund in the name of the individual who failed to cash their check.

4. What Do I Release Under the Settlement?

Released Class Claims. As of the Effective Date and upon full finding of the Gross Settlement Amount by Defendant, all Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, hereby release all Released Parties from all Released Class Claims. The “Released Class Claims” are all class claims pled, or that could have been pled, in the Operative Complaint and PAGA Notice, based on the factual allegations contained therein which occurred during the Class Period. Except as expressly set forth in this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the California Fair Employment and Housing Act, unemployment insurance, disability, social security, workers’ compensation, or claims based on facts occurring outside the Class Period.

This means that, if you do not timely and formally exclude yourself from the Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendant or any other Released Party about the Released Class Claims resolved by this Settlement. It also means that all of the Court’s orders in the Actions will apply to you and legally bind you.

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

Released Parties. The Released Parties are: Defendant, its parent, subsidiaries, and each of their respective former and present directors, officers, members, shareholders, owners, attorneys, insurers, predecessors, successors, and assigns.

5. How much will my payment be?

Defendant’s records reflect that you worked <<_____>> Workweeks during the Class Period (August 2, 2018 through _____).

Based on this information, your estimated Individual Class Payment from the Net Settlement Amount is <<_____>>.

[Defendant’s records reflect that you worked <<_____>> PAGA Pay Periods during the during the PAGA Period (August 2, 2021 through _____). Based on this information your estimated Individual PAGA Payment is <<_____>>.]

If you wish to challenge the information set forth above, then you must submit a written, signed dispute challenging the information along with supporting documents, to the Administrator at the address provided in this Class Notice no later than the Response Deadline, which is _____ [sixty (60) days after the mailing of the Class Notice or an additional 14 days in the case of re-mailing]. The address for the Administrator is _____ . You may also fax the dispute to _____ or email the dispute to _____ by no later than the Response Deadline. Any dispute should include credible written evidence and will be resolved by the Administrator.

6. How can I get a payment?

To get money from the Settlement, you do not have to do anything. A check for your Individual Class Payment will be mailed automatically to the same address as this Class Notice. If your address is incorrect or has changed, you must notify the Administrator. The Administrator is: ILYM Group _____ (800) _____.

The Court will hold a Final Approval Hearing on _____ at _____ to decide whether to approve the Settlement and fix the amounts to be paid as attorneys’ fees and costs to Class Counsel and as service payment to Plaintiff. If the Court approves the Settlement

and there are no objections or appeals, payments will be mailed approximately three months after this hearing. If there are objections or appeals, resolving them can take time, perhaps more than a year. Please be patient.

7. What if I don't want to be a part of the Settlement?

If you do not wish to participate in the Settlement, you may exclude yourself from the Class portion of the Settlement or "opt out." **If you opt out, you will not receive an Individual Class Payment from the Settlement, and you will not be bound by its terms, which means you will retain the right to sue Defendant for the Released Class Claims.** However, Aggrieved Employees who opt out will still be paid their allocation of the PAGA Penalties and will remain subject to the release of the Released PAGA Claims regardless of whether they submit a request for exclusion.

To opt out, you must submit to the Administrator a written, signed and dated request to opt-out postmarked no later than the Response Deadline which is _____. You may also fax your request to opt out to _____ or email the dispute to _____ by no later than the Response Deadline. The request to opt-out should state in substance that you wish to be excluded from the class settlement in the *Walker v. DJO, LLC* lawsuit. The request to opt-out should state the Class Member's full name, address and email address or telephone number. Please include the name and number of the case, which is *Walker v. DJO, LLC*, Case No. 22CV400335. The request to opt-out must be completed and signed by you. No other person may opt-out for a living member of the Class.

The address for the Administrator is _____. Written requests for exclusion that are postmarked after _____, or are incomplete or unsigned will be rejected, and those Class Members will remain bound by the Settlement and the release described above.

8. How do I Object to the Settlement?

Only Participating Class Members have the right to object to the Settlement. Before deciding whether to object, you may wish to see what Plaintiff and Defendant are asking the Court to approve. At least sixteen (16) court days before the Final Approval Hearing, scheduled for _____, Class Counsel and Plaintiffs will file in Court (1) a Motion for Final Approval that includes, among other things, the reasons why the proposed Settlement is fair, and (2) a Motion for Attorneys' Fees, Litigation Expenses and Service Awards stating (a) the amount Class Counsel is requesting for attorneys' fees and litigation expenses; and (b) the amount Plaintiffs are requesting as Class Representative Service Payments. Upon reasonable request, Class Counsel (whose contact information is below) will send you copies of these documents at no cost to you. You can also view them on Class Counsel's website at www.bamlawca.com under "Class Notices" for *Walker v. DJO, LLC* or on the via the Case Information Portal for the California Superior Court for the County of Santa Clara (<https://cmportal.sccourt.org/Portal>) and entering the Case No. 22CV400335.

A Participating Class Member who disagrees with any aspect of the Agreement, the Motion for Final Approval and/or Motion for Attorneys' Fees, Litigation Expenses and Service Awards

may wish to object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class Counsel or Plaintiff are too high or too low. **The Response Deadline for sending written objections to the Administrator is _____** [sixty (60) days after the date of the Notice or an additional 14 days after the Notice in the case of re-mailing]. You may also fax the dispute to _____ or email the dispute to _____ by no later than this Response Deadline. Be sure to tell the Administrator what you object to, why you object, and any facts that support your objection. Make sure you identify the Action, *Walker v. DJO, LLC*, Case No. 22CV400335, and include your name, current address, email or telephone number, and approximate dates of employment with Defendant and sign the objection. The Administrator's contact information is as follows:

Administrator:

Name of Company: ILYM Group

Email Address: _____

Mailing Address: _____

Telephone Number: _____

Fax Number: _____

Alternatively, a Participating Class Member can object (or personally retain a lawyer to object at your own cost) by attending the Final Approval Hearing. You (or your attorney) should be ready to tell the Court what you object to, why you object, and any facts that support your objection. You also have the option to appear at the hearing remotely through the Court's procedure at https://www.scsccourt.org/general_info/news_media/courtAppearances.shtml. Check the Court's website for the most current information. See Section 9 of this Notice (immediately below) for specifics regarding the Final Approval Hearing

The addresses for Parties' counsel are as follows:

CLASS COUNSEL:

Kyle Nordrehaug
Blumenthal Nordrehaug Bhowmik DeBlouw LLP
2255 Calle Clara
La Jolla, CA 92037
Tel.: (858) 551-1223
Fax: (858) 551-1232
E-Mail: kyle@bamlawca.com

COUNSEL FOR DEFENDANT:

Seth L. Neulight
NIXON PEABODY, LLP
One Embarcadero Center, 32nd Floor
San Francisco, CA 94111
Tel.: (415) 984-8200
Fax: (415) 984-8300
Email: sneulight@nixonpeabody.com

9. Can I Attend the Final Approval Hearing?

The Court will hold a Final Approval Hearing at _____ (Pacific Standard Time) on _____, in Department 1 of the Superior Court of California, County of Santa Clara County Superior Court, located at 191 North First Street, San Jose, CA 95113, before Judge Sunil R. Kulkarni. At this hearing the Court will consider whether the Settlement is fair, reasonable, and adequate. The purpose of this hearing is for the Court to determine whether to grant final approval to the Settlement and to fix the amounts to be paid as attorneys' fees and costs to Class Counsel and as service payments to Plaintiffs. If there are objections, the Court will consider them. **You are not required to attend** the Final Approval Hearing, although any Class Member is welcome to attend the hearing using the procedure at https://www.scscourt.org/general_info/news_media/courtAppearances.shtml.

It is possible the Court will reschedule the Final Approval Hearing. If the hearing is continued, notice will be posted on Class Counsel's website at www.bamlawca.com under "Class Notices" for *Walker v. DJO, LLC*. In addition, hearing dates are posted on the Internet via the Case Query page for the California Superior Court for the County of Santa Clara (<https://www.sfsuperiorcourt.org/>) and entering the Case No. 22CV400335.

10. How Can I Get More Information?

You may call the Administrator at _____ or write to *Walker v. DJO, LLC* Administrator, c/o _____.

This Class Notice summarizes the proposed settlement. More details are in the Settlement Agreement. You may receive a copy of the Settlement Agreement, the Judgment, the motion for attorneys' fees, costs and service awards, the motion for final approval or other Settlement documents by going to Class Counsel's website at www.bamlawca.com under "Class Notices" for *Walker v. DJO, LLC*. You may get more details by examining the Court's file on the Internet via the Case Information Portal for the California Superior Court for the County of Santa Clara (<https://cmportal.scscourt.org/Portal>) and entering the Case No. 22CV400335. If you wish to view the Court files in person, you should go to the Clerk's Office located at 191 North First Street, San Jose, CA 95113.

PLEASE DO NOT CALL THE COURT ABOUT THIS NOTICE.

IMPORTANT:

- **What if Your Address Changes** - To receive your check, you should immediately notify the Administrator if you move or otherwise change your mailing address.
- **What if You Fail to Cash a Check** - Settlement checks will be null and void 180 days after issuance if not deposited or cashed, and this expiration date is printed on the check. In such events, the Administrator shall direct all unclaimed funds to be paid to the California Controller's Unclaimed Property Fund in the name of and for the benefit of the individual who did not cash their check. The funds may be claimed at https://www.sco.ca.gov/upd_msg.html.

- **What if You Lose Your Check** - If your check is lost or misplaced, you should contact the Administrator immediately to request a replacement.

EXHIBIT B

[ORDER GRANTING PRELIMINARY APPROVAL]

EXHIBIT "B"

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

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

Plaintiffs,

v.

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

Defendants.

CASE NO.: **22CV400335**

**[PROPOSED] PRELIMINARY
APPROVAL ORDER**

Hearing Date: _____
Hearing Time: _____

Judge: Hon. Sunil R. Kulkarni
Dept.: 1

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

PRELIMINARY APPROVAL ORDER

1 This matter came before the Honorable Sunil R. Kulkarni of the Superior Court of the
2 State of California, in and for the County Santa Clara, on _____[DATE], for the motion by
3 Plaintiffs Tamika Walker and Shannon Peete (“Plaintiffs”) for preliminary approval of the class
4 settlement with Defendant DJO, LLC (“Defendant”). The Court, having considered the briefs,
5 argument of counsel and all matters presented to the Court and good cause appearing, hereby
6 GRANTS Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement.

7 **IT IS HEREBY ORDERED:**

8 1. The Court preliminarily approves the Class Action and PAGA Settlement
9 Agreement (“Agreement”) submitted as Exhibit #1 to the Declaration of Kyle Nordrehaug in
10 Support of Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement. This
11 preliminary approval is based on the Court’s determination that the Settlement set forth in the
12 Agreement is within the range of possible final approval, pursuant to the provisions of section 382
13 of the California Code of Civil Procedure and California Rules of Court, rule 3.769.

14 2. This Order incorporates by reference the definitions in the Agreement, and all
15 terms defined therein shall have the same meaning in this Order as set forth in the Agreement.

16 3. The Gross Settlement Amount is One Million Five Hundred Thousand Dollars
17 (\$1,500,000). It appears to the Court on a preliminary basis that the settlement amount and terms
18 are fair, adequate and reasonable as to all potential Class Members when balanced against the
19 probable outcome of further litigation and the significant risks relating to certification, liability and
20 damages issues. It further appears that investigation and research have been conducted such that
21 counsel for the Parties are able to reasonably evaluate their respective positions. It further appears
22 to the Court that settlement at this time will avoid substantial additional costs by all Parties, as
23 well as avoid the delay and risks that would be presented by the further prosecution of the Action.
24 It further appears that the Agreement has been reached as the result of serious and non-collusive,
25 arms-length negotiations. The Court therefore preliminarily finds that the Settlement is fair,
26 adequate, and reasonable when balanced against the probable outcome of further litigation and the
27 significant risks relating to certification, liability, and damages issues.

1 4. The Agreement specifies an attorneys' fees award not to exceed one-third of the
2 Gross Settlement Amount, an award of litigation expenses incurred, not to exceed Twenty-One
3 Thousand Five Hundred Dollars (\$21,500), and a proposed Class Representative Service Payment
4 to the Plaintiffs in an amount not to exceed Ten Thousand Dollars (\$10,000) each. The Court will
5 not approve the amount of attorneys' fees and litigation expenses, nor the amount of any service
6 award, until the Final Approval Hearing. Plaintiffs will be required to present evidence supporting
7 these requests prior to final approval.

