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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SANTA CLARA

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

**DECLARATION OF NORMAN BLUMENTHAL
IN SUPPORT OF MOTION FOR FINAL
APPROVAL OF CLASS SETTLEMENT,
ATTORNEYS' FEES, COSTS AND SERVICE
AWARDS**

Hearing Date: April 18, 2024

Hearing Time: 1:30 p.m.

[Hearing scheduled by Orders dated August 11, 2023
and December 20, 2023]

Judge: Hon. Charles F. Adams

Dept: 7

Date Filed: July 13, 2022

Trial Date: Not set

1 I, NORMAN B. BLUMENTHAL, declare as follows:

2 1. I am the managing partner of the law firm of Blumenthal Nordrehaug Bhowmik De Blouw
3 LLP, counsel of record for Tamika Walker and Shannon Peete (“Plaintiffs”) in this matter. As such, I
4 am fully familiar with the facts, pleadings and history of this matter. The following facts are within my
5 own personal knowledge, and if called as a witness, I could testify competently to the matters stated
6 herein. This declaration is being submitted in support to the Plaintiffs’ motion for final approval of the
7 class settlement, including attorneys’ fees, costs and