8 5. The Court recognizes that Plaintiffs and Defendant stipulate and agree to
9 certification of a class for settlement purposes only. This stipulation will not be deemed
10 admissible in this or any other proceeding should this Settlement not become final. For settlement
11 purposes only, the Court conditionally certifies the following Class: "all individuals who currently
12 or previously have worked for Defendant in California, including both Defendant's employees and
13 temporary workers employed by third-party staffing agencies and assigned to work for Defendant,
14 in non-exempt positions at any time during the Class Period." The Class Period is August 2, 2018
15 through _____.

16 6. The Court concludes that, for settlement purposes only, the Class meets the
17 requirements for certification under section 382 of the California Code of Civil Procedure in that:
18 (a) the Class is ascertainable and so numerous that joinder of all members of the Class is
19 impracticable; (b) common questions of law and fact predominate, and there is a well-defined
20 community of interest amongst the members of the Class with respect to the subject matter of the
21 litigation; (c) the claims of the Plaintiff are typical of the claims of the members of the Class;
22 (d) the Plaintiffs can fairly and adequately protect the interests of the members of the Class; (e) a
23 class action is superior to other available methods for the efficient resolution of this controversy;
24 and (f) counsel for the Class is qualified to act as counsel for the Class and the Plaintiff is an
25 adequate representative of the Class.

26 7. The Court provisionally appoints Plaintiffs as the representatives of the Class. The
27 Court provisionally appoints Norman B. Blumenthal, Kyle R. Nordrehaug, Aparajit Bhowmik,
28

1 Nicholas J. DeBlouw, and Christine T. LeVu of Blumenthal Nordrehaug Bhowmik De Blouw
2 LLP as Class Counsel for the Class.

3 8. The Court hereby approves, as to form and content, the Court Approved Notice of
4 Class Action Settlement and Hearing Date for Final Court Approval (“Class Notice”), submitted
5 as Exhibit A to the Agreement. The Court finds that the Class Notice appears to fully and
6 accurately inform the Class of all material elements of the proposed Settlement, of the Class
7 Members’ right to be excluded from the Class by submitting a written opt-out request, and of each
8 Class Member’s right and opportunity to object to the Settlement. The Court further finds that the
9 distribution of the Class Notice substantially in the manner and form set forth in the Agreement
10 and this Order meets the requirements of due process, is the best notice practicable under the
11 circumstances, and shall constitute due and sufficient notice to all persons entitled thereto. The
12 Court orders the mailing of the Class Notice by first class mail, pursuant to the terms set forth in
13 the Agreement. If a Class Notice Packet is returned because of an incorrect address, the
14 Settlement Administrator will promptly search for a more current address for the Class Member
15 and re-mail the Class Notice Packet to the Class Member.

16 9. The Court hereby appoints ILYM Group as Administrator for the Settlement. No
17 later than forty-five (45) calendar days after issuance of this Order, Defendant shall provide to the
18 Administrator an electronic spreadsheet with the Class Data. This information will otherwise
19 remain confidential and will not be disclosed to anyone, except as required to applicable taxing
20 authorities, to carry out the procedures in the Agreement, or pursuant to Defendant’s express
21 written authorization or by order of the Court. The Administrator will perform address updates
22 and verifications as necessary prior to the mailing of the Class Notice. Using best efforts to mail it
23 as soon as possible, and in no event later than fourteen (14) calendar days after receiving the Class
24 Data spreadsheet, the Administrator will mail the Class Notice to all Class Members via first-class
25 U.S. Mail.

26 10. The Court hereby preliminarily approves the proposed procedure for exclusion
27 from the Settlement. Any Class Member may individually choose to opt-out of and be excluded
28

1 from the Class as provided in the Class Notice by following the instructions set forth in the Class
2 Notice. All requests for exclusion must be sent to the Administrator and postmarked by no later
3 than the Response Deadline, which is sixty (60) calendar days after the Administrator initially
4 mails the Class Notice Packets to the Class Members. If the Class Notice Packet is re-mailed, this
5 Response Deadline will be extended an additional fourteen (14) calendar days. Any person who
6 chooses to opt-out of and be excluded from the Class will not be entitled to any recovery under the
7 Settlement and will not be bound by the Settlement or have any right to object, appeal or comment
8 thereon. Aggrieved Employees shall be sent their Individual PAGA Payment and will be subject to
9 the release of the Released PAGA Claims regardless of whether they opt-out of the Class. Class
10 Members who have not requested exclusion shall be bound by all determinations of the Court, the
11 Agreement, and the Judgment. A request for exclusion applies only to the individual submitting
12 the request for exclusion, and any attempt to effect an opt-out on behalf of any other individual or
13 individuals (including a group, class, or subclass of individuals) is not permitted and will be
14 deemed invalid.

15 11. Any Class Member who has not opted-out may appear at the Final Approval
16 Hearing and may object or express the Class Member's views regarding the Settlement and may
17 present evidence and file briefs or other papers that may be proper and relevant to the issues to be
18 heard and determined by the Court as provided in the Class Notice. Class Members will have
19 until the Response Deadline set forth in the Class Notice to submit their written objections to the
20 Administrator in accordance with the instructions in the Class Notice. If the Class Notice is re-
21 mailed, the Response Deadline will be extended an additional fourteen (14) calendar days.
22 Alternatively, Class Members may appear at the Final Approval Hearing to make an oral
23 objection.

24 12. A Final Approval Hearing shall be held before this Court on _____
25 _____ at _____ in Department 1 at the of the Santa Clara County Superior Court to
26 determine all necessary matters concerning the Settlement, including: whether the proposed
27 settlement of the Action on the terms and conditions provided for in the Agreement is fair,
28

1 adequate and reasonable and should be finally approved by the Court; whether the Final Approval
2 Order and Judgment should be entered herein; whether the plan of allocation contained in the
3 Agreement should be approved as fair, adequate and reasonable to the Class Members; and to
4 finally approve attorneys' fees and costs, the service awards, and the expenses of the
5 Administrator. The motion for final approval and the motion for attorneys' fees, costs and service
6 award shall be filed with the Court and served on all counsel no later than sixteen (16) court days
7 before the hearing and both motions shall be heard at the Final Approval Hearing.

8 13. Neither the Settlement nor any exhibit, document, or instrument delivered
9 thereunder shall be construed as a concession or admission by Defendant in any way that the
10 claims asserted have any merit or that this Action was properly brought as a class or representative
11 action, and shall not be used as evidence of, or used against Defendant as, an admission or
12 indication in any way, including with respect to any claim of any liability, wrongdoing, fault or
13 omission by Defendant or with respect to the truth of any allegation asserted by any person.
14 Whether or not the Settlement is finally approved, neither the Agreement, nor any exhibit,
15 document, statement, proceeding or conduct related to the Settlement or Agreement, nor any
16 reports or accounts thereof, shall in any event be construed as, offered or admitted in evidence as,
17 received as or deemed to be evidence for any purpose adverse to the Defendant, including, but not
18 limited to, evidence of a presumption, concession, indication or admission by Defendant of any
19 liability, fault, wrongdoing, omission, concession or damage.

20 14. In the event the Settlement does not become effective in accordance with the terms
21 of the Agreement, or the Settlement is not finally approved, or is terminated, canceled or fails to
22 become effective for any reason, this Order shall be rendered null and void and shall be vacated,
23 and the Parties shall revert to their respective positions as of before entering into the Agreement,
24 and expressly reserve their respective rights regarding the prosecution and defense of this Action,
25 including all available defenses and affirmative defenses, and arguments that no claim in the
26 Action could be certified as a class action and/or managed as a representative action. In such an
27
28

1 event, the Court's orders regarding the Settlement, including this Order, shall not be used or
2 referred to in litigation or otherwise for any purpose.

3 15. The Court reserves the right to adjourn or continue the date of the Final Approval
4 Hearing and all dates provided for in the Agreement without further notice to Class Members and
5 retains jurisdiction to consider all further applications arising out of or connected with the
6 proposed Settlement.

7 16. The Action is stayed and all trial and related pre-trial dates are vacated, subject to
8 further orders of the Court at the Final Approval Hearing.

9 **IT IS SO ORDERED.**

10
11 Dated: _____

HON. SUNIL R. KULKARNI
JUDGE, SUPERIOR COURT OF CALIFORNIA

EXHIBIT C

[FINAL APPROVAL ORDER AND JUDGMENT]

EXHIBIT "C"

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

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

Plaintiffs,

v.

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

Defendants.

CASE NO.: **22CV400335**

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

Hearing Date: _____
Hearing Time: _____

Judge: Hon. Sunil R. Kulkarni
Dept.: 1

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

FINAL APPROVAL ORDER AND JUDGMENT

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 _____ before the Honorable Sunil R.
4 Kulkarni.

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 of One Million Five Hundred
17 Thousand Dollars (\$1,500,000) and the terms set forth in the Agreement are fair, reasonable, and
18 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 _____, the Court granted preliminary approval of the Agreement. At
27 this same time, the Court approved conditional certification of the Class for settlement purposes
28

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
8 _____. Mailing of the Class Notice to their last known addresses was the best notice
9 practicable under the circumstances and was reasonably calculated to communicate actual notice
10 of the litigation and the proposed settlement to the Class. The Class Notice given to the Class
11 Members fully and accurately informed the Class Members of all material elements of the
12 proposed Settlement and of their opportunity to object to or comment thereon or to seek exclusion
13 from the Settlement; was valid, due, and sufficient notice to all Class Members; and complied
14 fully with the laws of the State of California, the United States Constitution, due process and other
15 applicable law. The Class Notice fairly and adequately described the Settlement and provided
16 Class 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 _____, 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. ____ objections were received. _____ requests for exclusion were
14 received].

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

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

22 **Attorneys' Fees and Costs**

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

1 **Class Representative Service Payments**

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

8 **Administration Expenses Payment**

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

16 **PAGA Penalties**

17 14. The PAGA Penalties amount of \$_____is approved and shall be paid out of the
18 Gross Settlement Amount, 75% of which shall be allocated and paid to the LWDA and 25% of
19 which shall be distributed to the Aggrieved Employees as Individual PAGA Payments. The
20 Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the
21 Aggrieved Employees' 25% share of PAGA Penalties (\$37,500) by the total number of PAGA
22 Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b)
23 multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. The Aggrieved
24 Employees are all individuals who currently or previously have worked for Defendant in
25 California, including both Defendant's employees and temporary workers employed by third-party
26 staffing agencies and assigned to work for Defendant, in non-exempt positions at any time during
27 the PAGA Period which is August 2, 2021 through _____. All Aggrieved
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1 Employees will be sent their share of the PAGA Penalties and will be subject to the release of the
2 Released PAGA 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
_____).

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. [INSERT REFERENCE TO IDENTIFY ANY OPT OUTS].

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 _____ and Class Counsel Litigation Expenses Payment in the amount of \$_____.
19 Class 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 _____ to each of the Plaintiffs is approved.

23 6. The payment of \$_____ to the Administrator as the Administration
24 Expenses 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.

10
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.**

5

6 Dated: _____

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HON. SUNIL R. KULKARNI
JUDGE, SUPERIOR COURT OF CALIFORNIA

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FINAL APPROVAL ORDER AND JUDGMENT

Blumenthal Nordrehaug Bhowmik De Blouw LLP

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FIRM RESUME

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ATTORNEY BIOGRAPHIES

Norman B. Blumenthal

Partner, Blumenthal Nordrehaug Bhowmik De Blouw LLP (2018 to present)

Practice Areas: Consumer and Securities Class Action, Civil Litigation, Wage and Hour Class Actions, Transactional Law

Admitted: 1973, Illinois; 1976, California

Biography: Law Clerk to Justice Thomas J. Moran, Illinois Supreme Court, 1973-1975, while on Illinois Court of Appeals. Instructor, Oil and Gas Law: California Western School of Law, 1981; University of San Diego School of Law, 1983. Sole Practitioner 1976-1987. Partner, Blumenthal & Ostroff, 1988-1995. Partner, Blumenthal, Ostroff & Markham, 1995-2001. Partner, Blumenthal & Markham, 2001-2007. Partner, Blumenthal & Nordrehaug, 2007. Partner, Blumenthal, Nordrehaug & Bhowmik, 2008-2018. Partner, Blumenthal Nordrehaug Bhowmik De Blouw LLP, 2018 - present.

Member: San Diego County, Illinois State and American Bar Associations; State Bar of California.

Educated: University of Wisconsin (B.A., 1970); Loyola University of Chicago (J.D., 1973);

Summer Intern (1971) with Harvard Voluntary Defenders

Kyle R. Nordrehaug

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Practice Areas: Consumer and Securities Class Actions, Wage and Hour Class Actions, Civil Litigation

Admitted: 1999, California

Biography: Associate, Blumenthal, Ostroff & Markham, 1999-2001. Associate, Blumenthal & Markham, 2001-2007. Partner, Blumenthal & Nordrehaug, 2007. Partner, Blumenthal, Nordrehaug & Bhowmik, 2008-2017

Member: State Bar of California, Ninth Circuit Court of Appeals, Third Circuit Court of Appeals

Educated: University of California at Berkeley (B.A., 1994); University of San Diego School of Law (J.D. 1999)

Awards: Top Labor & Employment Attorney 2016; Top Appellate Reversal - Daily Journal 2015; Super Lawyer 2015-2018

Aparajit Bhowmik

Partner, Blumenthal Nordrehaug Bhowmik De Blouw LLP (2018 to present)

Practice Areas: Civil Litigation; Consumer Class Actions, Wage and Hour Class Actions

Admitted: 2006, California

Educated: University of California at San Diego (B.A., 2002); University of San Diego School of Law (J.D. 2006)

Biography: Partner, Blumenthal, Nordrehaug & Bhowmik, 2008-2017

Awards: Rising Star 2015

Nicholas J. De Blouw

Partner, Blumenthal Nordrehaug Bhowmik De Blouw LLP (2018 to present)

Practice Areas: Civil Litigation; Consumer Class Actions, Wage and Hour Class Actions

Admitted: 2011, California

Educated: Wayne State University (B.A. 2008); California Western School of Law (J.D. 2011)

Piya Mukherjee

Associate Attorney

Practice Areas: Civil Litigation; Consumer Class Actions, Wage and Hour Class Actions

Admitted: 2010, California

Educated: University of California, San Diego (B.S. 2006); University of Southern California, Gould School of Law (J.D. 2010)

Victoria Rivapalacio

Associate Attorney

Practice Areas: Civil Litigation; Consumer Class Actions, Wage and Hour Class Actions

Admitted: 2011, California

Educated: University of California at San Diego (B.A., 2003); George Washington University Law School (J.D. 2010)

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Practice Areas: Civil Litigation; Wage and Hour Class Actions

Admitted: 2018, California; 2004, Nevada

Educated: University of California, San Diego (B.A. 1998); Loyola Law School (J.D. 2001)

Jeffrey S. Herman

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Practice Areas: Civil Litigation; Wage and Hour Class Actions

Admitted: 2011, California; 2016 Arizona

Educated: University of Michigan (B.A. 2008); California Western School of Law (J.D. 2011)

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Practice Areas: Civil Litigation; Wage and Hour Class Actions

Admitted: 2016, California

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Practice Areas: Civil Litigation; Wage and Hour Class Actions

Admitted: 2012, California

Educated: University of California, Irvine; California Western School of Law

Andrew Ronan

Associate Attorney

Practice Areas: Civil Litigation; Wage and Hour Class Actions

Admitted: 2016, California

Educated: Arizona State University; University of San Diego School of Law

Scott Blumenthal

Associate Attorney

Practice Areas: Civil Litigation; Wage and Hour Class Actions

Admitted: 2020, New Mexico

Educated: University of Southern California; California Western School of Law

REPORTED CASES

Sakkab v. Luxottica Retail N. Am., Inc., 803 F.3d 425 (9th Cir. 2015) (The panel reversed the district court's order granting Luxottica Retail North America, Inc.'s motion to compel arbitration of claims and dismissing plaintiff's first amended complaint, in a putative class action raising class employment-related claims and a non-class representative claim for civil penalties under the Private Attorney General Act.);

Securitas Security Services USA, Inc. v. Superior Court, 234 Cal. App. 4th 1109 (Cal. Feb. 27, 2015) (Court of Appeal concluded the trial court correctly ruled that *Iskanian* rendered the PAGA waiver within the parties' dispute resolution agreement unenforceable. However, the Court of Appeal then ruled the trial court erred by failing to invalidate the non-severable class action waiver from the agreement and remanded the entire complaint, including class action and PAGA claims, be litigated in the Superior Court);

Sussex v. United States Dist. Court for the Dist. of Nev., 781 F.3d 1065 (9th Cir. 2015) (The panel determined that the district court clearly erred in holding that its decision to intervene mid-arbitration was justified under *Aerojet-General*. Specifically, the panel held that the district court erred in predicting that an award issued by the arbitrator would likely be vacated because of his "evident partiality" under 9 U.S.C. § 10(a)(2).);

Provost v. YourMechanic, Inc., 2020 Cal. App. Lexis 955 (Oct. 15, 2020) (Court of Appeals affirmed denial of arbitration of PAGA claim, and held in a case of first impression, that there was no additional standing rules for PAGA claim brought by independent contractor);

In re Tobacco Cases II, 41 Cal. 4th 1257 (2007); Washington Mutual Bank v. Superior Court, 24 Cal. 4th 906 (2001); Rocker v. KPMG LLP, 148 P.3d 703; 122 Nev. 1185 (2006); PCO, Inc. v. Christensen, Miller, Fink, Jacobs, Glaser, Weil & Shapiro, LLP, 150 Cal. App. 4th 384 (2007); Hall v. County of Los Angeles, 148 Cal. App. 4th 318 (2007); Coshov v. City of Escondido, 132 Cal. App. 4th 687 (2005); Daniels v. Philip Morris, 18 F.Supp 2d 1110 (S.D. Cal.1998); Gibson v. World Savings & Loan Asso., 103 Cal. App. 4th 1291 (2003); Jordan v. Department of Motor Vehicles, 75 Cal. App. 4th 445 (1999); Jordan v. Department of Motor Vehicles, 100 Cal.App. 4th 431 (2002); Norwest Mortgage, Inc. v. Superior Court, 72 Cal.App.4th 214 (1999); Hildago v. Diversified Transp. Sya, 1998 U.S. App. LEXIS 3207 (9th Cir. 1998); Kensington Capital Mgal. v. Oakley, Inc., 1999 U.S. Dist LEXIS 385; Fed.Sec.L.Rep. (CCH) P90,411 (1999 C.D. Cal.); Lister v. Oakley, Inc., 1999 U.S. Dist. LEXIS 384; Fed. Sec. L. Rep. (CCH) P90,409 (C.D. Cal. 1999); Olszewski v. Scripps Health, 30 Cal. 4th 798 (2003); Steroid Hormone Product Cases, 181 Cal. App. 4th 145 (2010); Owen v. Macy's, Inc., 175 Cal. App. 4th 462 (2009); Taiheiyo Cement Corp. v. Superior Court, 117 Cal. App. 4th 380 (2004); Taiheiyo Cement Corp. v. Superior Court, 105 Cal.App. 4th 398 (2003); McMeans v. Scripps Health, Inc., 100 Cal. App. 4th 507 (2002); Ramos v. Countrywide Home Loans, 82 Cal.App. 4th 615 (2000); Tevssier v. City of San Diego, 81 Cal.App. 4th 685 (2000); Washington Mutual Bank v. Superior Court, 70 Cal. App. 4th 299 (1999); Silvas v. E*Trade Mortg. Corp., 514 F.3d 1001 (9th Cir. 2008); Silvas v. E*Trade Mortg. Corp., 421 F. Supp. 2d 1315 (S.D. Cal. 2006); McPhail v. First Command Fin. Planning, Inc., 2009 U.S. Dist. LEXIS 26544 (S.D. Cal. 2009); McPhail v. First Command Fin. Planning, Inc., 251 F.R.D. 514 (S.D. Cal. 2008); McPhail v. First Command Fin. Planning, Inc., 247 F.R.D. 598 (S.D. Cal. 2007); Barcia v. Contain-A-Way, Inc., 2009 U.S. Dist. LEXIS 17118 (S.D. Cal. 2009); Barcia v. Contain-A-Way, Inc., 2008 U.S. Dist. LEXIS 27365 (S.D. Cal. 2008); Wise v. Cubic Def. Applications, Inc., 2009 U.S. Dist. LEXIS 11225 (S.D. Cal. 2009); Gabisan v. Pelican Prods., 2009 U.S. Dist. LEXIS 1391

(S.D. Cal. 2009); La Jolla Friends of the Seals v. Nat'l Oceanic & Atmospheric Admin. Nat'l Marine Fisheries Serv., 630 F. Supp. 2d 1222 (S.D. Cal. 2009); La Jolla Friends of the Seals v. Nat'l Oceanic & Atmospheric Admin. Nat'l Marine Fisheries Serv., 2008 U.S. Dist. LEXIS 102380 (S.D. Cal. 2008); Louie v. Kaiser Found. Health Plan, Inc., 2008 U.S. Dist. LEXIS 78314 (S.D. Cal. 2008); Weltman v. Ortho Mattress, Inc., 2010 U.S. Dist. LEXIS 20521 (S.D. Cal. 2010); Weltman v. Ortho Mattress, Inc., 2008 U.S. Dist. LEXIS 60344 (S.D. Cal. 2008); Curry v. CTB McGraw-Hill, LLC, 2006 U.S. Dist. LEXIS 5920; 97 A.F.T.R.2d (RIA) 1888; 37 Employee Benefits Cas. (BNA) 2390 (N.D. Cal. 2006); Reynov v. ADP Claims Servs. Group, 2006 U.S. Dist. LEXIS 94332 (N.D. Cal. 2006); Kennedy v. Natural Balance Pet Foods, Inc., 2010 U.S. App. LEXIS 248 (9th Cir. 2010); Kennedy v. Natural Balance Pet Foods, Inc., 2008 U.S. Dist. LEXIS 38889 (S.D. Cal. 2008); Kennedy v. Natural Balance Pet Foods, Inc., 2007 U.S. Dist. LEXIS 57766 (S.D. Cal. 2007); Sussex v. Turnberry/MGM Grand Towers, LLC, 2009 U.S. Dist. LEXIS 29503 (D. Nev. 2009); Picus v. Wal-Mart Stores, Inc., 256 F.R.D. 651 (D. Nev. 2009); Tull v. Stewart Title of Cal., Inc., 2009 U.S. Dist. LEXIS 14171 (S.D. Cal. 2009); Keshishzadeh v. Gallagher, 2010 U.S. Dist. LEXIS 46805 (S.D. Cal. 2010); Keshishzadeh v. Arthur J. Gallagher Serv. Co., 2010 U.S. Dist. Lexis 116380 (S.D. Cal. 2010); In re Pet Food Prods. Liab. Litig., MDL Docket No. 1850 (All Cases), 2008 U.S. Dist. LEXIS 94603 (D.N.J. 2008); In re Pet Food Prods. Liab. Litig., 629 F.3d 333 (3rd Cir. 2010); Puentes v. Wells Fargo Home Mortgage, Inc., 160 Cal. App. 4th 638 (2008); Rezec v. Sony Pictures Entertainment, Inc., 116 Cal. App. 4th 135 (2004); Badillo v. Am. Tobacco Co., 202 F.R.D. 261 (D. Nev. 2001); La Jolla Friends of the Seals v. Nat'l Oceanic & Atmospheric Admin., 2010 U.S. App. Lexis 23025 (9th Cir. 2010); Dirienzo v. Dunbar Armored, Inc., 2011 U.S. Dist. Lexis 36650 (S.D. Cal. 2011); Rix v. Lockheed Martin Corp., 2011 U.S. Dist Lexis 25422 (S.D. Cal. 2011); Weitzke v. Costar Realty Info., Inc., 2011 U.S. Dist Lexis 20605 (S.D. Cal. 2011); Goodman v. Platinum Condo.Dev., LLC, 2011 U.S. Dist. LEXIS 36044 (D. Nev. 2011); Sussex v. Turnberry/MGM Grand Towers, LLC, 2011 U.S. Dist. LEXIS 14502 (D. Nev. 2011); Smith v. Kaiser Foundation Hospitals, Inc., 2010 U.S. Dist. Lexis 117869 (S.D. Cal. 2010); Dobrosky v. Arthur J. Gallagher Serv. Co., LLC, No. EDCV 13-0646 JGB (SPx), 2014 U.S. Dist. LEXIS 106345 (C.D. Cal. July 30, 2014); Metrow v. Liberty Mut. Managed Care LLC - Class Certification Granted, Metrow v. Liberty Mut. Managed Care LLC, No. EDCV 16-1133 JGB (KKx), 2017 U.S. Dist. LEXIS 73656 (C.D. Cal. May 1, 2017); Nelson v. Avon Products, Inc., Class Certification Granted, U.S. District Court for The Northern District of California, Case No. 13-cv-02276-BLF, 2015 U.S. Dist. LEXIS 51104 (N.D. Cal. Apr. 17, 2015); Orozco v. Illinois Tool Works Inc., Class Certification Granted, 2017 U.S. Dist. LEXIS 23179 (E.D. Cal. Feb. 16, 2017); Rieve v. Coventry Health Care, Summary Judgment *Sua Sponte* Granted for Plaintiff, Rieve v. Coventry Health Care, Inc., 870 F. Supp. 2d 856 (C.D. Cal. 2012)

CLASS ACTION & REPRESENTATIVE CASES

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County Superior Court, Case No. 37-2014-00005608; Behar v. Union Bank, Orange County Superior Court, Case No. 30-2009-00317275; Bell v. John Stewart Company, Alameda County Superior Court, Case No. RG14728792; Bennett v. Custom Built Personal Training Monterey County Superior Court, Case No. M127596; Bermant v. Bank of America, Investment Services, Inc., Los Angeles Superior Court, Civil Action No. BC342505; Bethley v. Raytheon Company, United States District Court, Central District of California, Case No. SACV10-01741; Betorina v. Randstad US, L.P., U.S. District Court Northern District of California, Case No. 3:15-cv-03646-MEJ; Beverage v. Edcoa Inc., Sacramento County Superior Court, Case No. 2013-00138279; Bova v. Washington Mutual Bank / JP Morgan Chase, U.S. District Court, Southern District California, Case No. 07-cv-2410; Bowden v. Sunset Parking Services, LLC & LAZ Parking California, LLC - Settled San Diego County Superior Court, Case No. 37-2012-00101751-CU-OE-CTL; Briseno v. American Savings Bank, Class Certification Granted, Orange County Superior Court, Case No. 774773; Brueske v. Welk Resorts, San Diego Superior Court, Case No 37-2010-00086460; Bueche v. Fidelity National Management Services, U.S. District Court, Eastern District of California, Case No. 13-cv-01114; Bunch v. Pinnacle Travel Services, LLC, Los Angeles County Superior Court, Case No. BC552048; Butler v. Stericycle, Inc & Appletree Answering Services of California, Inc., Sacramento County Superior Court, Case No. 34-2015-00180282; Cabral v. Creative Communication Tech., Class Certification Granted, Los Angeles Superior Court, Case No. BC402239; Cardoza v. Wal-Mart Associates, Inc., U.S. District Court Northern District of California, Case No. 4:15-cv-01634-DMR; Castro v. Vivint Solar, Inc., San Diego County Superior Court, Case No. 37-2014-00031385-CU-OE-CTL; Cavazos v. Heartland Automotive Services, Inc., Riverside County Superior Court, Case No. PSC 1401759; Cohen v. Bosch Tool, San Diego Superior Court, Case No. GIC 853562; Comstock v. Washington Mutual Bank - Class Certification Granted, San Diego County Superior Court, Case No. GIC820803; Conley v. Norwest, San Diego County Superior Court, Case No. N73741; Connell v. Sun Microsystems, Alameda Superior Court, Case No. RG06252310; Corrente v. Luxe Valet, Inc., San Francisco County Superior Court, Case No. CGC-15-545961; Cruz v. Redfin Corporation, U.S. District Court Northern District of California, Case No. 3:14-cv-05234-THE; Culley v. Lincare Inc. & Alpha Respiratory Inc., U.S. District Court eastern District of California, Case No. 2:15-cv-00081-GEB-CMK; Cunningham v. Leslie's Poolmart, Inc., U.S. District Court, Central District of California, Case No. 13-cv-02122-CAS; Curry v. California Testing Bureau/McGraw Hill, U.S. District Court, Northern District of California, Case No. C-05-4003 JW; Daniels, et al. v. Philip Morris,(In Re Tobacco Cases II) – Class Certification Granted, San Diego Superior Court, Case No. JCCP 4042; Davis v. Genex Holdings Inc., Santa Clara County Superior Court, Case No. 1-13-cv-240830; Davis v. Clear Connection, LLC, San Diego County Superior Court, Case No. 37-2014-00035173-CU-OE-CTL; Day v. WDC Exploration, Orange County Superior Court, Case No. 30-2010-00433770; Dedrick v. Hollandia Dairy, San Diego County Superior Court, Case No. 37-2014-00004311-Cu-OE-CTL; Delmare v. Sungard Higher Education - Settled U.S. District Court, Southern District of California, Case No. 07-cv-1801; Del Rio v. Tumi Stores, Inc., San Diego County Superior Court, Case No. 37-2015-00022008-CU-OE-CTL; Dewane v. Prudential, U.S. District Court, Central District of California, Case No. SA CV 05-1031; Diesel v. Wells Fargo Bank, Orange County Superior Court, Case No. 30-2011-00441368; Dirienzo v. Dunbar Armored, U.S. District Court, Southern District of California, Case No. 09-cv-2745; Dobrosky v. Arthur J. Gallagher Service Company, LLC, Class certification Granted, No. EDCV 13-0646 JGB (Spx); Dodds v. Zaven Tootikian, Los Angeles County Superior Court, Case No. BC494402; Drumheller v. Radioshack Corporation, United States District Court, Central District of California, Case No. SACV11-355; Enger v. Kaiser Foundation Health Plan, U.S. District Court, Southern District of California, Case No. 09-cv-1670; Escobar v. Silicon Valley Security & Patrol, Inc., Santa Clara County Superior Court, Case No. 1-14-cv272514; Fierro v. Chase Manhattan - Class Certification Granted, Settled San Diego Superior Court, Case No. GIN033490; Figueroa v. Circle K Stores, Inc., San Diego County Superior Court, Case No. 37-2012-00101193-CU-OE-CTL; Finch v. Lamps Plus, (Lamps Plus Credit Transaction Cases), San Diego Superior Court, Case No. JCCP 4532; Fletcher v. Verizon, U.S. District Court, Southern

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Navajo Express, Inc. – San Bernardino County Superior Court, Case No. CIVDS1613846; Lara v. Commercial Protective Service, Inc. – Los Angeles County Superior Court, Case No. BC648921; Picos v. Culinart of California, Inc. – San Diego County Superior Court, Case No. JCCP 4892; Samaniego v. A&I Transport, Inc. – Santa Cruz County Superior Court, Case No. 16CV01894; Bailey v. Romanoff Floor Covering, Inc. – U.S. District Court, Eastern District of California, Case No. 17-CV-00685-TLN-CMK; Aguirre v. Bitech, Inc. – Sacramento County Superior Court, Case No. 34-2016-002022; Phillips v. DI Overnite LLC – San Diego County Superior Court, Case No. 37-2016-00016800-CU-OE-CTL; Jacob v. Pride Transport, Inc. – Santa Cruz County Superior Court, Case No. 16CV1337; Bennett v. Heartland Express, Inc. of Iowa – San Diego County Superior Court, Case No. 37-2016-00015056-CU-OE-CTL; Stapf v. Mercer Health & Benefits Administration LLC – Los Angeles County Superior Court, Case No. BC643007; Armstrong v. Ruan Transport Corporation – San Bernardino County Superior Court, Case No. CIVDS1605897; Geiger v. Floyd’s 99-California LLC – Orange County Superior Court, Case No. 30-2016-00874943-CU-OE-CXC; Mondrian v. Trius Trucking, Inc. – Fresno County Superior Court, Case No. 16CECG01501; Johnson v. Fedex Office and Print Services, Inc. – Alameda County Superior Court, Case No. RG17856291; Rios v. Pacific Western Bank – San Diego County Superior Court, Case No. 37-2016-00038083; Sanders v. Old Dominion Freight Lines, Inc. – San Diego County Superior Court, Case No. 37-2016-00030725-CU-OE-CTL; Taylor v. Gardner Trucking, Inc. – San Bernardino County Superior Court, Case No. CIVDS1614280; Couture v. Wal-Mart Associates, Inc. – U.S. District Court, Eastern District of California, case No. 16-CV-02202-VC; Bertuol v. AHMC Anaheim Regional Medical Center LP – Orange County Superior Court, Case No. 30-2017-00899024-CO-OE-CXC; Espinoza v. Prime Communications of California, LLC – San Mateo County Superior Court, Case No. 16CIV01563; Archuletta v. Tidy Services, Inc. – Orange County Superior court, Case No. 30-2016-008611892-CU-OE-CXC; Puccini v. Earthbound Farm, LLC – Santa Clara County Superior Court, Case No. 17CV308643; Vikram v. First Student Management, LLC – U.S. District Court, Northern District of California, Case No. 17-CV-04656-KAW; Blair v. Ashley Distribution Services, LTD. – U.S. District Court, Central District of California, Case No. 17-CV-01427-JAK-SP; Richardson v. Service Staffing, LLC – Orange County Superior Court, Case No. 30-2017-00899039-CU-OE-CXC; Coffin v. Certified Freight Logistics, Inc. – San Diego County Superior Court, Case No. 37-2016-00036523-CU-OE-CTL; Encarnacion v. S.A.S. Services Group, Inc. – San Diego County Superior Court, Case No. 37-2017-00026726-CU-OE-CTL; Vasquez v. Golden State Overnight Delivery Service, Inc. – Alameda County Superior Court, Case No. RG17862924; Karr v. Tristar Managed Care, Inc. – Contra Costa Superior Court, case No. MSC17-00650; Gouveia v. Central Cal Transportation – San Joaquin County Superior Court, Case No. STK-CV-UOE-2017-0001765; Miranda v. Genex Services, LLC – U.S. District Court, Northern District of California, Case No. 17-CV-01438-JD; Spears v. Health Net of California, Inc. – Sacramento County Superior Court, Case No. 34-2017-00210560; Martinez v. Geil Enterprises, Inc. – Fresno County Superior Court, Case No. 17CECG01879; McComack v. Marriott Ownership Resorts, Inc. – U.S. District Court, Southern District of California, Case No. 17CV1663 BEN WVG; Velasco v. Lemonade Restaurant Group, LLC – Los Angeles County Superior Court, Case No. BC672235; Smith v. Personnel Services, Inc. – U.S. District Court, Northern District of California, Case NO. 17-CV-03594-SK; Gabriel v. Kuni SDA, LLC – San Diego County Superior Court, Case No. 37-2017-000251191-CU-OE-CTL; Miller v. Mattress Firm, Inc. – Santa Clara County Superior Court, Case No. 17CV313148; Provost v. Yourmechanic, Inc. – San Diego County Superior Court, Case No. 37-2017-00024056-CU-OE-CTL; Zirpolo v. UAG Stevens Creek II, Inc. – Santa Clara County Superior Court, Case No. 17CV313457; Salazar v. Aids Healthcare Foundation – San Diego County Superior Court, Case No. 37-2017-00033482-CU-OE-CTL; Knipe v. Amazon.com, Inc. – San Diego County Superior Court, Case No. 37-2017-00029426-CU-OE-CTL; Erwin v. Caremeridian, LLC – Fresno County Superior Court, Case No. 17CECG03048; Davis v. Cox Communications California, LLC – U.S. District Court, Southern District of California, Case No. 16-CV-00989-BAS-BLM; Lara v. RMI International, Inc. – Los Angeles County Superior Court, Case No. BC597695; Harper v. C.R. England, Inc. – U.S. District Court, Utah Central

Division, Case No. 16-CV-00906-DB; Mrazik v. C.H. Robinson Company – U.S. District Court, Central District of California, Case No. 12-CV-02067-CAS-PLA; Horn v. Rise Medical Staffing, LLC – U.S. District Court, Eastern District of California, Case No. 2:17-cv-01967-MCE-KJN; Pasallo v. GSG Protective Services CA Inc. – San Diego Superior Court, Case No. 37-2018-00037611-CU-OE-CTL; Smith v. Pacific Personnel Services, Inc. – U.S. District Court, Northern District of California, Case No. 17-cv-03594-SK; Terrado v. Accredited Debt Relief, LLC – San Diego Superior Court, Case No. 37-2018-00014181-CU-OE-CTL; Escobedo v. Pacific Western Bank – Los Angeles Superior Court, Case No. BC682686; Wade v. Automobile Club of Southern California – Orange County Superior Court, Case No. 30-2017-00960268-CU-OE-CXC; Montano v. American Automobile Association of Northern California – Contra Costa County Superior Court, Case No. CIVMSC18-01539; Perez v. Summit Interconnect, Inc. – Orange County Superior Court, Case No. 30-2018-00995403-CU-OE-CXC; Wolleson v. Gosch Imports, Inc. – Riverside County Superior Court, Case No. RIC170356; Banuelos v. Ortho Mattress, Inc. – Orange County Superior Court, Case No. 30-2020-01161304-CU-OE-CXC; Castellanos v. Miller Automotive Group, Inc. – Los Angeles County Superior Court, Case No. BC699211; Tressler v. Spoonful Management, LLC – Los Angeles County Superior Court, Case No. BC71940; Delph v. Employee Retention Services, LLC – San Diego County Superior Court, Case No. 37-2018-00007885; Romero v. May Trucking Company – U.S. District Court, Central District of California, Case No. 5:17-cv-02166-JGB-SHK; Miranda v. Genex Services, LLC – San Bernardino County Superior Court, Case No. CIVDS1700779; Moore v. Zirx Transportation Services, Inc. – Los Angeles County Superior Court, Case No. CGC-18-566655; Sottile v. Motion Recruitment Partners – Santa Clara County Superior Court, Case No. 18CV321677; Shahbazian v. Fast Auto Loans, Inc. – U.S. District Court, Central District of California, Case No. 2:18-cv-03076-ODW-KS; Salazar v. Johnson & Johnson Consumer Inc. – Los Angeles County Superior Court, Case No. BC702468; Conti v. L'Oreal USA S/D, Inc. – U.S. District Court, Eastern District of California, Fresno, Case No. 1:19-CV-00769-LJO-SKO; Mercado v. Security Industry Specialists, Inc. – Santa Clara County Superior Court, Case No. 17CV320059; Vikili v. Dignity Health – San Francisco County Superior Court, Case No. CGC-18-569456; Bagby v. Swissport SA, LLC – Los Angeles County Superior Court, Case No. BC691058; Henry v. Motion Entertainment Group, LLC – San Francisco County Superior Court, Case No. CGC18565643; Dandoy v. West Coast Convenience, LLC – Alameda County Superior Court, Case No. HG20051121; Lanuza v. AccentCare, Inc. – San Francisco County Superior Court, Case No. CGC-18-565521; Thomas v. Easy Driving School, LLC – San Diego County Superior Court, Case No. 37-2018-00047639-CU-OE-CTL; Erickson v. Erickson – Contra Costa County Superior Court, Case No. MSC18-00307; Martin v. Menzies Aviation (USA) Inc. – San Francisco County Superior Court, Case No. CGC-18-566072; Mortimer v. Healthsouth Bakersfield Rehabilitation Hospital, LLC – Kern County Superior Court, Case No. BCV-18-102761; Alcaraz v. Red Lion Hotels Corporation – San Francisco County Superior Court, Case No. CGC-18-570310; Calhoun v. Total Transportation and Distribution, Inc. – San Diego County Superior Court, Case No. 37-2018-00058681-CU-OE-CTL; Rataul v. Overton Security Services, Inc. – Alameda County Superior Court, Case No. RG18891882; Beltran v. Compass Bank – San Diego County Superior Court, Case No. 37-2019-00024475-CU-OE-CTL; Kirshner v. Touchstone Golf, LLC – San Diego County Superior Court, Case No. 37-2018-00028865-CU-OE-CTL; Pizarro v. The Home Depot, Inc. – U.S. District Court for the Northern District of Georgia-Atlanta Division; Hatanaka v. Restore Rehabilitation, LLC – San Diego County Superior Court, Case No. 37-2018-00034780-CU-OE-CTL; Faria v. Carriage Funeral Holdings, Inc. – Contra Costa County Superior Court, Case No. MSC18-00606; Ontiveros v. Baker Concrete Construction, Inc. – Santa Clara County Superior Court, Case No. 18CV328679; Morales v. Redlands Automotive Services, Inc. – San Bernardino County Superior Court, Case No. CIVDS1807525; Ramirez v. Carefusion Resources, LLC – U.S. District Court, Southern District of California; Amster v. Starbucks Corporation – San Bernardino Superior Court, Case No. CIVDS1922016; Kutzman v. Derrel's Mini Storage, Inc. – U.S. District, Eastern District of California, Case No. 1:18-cv-00755-AWI-JLT; Marks v. Universal Propulsion Company, Inc. – Solano County Superior Court, Case No. FCS051608; Martinez v. Geil Enterprises,

Inc. – Fresno County Superior Court, Case No. 17CECG01480; Teniente v. Cirrus Asset Management, Inc. – Los Angeles County Superior Court, Case No. 20STCV16302; Blackshear v. California Fine Wine & Spirits LLC – Sacramento County Superior Court, Case No. 34-2018-00245842; Warnick v. Golden Gate America West LLC – Los Angeles County Superior Court, Case No. BC714176; Bennett v. Dnata Aviation USA, Inc. – San Francisco County Superior Court, Case No. CGC-18-566911; George v. PF Stockton Fitness LLC – Sacramento County Superior Court, Case No. 34-2019-00261113-CU-OE-GDS; Oshana v. Farmers and Merchants Bank of Central California – Stanislaus County Superior Court, Case No. CV-19-003427; Vasquez v. Packaging Corporation of America, – U.S. District Court, California Central District, Case No. 2:19-cv-01935-PSG-PLA; Palomino v. Zara USA Inc. – Orange County Superior Court, Case No. 30-2018-00992682-CU-OE-CXC; Simmons v. Joe & The Juice LA, LLC – San Francisco County Superior Court; Pacia v. CIM Group, L.P. – Los Angeles County Superior Court, Case No. BC709666; Flores v. Plastic Express – Los Angeles County Superior Court, Case No. BC71971; Madera v. William Warren Properties, Inc. – Orange County Superior Court, Case No. 30-2019-01055704-CU-OE-CXC; Hernandez v. Quality Custom Distribution – Orange County Superior Court, Case No. 30-2018-01010611-CU-OE-CXC; Arango v. Schlumberger Technology Corporation – Orange County Superior Court, Case No. 30-2019-01056839-CU-OE-CXC; Dandoy v. West Coast Convenience, LLC – Alameda County Superior Court, Case No. HG20051121; Ramirez v. J E H Enterprises, Inc. – San Francisco County Superior Court, Case No. CGC-19-574691; Sullen v. First Service Residential California, LLC – San Francisco County Superior Court, Case No. CGC-19-575131; Valentino v. East Bay Tire Co., – Solano County Superior Court, Case No. FCS053067; Murphy v. Rockler Retail Group, Inc. – Sacramento Superior Court, Case No. 34-2019-00251220; Shahbazian v. Onewest Bank – Los Angeles County Superior Court, Case No. 19STCV23722; Bruemmer v. Tempur Retail Stores LLC – Marin County Superior Court, Case No. CIV1803646; Antonios v. Interface Rehab, Inc. – Orange County Superior, Case No. 30-2019-01067547-CU-OE-CXC; Tavallo v. DC Auto, Inc. – San Bernardino, Case No. CIVDS1833598; Miranda v. The Lloyd Pest Control Co. – San Diego County Superior Court, Case No. 37-2018-00052510-CU-OE-CTL; Soenardi v. Magnussen Imports, Inc. – Santa Clara County Superior Court, Case No. 18CV340003; Thai v. Team Industrial Services, Inc. – Los Angeles County Superior Court, Case No. 19STCV21953; Castillo v. A.J. Kirkwood & Associates, Inc. – Los Angeles County Superior Court, Case No. 19STCV04435; Moss v. Jabil Inc., – Alameda County Superior Court, Case No. HG20050536; Billosillo, Jr. v. Crown Energy Services, Inc. – San Diego County Superior Court, Case No. 37-2018-00058254-CU-OE-CTL; Tarkington v. Freetime, Inc. – San Diego County Superior Court, Case No. 37-2019-00011473-CU-OE-CTL; McIntyre v. J.J.R. Enterprises, Inc. – Sacramento County Superior Court, Case No. 34-2019-00251220; Bucur v. Pharmaca Integrative Pharmacy, Inc. – San Diego County Superior Court, Case No. 37-2019-00009409-CU-OE-CTL; Batin v. McGee Air Services, Inc. – Santa Clara County Superior Court, Case No. 19CV347733; Terry v. McGee Air Services, Inc. – King County Superior Court of Washington, Case No. 19-2-3321-5 KNT; Weiss v. Niznik Behavioral Health Resources, Inc. – San Diego County Superior Court, Case No. 37-2019-00039441-CU-OE-CTL; Cavada v. Inter-Continental Hotels Group, Inc. – U.S. District Court, Southern District of California, Case No. 3:19-cv-01675-GPC-AHG; Lesevic v. Spectraforce Technologies, Inc. – U.S. District Court, Northern District of California, Case No. 5:19-cv-03126-LHK; Mutchler v. Circle K Stores, Inc. – San Diego County Superior Court, Case No. 37-2020-00016331-CU-OE-CTL, Azima v. CSI Medical Group, – Santa Clara County Superior Court, Case No. 19CV345450; Porras v. Baypointe Enterprises, LLC – Los Angeles County Superior Court, Case No. 19STCV31015; Mitchell v. Mack Trucking, Inc. – San Bernardino County Superior Court, Case No. CIVDS1928334; Watts v. T.R.L. Systems, Incorporated – Orange County Superior Court, Case No. 30-2019-01102457-CU-OE-CXC; Price v. DMSD Restaurants Inc. – San Diego County Superior Court, Case No. 37-2019-00024062-CU-OE-CTL; Jacobs v. Nortek Security & Control LLC – San Diego County Superior Court, Case No. 37-2019-0019735-CU-OE-CTL; Gonzalez v. Hub International Midwest – San Bernardino County Superior Court, Case No. CIVDS1900463; Cisneros v. Bluepearl California, Inc. – San Mateo Superior Court, Case No. 19-

CIV-05707; Garcia v. Gallagher Basset Services – San Bernardino Superior Court, Case No. CIVDS2004140; Callow v. Adventist Health System/West – Placer County Superior Court, Case No. SCV0043607; Dominguez v. Kimco Facility Services, LLC – Los Angeles County Superior Court, Case No. 19STCV37592; Searles v. Robert Heath Trucking, Inc. – Los Angeles County Superior Court, Case No. 19STCY30808; Rangel v. Pioneer Hi-Bred international, Inc. – Yolo County Superior Court, Case No. CV-19-1797; Ivon v. Sinclair Television of California, Humboldt County Superior Court, Case No. DR190699; Williams v. Henkels & McCoy, Inc. – San Bernardino County Superior Court, Case No. CIVDS2003888; Cano v. Larry Green Chrysler Jeep Dodge, Inc. – Riverside County Superior Court, Case No. BLC1900184; Lopez v. Cepheid – Santa Clara County Superior Court, Case No. 19CV358827; Hernandez v. Quick Dispense, Inc. – Los Angeles County Superior Court, Case No. 19STCV29405; Lopez v. Lacoste USA, Inc. – San Bernardino County Superior Court, Case No. CIVDS1914626; Duhe v. Hospital Couriers Nevada, LLC – Contra Costa County Superior Court, Case No. MSC19-01377; Law v. Sequoia Equities, Incorporated – Contra Costa Superior Court, Case No. C19-01925; Dvorak v. Rockwell Collins, Inc. – San Diego County Superior Court, Case No. 37-2019-00064397-CU-OE-CTL; Noguera v. Metal Container Corporation – Riverside County Superior Court, Case No. RIC2003235; Leon v. Miller Event Management, Inc. – San Luis Obispo Superior Court, Case No. 19CV-0435; Leon v. Miller Event Management, Inc. – San Luis Obispo County Superior Court, Case No. 19CV-0435, Camacho-Bias v. Serve U Brands Inc. – Butte County Superior Court, Case No. 20CV00603; La Pietra v. Entertainment Partners Services, LLC – Los Angeles County Superior Court, Case No. 19STCV39529; Celis v. Theatre Box - San Diego, LLC – San Diego County Superior Court, Case No. ____; Ignacio v. Laboratory Corporation of America – U.S. District Court, California Central District, Case No. 2:19-cv-06079-AB-RAO; Kovnas v. Cahill Contractors LLC – Alameda County Superior Court, Case No. RG19037852; Hersh v. Mrs. Gooch's Natural Food – Los Angeles County Superior Court, Case No. 19STCV10444; Miller v. The Permanente Medical Group – Alameda County Superior Court, Case No. RG19045904; Vasquez v. Autoalert, LLC – Orange County Superior Court, Case No. 30-2019-01114549-CU-OE-CXC; Cavanaugh v. Morton Golf, LLC – Sacramento County Superior Court, Case No. 34-2019-00270176; Coley v. Monroe Operations, LLC – Alameda County Superior Court, Case No. RG20063188; Ramirez v. Sierra Aluminum Company – U.S. District Court, California Central District Court, Case No. 5:20-cv-00417-JGB-KK; Marrero v. Stat Med, P.C. – Alameda County Superior Court, Case No. HG19043214; Enriquez v. Solari Enterprises, Inc. – Los Angeles County Superior Court, Case No. 20STCV11129; Craig v. Hometown Heart – San Francisco County Superior Court, Case No. CGC-20-582454; Lopez v. Hy0Lang Electric California, Inc. – San Diego County Superior Court, Case No. 37-2020-00012543-CU-OE-CTL; Heuklom v. Clara Medical Group, P.C. – San Francisco County Superior Court, Case No. CGC-20-585918; Dominguez v. Lifesafer of Northern California – Monterey County Superior Court, Case No. 20CV002586; Kiseleva v. Totalmed Staffing Inc. – U.S. District Court, California Northern District, Case No. 5:19-cv-06480; Vires v. Sweetgreen, Inc. – Santa Clara County Superior Court, Case No. 20CV365918; Kim v. Wireless Vision, LLC – San Bernardino County Superior Court, Case No. CIVDS2000074; Senoren v. Air Canada Corporation – Los Angeles County Superior Court, Case No. 20STCV13942; Clark v. Quest Diagnostics Incorporated – San Bernardino County Superior Court, Case No. CIVDS2018707; Green v. Shipt, Inc. – Los Angeles County Superior Court, Case No. 20STCV01001; Respass v. The Scion Group LLC – Sacramento County Superior Court, Case No. 34-2020-00285265; Jackson v. Decathlon USA LLC – Alameda County Superior Court, Case No. RG2003024; Avacena v. FTG Aerospace Inc. – Los Angeles County Superior Court, Case No. 20STCV28767; Perez v. Butler America, LLC – Los Angeles County Superior Court, Case No. 20STCV20218; Christensen v. Carter's Retail, Inc. – Orange County Superior Court, Case No. 30-2020-01138792-CU-OE-CXC; Astudillo v. Torrance Health Association, Inc. – Los Angeles County Superior Court, Case No. 20STCV18424; Hansen v. Holiday Al Management Sub LLC – Contra Costa County Superior Court, Case No. CIVMSC20-00779; Almahdi v. Vitamin Shoppe Industries Inc – Santa Clara County Superior Court, Case No. 20CV365150; Krisinda v. Loyal Source Government Services LLC – U.S. District Court, California

Southern District, Case No. 3:20-cv-879-LAB-NLS; Ettegui v. WB Studio Enterprises Inc – U.S. District Court, California Central District, Case No. 2:20-CV-08053-MCS (MAAx); Fernandez v. Nuvision Federal Credit Union – Orange County Superior Court, Case No. 30-2020-01161691-CU-OE-CJC; Aviles v. UPS Supply Chain Solutions, Inc. – Riverside County Superior Court, Case No. RIC2000727; Alcocer v. DSV Solutions, LLC – San Bernardino Superior Court, Case No. CIVDS2010345; Wilson v. Wholesome Harvest Baking, LLC – U.S. District Court, California Northern District, Case No. 4:20-cv-05186-YGR; Gregory v. Verio Healthcare, Inc. – Los Angeles County Superior Court, Case No. 20STCV37254; Rose v. Impact Group, LLC – Orange County Superior Court, Case No. 30-2020-01141107-CU-OE-CXC; Monasterio v. Citibank, N.A. – San Mateo County Superior Court, Case No. 20-CIV-03650; Martinez-Lopez v. Medamerica, Inc. – San Diego County Superior Court, Case No. 37-2020-00034393-CU-OE-CTL; Cox v. PRB Management, LLC – Solano County Superior Court, Case No. FCS055514; Nash v. K. Hovnanian Companies, LLC – Riverside County Superior Court, Case No. RIC2003319; Kyler v. Harbor Freight Tools USA, Inc. – San Diego County Superior Court, Case No. 37-2020-00015828-CU-OE-CTL; Roberts v. Solantic Corporation – Los Angeles County Superior Court, Case No. 20STCV41117; Price v. Mistras Group, Inc. – Los Angeles County Superior Court, Case No. 20STCV22485; Macias v. ABM Electrical & Lighting Solutions, Inc. – San Diego County Superior Court, Case No. 37-2020-00024997-CU-OE-CTL; Basu-Kesselman v. Garuda Labs, Inc. – San Francisco County Superior Court, Case No. CGC-20-585229; Armstrong v. Prometric LLC – Los Angeles County Superior Court, Case No. 20STCV29967; Ashlock v. Advantis Medical Staffing, LLC – San Diego County Superior Court, Case No. 37-2020-00022305-CU-OE-CTL; Wilson v. WXI Global Solutions, LLC – Los Angeles County Superior Court, Case No. 20STCV25007; Gandhale v. Select Rehabilitation, LLC – Monterey County Superior Court, Case No. 20CV002240; Starvoice v. G4S Secure Solutions (USA) Inc. – San Diego County Superior Court, Case No. 37-2020-00029421-CU-OE-CTL; Mbise v. Axlehire, Inc. – Alameda County Superior Court, Case No. RG20067350; Points v. C&J Services, Inc. – Kern County Superior Court, Case No. BCV-20-102483; Marshall v. PHI Air Medical, LLC – Lassen County Superior Court, Case No. 62973; Jauregui v. Cytec Engineered Materials, Inc. – Orange County Superior Court, Case No. 30-2020-01164932-CU-OE-CXC

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May 19, 2022
CA2651

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency DJO, LLC

Online Filing

Certified Mail #70220410000153343225

CT Corporation System

330 N. Brand Blvd., Suite 700

Glendale, CA 91203

Re: Notice Of Violations Of California Labor Code Sections §§ 201, 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 246 *et seq.*, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 11070(14) (Failure to Provide Seating), Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant To California Labor Code Section 2699.5.

Dear Sir/Madam:

“Aggrieved Employees” refers to all individuals who are or previously were employed by DJO, LLC in California, including any employees staffed with DJO, LLC by a third party, and classified as non-exempt employees during the time period of May 19, 2021 until a date as determined by the Court. Our offices represent Plaintiffs Tamika Walker and Shannon Peete (“Plaintiffs”) and other Aggrieved Employees in a lawsuit against DJO, LLC (“Defendant”). Plaintiff Walker was employed by Defendant in California as a non-exempt employee in the position of Private Client Services Representative from September of 2019 to April of 2022 and entitled to the legally required meal and rest breaks and payment for all time worked under Defendant’s control. Plaintiff Peete was employed by Defendant in California as a non-exempt employee in the position of Private Client Services Representative from September of 2019 to April of 2022 and entitled to the legally required meal and rest breaks and payment for all time worked under Defendant’s control. Defendant, however, unlawfully failed to record and pay Plaintiffs and other Aggrieved Employees for, including but not limited to, all of their time worked, including minimum and overtime wages all of their sick pay wages at the correct rates, for all of their missed meal and rest break (and pay the meal and rest break premiums at the correct regular rates of pay), and for all of their time spent working off the clock. Moreover, when Defendant required Plaintiffs and Aggrieved Employees to report for work, but “furnished less than half said employee’s usual or scheduled day’s work,” Defendant violated Cal. Code Regs., tit. 8 § 11040, subd. 5(A) by failing to pay Plaintiffs and Aggrieved Employees for at least two (2) hours’ worth of work at their regular rate of pay. In addition, when Defendant required Plaintiffs and Aggrieved Employees to respond to and engage in additional work, this resulted in a second reporting for work in a single workday, and Defendant failed to pay these employees reporting time pay as required by Cal. Code Regs., tit. 8, § 11040,

subd. 5(B). Further, Defendant failed to advise Plaintiffs and the other Aggrieved Employees of their right to take separately and hourly paid duty-free ten (10) minute rest periods. *See Vaquero v. Stoneledge Furniture, LLC*, 9 Cal. App. 5th 98, 110 (2017). Additionally, pursuant to Labor Code § 204 *et seq.*, Defendant failed to timely provide Plaintiffs and other Aggrieved Employees with their wages, including the “Retro Pay” payments, which were regular wage payments. Plaintiffs further contend that Defendant failed to provide accurate wage statements to Plaintiffs, and other Aggrieved Employees, in violation of California Labor Code section 226(a). Specifically, Plaintiffs and Aggrieved Employees were paid on an hourly basis. As such, the wage statements should reflect all applicable hourly rates during the pay period and the correct total hours worked, and the applicable pay period in which the wages were earned pursuant to California Labor Code Section 226(a). The wage statements Defendant provided to Plaintiffs and other Aggrieved Employees failed to identify such information. More specifically, the wage statements failed to identify the accurate total hours worked each pay period in violation of Cal. Lab. Code Section 226(a)(2) as when the hours were added up they did not equal the actual amount of hours worked each pay period. Additionally, Plaintiffs contend that Defendant failed to comply with Industrial Wage Order 7(A)(3) in that Defendant failed to keep time records showing when Plaintiffs began and ended each shift and meal period. Plaintiffs and other Aggrieved Employees perform tasks that reasonably permit sitting, and a seat would not interfere with their performance of any of their tasks that may require them to stand. Defendant failed to provide Plaintiffs and other Aggrieved Employees with suitable seats. Said conduct, in addition to the foregoing, as well as the conduct alleged in the incorporated Complaint, violates Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 246, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 11070(14) (Failure to Provide Seating), Violation of the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

A true and correct copy of the Complaint by Plaintiffs against Defendant, which (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Plaintiffs, (iii) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiffs, and (iv) sets forth the illegal practices used by Defendant, is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency’s reference. Plaintiffs therefore incorporate the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

This notice is provided to enable Plaintiffs to proceed with the Complaint against Defendant as authorized by California Labor Code section 2699, *et seq.* The lawsuit consists of other Aggrieved Employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statue of 2004 on behalf of Plaintiffs and all Aggrieved Employees. Your earliest response to this notice is appreciated. If you have any questions of concerns, please do not hesitate to contact me at the above number and address.

Respectfully,

/s/ Nicholas J. De Blouw

Nicholas J. De Blouw, Esq.

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

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

16 Plaintiffs,

17 v.

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

20 Defendants.

CASE NO.: 22CV400335

DECLARATION OF MICHAEL SUTHERLAND

Hearing Date: August 10, 2023

Hearing Time: 1:30 p.m.

Judge: Hon. Sunil R. Kulkarni
Dept.: 1

Action Filed: July 13, 2022

Trial Date: Not set

DECLARATION OF MICHAEL SUTHERLAND

1 **DECLARATION OF MICHAEL SUTHERLAND**

2 **I, MICHAEL SUTHERLAND, declare as follows:**

3 1. I am a resident of the United States of America and am over the age of twenty-one (21).
4 I am the President for ILYM Group, Inc., (“ILYM Group”), a professional class action services
5 provider. I am preparing this declaration at the request of Class Counsel. I have personal
6 knowledge of the facts herein, and, if called upon to testify, I could and would testify competently
7 to such facts.

8 2. ILYM Group has extensive experience in disseminating class action notices and
9 administering class action settlements, including direct mail services, telephone, and web-based
10 support, database management, opt-out processing, and settlement fund distribution services for
11 class actions ranging in size from 26 to 4.5 million class members. Attached hereto as Exhibit A
12 is a true and correct copy of ILYM Group’s current CV reflecting our primary competencies as
13 they relate to class action administration. ILYM Group maintains the highest level of
14 confidentiality. The Class List and all forms of communication received by ILYM Group will be
15 held in strict confidentiality and will not be disclosed. ILYM Group will set up a login for
16 Defendants’ counsel to transmit the Class List through our encrypted secure portal. Attached
17 hereto as Exhibit B is ILYM Group’s Security Summary and Protocol. ILYM Group is insured
18 with E&O and Cyber Insurance policies.

19 3. ILYM Group has never had any financial interests in or affiliation with the Parties or
20 their counsel in the matter of Walker v. DJO, LLC.

21 4. If appointed by the Court to provide notice in this case, ILYM Group’s duties will
22 include the following, among others: (a) translating, printing, distributing, remailing (if necessary),
23 and tracking the Notice Packet and other documents (i.e., Objection Forms, Request for Exclusion
24 Forms received) for the Settlement Agreement; (b) calculating and distributing all payments to be
25 made pursuant to the Settlement Agreement; (c) sending Class Members and Eligible Aggrieved
26 Employees reminder postcards for uncashed settlement checks; (d) setting up the interest-bearing
27 Qualified Settlement Fund (“QSF”); (e) providing any funds remaining in the QSF as a result of
28 uncashed settlement checks to the State Controller’s Unclaimed Property Fund; (f) tax reporting;
29 and (g) providing necessary reports and declarations as requested by the Parties.

30 5. Upon appointment, ILYM Group will provide a mailing address and toll-free telephone
31 number to receive correspondence and inquiries from Class Members. After receiving the Class

32 List from Defendants (that should contain each Class Member's full name, last-known mailing
33 address, Social Security Number, and dates of employment and workweeks worked during the
34 Class Period), ILYM Group will upload the information into its database and check for duplicates
35 and other possible discrepancies.

36 6. As part of the preparation for mailing the Notice Packet, ILYM Group will process Class
37 Members' names and addresses against the National Change of Address Database ("NCOA"),
38 maintained by the United States Postal Service ("USPS"), for the purpose of updating and
39 confirming the mailing addresses of the Class Members before mailing of the Notice Packet. To
40 the extent an updated address is found in the NCOA, ILYM Group will use the updated address
41 for mailing the Notice Packet. If ILYM Group does not locate an updated address in the NCOA,
42 it will use the original address provided by Defendants for mailing the Notice Packet.

43 7. Should any Notice Packet be returned to ILYM Group's office as undeliverable, ILYM
44 Group will attempt to locate an updated address using the NCOA and/or other skip trace efforts
45 and will promptly remail the Notice Packet.

46 8. Prior to sending out the Notice Packet, ILYM Group will fill in the specific date for the
47 deadline so that all Class Members will be informed of exactly when all applicable forms will be
48 due, depending on the deadlines set by the Court. At the expiration of the deadline, ILYM Group
49 will inform all Parties as to the number and name of those individuals who filed a timely opt-opt,
50 dispute, or objection. ILYM Group will verify the final number of opt-outs and/or objections in a
51 declaration to be filed with the Court.

52 9. ILYM Group's Disbursement Process will include but not limited to; (a) applying for a
53 case EIN; (b) establishing a QSF, with administering tasks, including, but limited to, overview and
54 reconciliation of the account; (c) calculating the settlement payments; (d) preparing,
55 administering, and distributing settlement payments checks to the Class Members, including the
56 necessary tax forms (W2 and/or 1099); (e) calculating and withholding all applicable state and
57 federal taxes; and (f) performing other such duties as the Parties and/or the Courts direct. The
58 above services are included in ILYM Group's bid.

59 10. ILYM Group's fees to be charged are hourly, fixed, and per person. No additional
60 charges will be incurred unless the Class size increases, or additional services are requested. ILYM
61 Group's fees associated for the administration of this settlement are capped at \$12,430.88.

Attached hereto as Exhibit C is a true and correct copy of ILYM Group's bid that illustrates how its fees were calculated.

I declare that under the penalty of perjury under the laws of the United States of America and the State of California the foregoing is true and correct. Executed on the 12th day of July 2023 in Tustin, California.

Michael Sutherland

Michael Sutherland

EXHIBIT “A”

ILYM | GROUP, Inc.

SETTLEMENT ADMINISTRATION EXPERTS

Overview of Our Firm:

ILYM Group, Inc is a class action administration, legal notification and direct media outlets firm. With over 20 years of combined experience, our primary commitments are to client satisfaction, cutting edge technology and data management security, seamless case management and delivery of case expectations. Because, of our adherence to these commitments, ILYM Group, Inc is a one of the fastest growing, Woman Owned Business (NAPW), in the industry and has become the go-to firm for class action administration and legal notification. ILYM Group, Inc works with the top defense and plaintiff firms across the United States.

AREAS OF EXPERTISE:

- Wage and Hour
- FLSA
- Insurance and Health Care
- Consumer
- Finance
- Employment and Labor
- TCPA
- Antitrust
- Securities

Malta vs. Wells Fargo Home Mortgage Inc.

- TCPA Case with a class size of 5,200,000.

John Lofton, et al. v. Collecto, Inc.

- TCPA Case with a class size of 207,036.

Blaise Picchi et al., vs. World Financial Network Bank, et al.

- TCPA Case with a class size of 856,507. Performed a reverse look-up to obtain Class Member information. We were able to obtain contact information for 93.21% that did not have a valid address associated with the contact record.

Jacqueline Jones vs. I.Q. Data International, Inc.

- TCPA Case with a class size of 93,993. Performed a reverse look-up to obtain Class Member information. We were able to obtain contact information for 93.82% of the Class that did not have a name or address.

Reza Barani vs. Wells Fargo Bank, N.A.

- TCPA Case with a class size of 82,874. Performed a reverse look-up to obtain Class Member information. We were able to obtain contact information for 87.84% of the Class that did not have a name or address.

Kimberly Roberts, et al. v. T.J. Maxx of CA, LLC, et al.

- Wage & Hour Case with a class size of 82,549.

Robert Stone, et al. v. Universal Protection Services, LP, et al.

- Wage & Hour Case with a class size of 75,351.

ILYM | GROUP, Inc.

SETTLEMENT ADMINISTRATION EXPERTS

ILYM Group, Inc. is operational 24/7 delivering true client and class member availability. Our call center is open 24/7/365 days a year, even holidays and is full digital, automated and multilingual. ILYM Group Inc.'s mail and media center is a state-of-the-art facility, fully digital and USPS integrated. We can accommodate cases of any size, from ten class members to multi-millions. ILYM Group, Inc. prides itself on its commitment to service, quality, value pricing and availability. We've committed ourselves to being the best Class Action Administration and Notification Company in our industry. Through our years of experience, ILYM Group, Inc. is dedicated to exceeding our client's expectations.

PRE-SETTLEMENT CONSULTATION

- **Administration Consultation:** Meeting to determine objectives and expectations by both parties. All reporting and responsibilities will be agreed upon as will the seamless process to access data. We will also discuss the opportunities to identify class members with the proposed print and web-based media for optimum reach. Additionally, all expectations and delivery of those results will be planned for and mapped accordingly.

MAILING AND NOTIFICATION

- **Fulfillment and Correspondence:** All provided settlement information will be published via United States Postal Service (USPS first class standards) to the proposed mailing class. Notifications will include a Claim ID and how to respond, or Opt-Out, based on the stipulations.
- **Reverse Lookup:** A confidential reverse phone or reverse cell lookup will provide; owner's name, location, address history, carrier, phone type (landline or cell phone) and more. Our reverse lookup is powered by an extensive database which includes hundreds of millions of cell phone, landline, residential and unlisted number. Our software collects data from multiple data sources and carriers across the US. Our average "hit ratio" ranges from 93% - 98%.
- **Creating Class Database:** All Data is verified and filtered to eliminate duplication against the United States Postal Service (USPS) National Change of Address (NCOA) database. ILYM Group, Inc. will also certify and validate with the Coding Accuracy Support System (CASS) and Track Your Class (TYC) for zone delivery.
- **Claim Forms:** ILYM Group, Inc. will email all claim forms, whenever possible, to have accurate reporting and tracking of all class requests. Emails will contain full text claim forms.
- **Translations:** When needed, ILYM Group, Inc. will translate notices to any language needed to reach Class members.
- **Remails:** Returned mail will be scanned, re-verified and re-mailed. All returned mail is data warehoused and reported to both parties' counsels in a weekly report.

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SETTLEMENT ADMINISTRATION EXPERTS

MEDIA & INTERNET BANNER ADS

Notice Publication

- **Legal Notices:** ILYM Group, Inc. can provide a Media Proposal to maximize reach based on quantitative and qualitative methodologies.
- **Electronic Publication (Banner Ads):** ILYM Group, Inc. will utilize Internet Banner Noticing efforts and web technologies for maximum reach via the World Wide Web.
- **Electronic Mail Notices:** ILYM Group, Inc. can email an estimated number of class members a full text notice. We are compliant with all search engines and Internet Service Providers (ISP) so that our emails are always “White List” accepted with minimal returns.
- **Reach:** Every case has its own proposed reach and exposure percentage. We filter, verify and scrub the data to improve reach results.
- **Services Included:** Analysis, Documentation, Research and Methodologies, Execution and Reporting.

PROJECT MANAGEMENT

- **Case Notification, Maintenance and Management:** ILYM Group, Inc.’s Senior Project Managers will provide all Account Management, Pre-Consultation to Case Conclusion, Reporting and Claims Processing. Design, negotiation and implementation, upon approval, of all forms and notices, all distribution reporting and filings with the court.
- **Claims Processing:** All claims can be submitted by USPS, Internet, Fax, and Email or Online submission. Claims will be processed and recorded with matching ILYM database ID’s. E-claims will have corresponding records of intake. All deficient claims will be notified via USPS and make provisions for class member to re-submit claims.
- **Call Center:** ILYM Group, Inc. will support class members with a toll-free number to get the most up-to-date case settlement information. Customer service representatives will be available 24/7/365 as will recorded messages. All class members are given the options to best serve their needs and to receive case information.
- **Internet Support:** Class members can log on to a provided website and view, print or submit information and claim forms regarding the settlement. Frequently Asked Questions (FAQ’s) will be provided as well. Class members may download the claim form with mailing and fax instructions provided on the form.
- **Objection and Request for Exclusion:** All objections and request for exclusion, opt-out, will be data warehoused, dated and reported. Postmarks will serve for exclusion dating and will be forwarded to both counsels’ no more than 5 days post submission. Objection will be reviewed by ILYM Group, Inc. to determine the timeliness and basis of the objection. All information will be forwarded to both parties counsel, along with any representation information from the class member, within 5 days.

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SETTLEMENT ADMINISTRATION EXPERTS

DATA ADMINISTRATION AND NETWORK SECURITY

- **Network Security:** All provided data is encrypted, stored and hosted in a Tier 4, SAS70 certified environment.
- **Database Administration:** To be developed with all electronically provided data. Class members will be assigned ILYM Group, Inc. internal tracking ID's to ensure all collected member data coincides with all received claims.

DISTRIBUTION AND SETTLEMENT FUNDING

- **Distribution and Management:** Upon receipt of settlement funds, ILYM Group, Inc. will open a QSF Account for proceeds of the Gross Settlement Payment. The deposited funds will then be managed per the Settlement Agreement. All funds will be settled with class members and counsel along with all federal and state income tax reporting.
- **Check Printing and Mailing:** Claims processed, quantified and approved by clients, will be processed for distribution. All checks will be printed and mailed via USPS first class standards. ILYM Group, Inc. will reissue checks in accordance with the Settlement Agreement.
- **Preparation, Filing and Reporting of Taxes:** ILYM Group, Inc. will ensure taxes are filed in accordance to all federal, state and local employment tax returns. All taxes associated with the settlement will be paid on time to tax authorities. All filings and returns (e.g., 1099s, W-2s, etc.) will be done properly and timely with the appropriate authorities. All QSF steps and obligations with federal, state and/or local law will be followed.

CASE CONCLUSION

- **Data Manager Final Report:** All database and electronic documentation will be sent in reports weekly and at the conclusion of the Administration engagement. Call center activity, e-claims, mailed, and faxed claims will be included in all reporting.
- **Project Manager Final Report:** All case and class related information will be provided on a weekly basis and at the conclusion of the Administration engagement. Mailing and media final analysis, exclusions, objections, and all other claims processing outcomes, status reports and final court documentations will be included.
- **Affidavits:** ILYM Group, Inc. will provide all affidavits in support of analysis and media reach, final approvals and settlement. Expert Testimony and Media Methodologies will be determined.
- **Document Retention:** Unless otherwise directed, ILYM Group, Inc. will destroy all undeliverable notices on the effective date of the settlement or when the case is no longer subject to appeal. ILYM Group, Inc. will correspond for one year after the final distribution or until the case is no longer subject to appeal.

EXHIBIT “B”

ILYM Group, Inc. (ILYM) in conjunction with our security and Information Technology (IT) vendor(s), maintains the highest level of confidentiality of class member data. The class data and all forms of communication received by ILYM, will be held in strict confidentiality and will not be disclosed. Data provided to the administrator for purposes of notice, settlement, or award administration will be used solely for settlement implementation and for no other purpose. ILYM will set up a login for Defense Counsel to transmit the class data through our encrypted secure portal. ILYM processes adhere to the Settlement Administration Data Protection Checklist in the Northern District of California and are summarized in the tables below.

Technical Controls

Firewalls and intrusion detection/prevention systems	Yes
Endpoint Detection and Response (EDR) Systems	Yes
Complex Password Requirements	Yes
MultiFactor Authentication for Access to Systems and Data	Yes
Malware Protection and AntiVirus	Yes
Vulnerability Scanning/Pen Testing	Yes
Data Encryption	Yes
Key Management for access to encrypted Data	Yes
Access only provided on need-to-know basis	Yes

Administrative Policies

Personnel and support staff risk assessment and management, including pre-hire background checks and screening processes	Yes
Personnel and support staff required to enter into non-disclosure and confidentiality agreements	Yes
Access controls to systems and data, including guidance for granting, modifying, and reviewing access rights	
Information security and privacy policy training, including policy review, best practices, and data security	Yes
No remote access to systems for Employees	No
Exit interviews/confirmation that terminated/departed employees are immediately cut off from access	Yes
Robust audits of data privacy policies by third-party vendors	Yes – enhanced with SOC 2 efforts
Accreditation in accordance with ISO 27001 and SOC2 (among the industry standards listed below)	SOC 2 in progress
Disclosure of external certifications and any notice of expiration	Yes

Crisis and Risk Management

Incident response/disaster plan for immediate response to security incidents such as data breach.	Yes
Process and timing for notification to attorneys, claimants, and other stakeholders of a data breach and consideration of resources and/or remedies to provide thereto	Yes
Vendor management program that determines and defines requirements to manage risk associated with outsourcing	Core Vendors are limited and have been vetted. New program being implemented as part of SOC 2 efforts

Physical Access Controls

Physical Access Security Security Guards Access Cards to facilities with assignment of identification card subject to approval and review Logs of Access	Logs and “codes” No cards – just codes No security guards Logs are kept
Alarm Systems	Yes
CCTV recording Systems	Yes

Data Collection and Retention

Minimization of collection of personally identifiable information, e.g., social security numbers and banking information	Yes
Data collection only required to extent necessary for settlement administration	Yes
Various methods for ensuring data protection and security of Data classification (including implementation of appropriate safeguards to protect from theft, loss, and/or unauthorized disclosure, use, access, destruction) Compliance with applicable laws and regulations (see below) Secure data transfer	Yes

Data Destruction

Preservation of data only for so long as required for administration of the settlement and any relevant reporting required following the payments or distributions	Yes
Secure data destruction (e.g., 6 months – 1 year or when no longer required)	In Process of codifying as part of SOC 2
Physical media (e.g., paper, CDs) shredded or destroyed to point where they cannot be reconstructed	Yes
Destruction of all derivative copies and/or back-ups	Yes

Applicable Laws, Standards, and Other Regulation

Industry standards: National Institute of Standards and Technology (NIST), HIPAA, FISMA, System and Organization Controls (SOC1 and SOC2) or more advanced assessment, ISO 27001	Yes
Local, national, international privacy regulations (including CCPA)	Yes

Ethical Rules

Administrative policies and/or employee handbook incorporating commitment to ethical rules (e.g., company, court ethical rules) setting forth standards of ethical and legal behavior	Yes
Enforcement clauses, violation resulting in disciplinary action including and up to termination of employment	Yes

Customer Service Measures

Description of settlement website and posting thereto of relevant privacy policies or statements (including portal for reporting suspected loss of confidential data submitted with claim)	Yes
Explanation of role of claims administrator and how to prevent phishing (e.g., clear indication that administrator will not request confidential information by e-mail and how to identify a valid e-mail sent from the administrator)	Yes

EXHIBIT “C”

ILYM | GROUP, Inc.

SETTLEMENT ADMINISTRATION EXPERTS

Case Name:

DJO - Walker - CA2651 Settlement

Requesting Attorneys Name:

Christine LeVu

E-Mail:

christine@bamlawca.com

ILYM Contact:

Michael Sutherland

E-Mail:

msutherland@ilymgroup.com

Contact Number:

321.223.5067

ESTIMATE FOR ADMINISTRATION SOLUTIONS

ASSUMPTIONS

Total Number of Class Members	925
NCOA	Yes
Certified Spanish Translation	No
Case Duration (Year(s))	1

Activity

Rate Type

Unit Cost

Volume

Amount

CASE STARTUP

Initial Setup - Import and Formatting of Data*	Hourly	\$150.00	3	\$450.00
Programming of Class Database	Hourly	\$175.00	3	\$525.00

**ILYM assumes that data will be in a standard format. Client will be notified immediately if not in standard format to correct data or ILYM can convert to standard format @ \$150.00 per hour.*

Subtotal

\$975.00

PROJECT MANAGEMENT & NOTICING

Project Manager (Case notification and maintenance)	Hourly	\$120.00	5	\$600.00
Staff Hours for Processing Returned Mail	Hourly	\$70.00	1	\$70.00
Staff Hours for Processing Opt-Outs, Disputes & Objection(s) via Mail, E-Mail & Fax	Hourly	\$70.00	2	\$140.00
Report Processing	Hourly	\$70.00	4	\$280.00
NCOA	Flat Rate	\$50.00	1	\$50.00
Toll Free Customer Service Representative	Flat Fee	\$175.00	1	\$175.00
Weekly Reports	Flat Rate	\$750.00	1	Waived

Subtotal

\$1,315.00

ILYM | GROUP, Inc.

SETTLEMENT ADMINISTRATION EXPERTS

Activity	Rate Type	Unit Cost	Volume	Amount
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NOTIFICATION/MAILING

Fulfillment of Notice, English & Spanish	Per Piece	\$1.25	925	\$1,156.25
USPS First Class Postage	Per Piece	\$0.59	925	\$545.75
Re-Mails (Forward/Skip trace Undeliverables)	Per Piece	\$2.25	93	\$208.13
Storage, Photocopies, Deliveries	Flat Fee	\$250.00	1	\$250.00

Subtotal \$2,160.13

DISTRIBUTION (Includes EIN, Bank Acct * /QSF Setup)

Distribution Setup & Management	Hourly	\$150.00	4	\$600.00
Account Reconciliation & Distribution Reporting	Hourly	\$125.00	4	\$500.00
Check, Stub & Release - Print & Mail (W-2 and/or 1099)	Per Check	\$1.50	925	\$1,387.50
USPS First Class Postage	Per Piece	\$0.59	925	\$545.75
Re-Mails (Forward/Skip trace Undeliverables up to 10%)	Per Piece	\$2.50	93	\$231.25
Reminder Postcard, Includes Postage	Per Piece	\$1.00	231	\$231.25
Preparation of Taxes	Hourly	\$120.00	10	\$1,200.00
Annual Filing of Tax Return	Per Year	\$1,500.00	1	\$1,500.00

**Additional Bank fees may apply*

Subtotal \$6,195.75

CASE CONCLUSION

Data Manager Final Reporting	Hourly	\$100.00	3	\$300.00
Project Manager Final Reporting	Hourly	\$120.00	3	\$360.00
Process Unclaimed Funds to State Controller's Office	Flat Fee	\$750.00	1	\$750.00
Declaration	Hourly	\$125.00	3	\$375.00

Subtotal \$1,785.00

Not to Exceed: \$12,430.88

Terms and Conditions

All services to be provided by ILYM Group, Inc. (hereinafter, "ILYM") to Client shall be subject to the following terms and conditions:

Services: Subject to the terms hereof, ILYM agrees to provide the Client with Administration Services (hereinafter, "services") as specified in the Proposal provided to Client to which these Terms and Conditions are attached. The estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make provision for any services or class members/size not delineated in the request for proposal or stipulations. Such services do not in any way constitute legal services or advice. ILYM is performing its services as an Independent Contractor and neither it nor its employees shall be deemed to be employees of the Client.

Mailing and Data Conversion: ILYM's database administration assumes the Client will provide complete data that includes all information required to send notifications and complete the administration process. Data must be provided in a complete, consistent, standardized electronic format. ILYM's standard format is Microsoft Excel, however, ILYM may accept other formats at its discretion. Further developments or enhancements to non-standardized data will be billed to Client by ILYM on a time and materials basis, according to ILYM's Standard Rates.

Charges for Services: Charges to the Client for services shall be on a time and materials basis at our prevailing rates, as the same may change from time to time. Any fee estimates set forth in the proposal are estimates only, based on information provided by Client to ILYM. Actual fees charged by ILYM to Client may be greater or less than such estimate, and Client shall be responsible for the payment of all such charges and expenses in accordance with Section 5 hereof. Charges incurred related to resolving post distribution withholdings and related corrective files due to voids and re-issues of payments and related correspondence with state and federal taxing authorities will not be charged to the Client to the extent that funds are received from the taxing authorities offset these charges. ILYM may derive financial benefits from financial institutions in connection with the deposit and investment of settlement funds with such institutions, including without limitation, discounts on eligible banking services and fees, and loans at favorable rates.

Indemnification: Client will indemnify and hold ILYM (and the officers, employees, affiliates and agents harmless against any Losses incurred by ILYM, arising out of, in connection with, or related to (i) any breach of the terms by Client; (ii) the processing and handling of any payment by ILYM in accordance with Client's instructions, including without limitation, the imposition of any stop payment or void payment on any check or the wrongful dishonor of a check by ILYM pursuant to Client's instructions.

Payment of Charges: ILYM reserves the right to request payment of postage charges and 50% of the final administration charges at the start of the case. ILYM bills are due upon receipt unless otherwise negotiated and agreed to with the Client. In the event settlement terms provide that ILYM is to be paid out of the Settlement Fund, ILYM will request that Counsel endeavor to make alternate payment arrangements for ILYM charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the Settlement Account is funded by, or no later than the time of disbursement. Decisions of the court and actions of the parties, including disapproval or withdrawal of a settlement, do not affect the Client's liability to ILYM for payment of services. Services are not provided on a contingency fee basis.

Confidentiality: ILYM maintain reasonable and appropriate security measures and safeguards to protect the security and confidentiality of Client data provided to ILYM by Client in connection herewith. Should ILYM ever be notified of any judicial order or other proceedings in which a third party seeks to obtain access to the confidential data created by or for the Client, ILYM will promptly notify the Client, unless prohibited by applicable law. The Client shall have the option to (1) provide legal representation at the Client's expense to avoid such access or (2) promptly reimburse ILYM for any of its costs, including attorneys' fees, reasonably incurred in avoiding, attempting to avoid or providing such access and not paid by the entity seeking the data. If ILYM is required, pursuant to a court order, to produce documents, disclose data, or otherwise act in contravention of the obligations imposed by this Agreement, or otherwise, with respect to maintaining the confidentiality, proprietary nature and secrecy of the produced documents or disclosed data, ILYM will not be liable for breach of said obligation.

Data Rights: ILYM does not convey nor does the Client obtain any right in the programs, system data, or materials utilized or provided by ILYM in the ordinary course of business in the performance of this Agreement.

Document Retention: Unless directed otherwise in writing by Client, ILYM will destroy undeliverable mail on the effective date of the settlement or the date that the disposition of the case is no longer subject to appeal or review, whichever is later. ILYM will maintain claim forms and other correspondence for one year after final distribution of funds or benefits, or until the date that the disposition of the case is no longer subject to appeal or review, whichever is later.

Limitation of damages: ILYM is not responsible to the Client for any special, consequential or incidental damages incurred by Client. Any liability of ILYM to the Client shall not exceed the total amount billed to the Client for the particular services that give rise to any loss.

Termination: The services to be provided under this Agreement may be terminated, at will by the Client upon at least 30 calendar days' prior written notice to ILYM. The Client's obligation to pay for services or projects in progress at the time of notice of withdrawal shall continue throughout that 30 day period. ILYM may terminate this Agreement (i) with 10 calendar days' prior written notice, if the Client is not current in payment of charges or (ii) in any event, upon at least 3 months' prior written notice to the Client.

Notice: Any notice required or permitted hereunder shall be in writing and shall be delivered personally, or sent by registered mail, postage prepaid, or overnight courier service to the responsible officer or principal of ILYM or the Client, as applicable, and shall be deemed given when so delivered personally, or, if mailed, five days after the date of deposit in United States mail, or, if sent by courier, one business day after delivery to such courier service.

Force Majeure: To the extent performance by ILYM of any of its obligations hereunder is substantially prevented by reason of any act of God or by reason of any other matter beyond ILYM's reasonable control, then such performance shall be excused and this Agreement, at ILYM's option, be deemed suspended during the continuation of such condition and for a reasonable time thereafter.

Waiver of Rights: No failure or delay on the part of a party in exercising any right hereunder will operate as a waiver of, or impair, any such right. No single or partial exercise of any such right will preclude any other or further exercise thereof or the exercise of any other right. No waiver of any such right will be effective unless given in a signed writing.

Jurisdiction: The parties hereto submit to the jurisdiction of the Court of the applicable case for purposes of any suit, action or proceeding to enforce any provision of, or based on any right arising out of, this Agreement. The parties hereto hereby waive any objection to the laying of venue of any such suit, action or proceeding in the Court.

Entire Agreement: These terms and conditions and the proposal embody the entire agreement between the parties with respect to the subject matter hereof, and cancels and supersedes all prior negotiations, representations, and agreements related thereto, either written or oral, except to the extent they are expressly incorporated herein. No changes in, additions to, or waivers of, the terms and conditions set forth herein will be binding upon any party, unless approved in writing by such party's authorized representative.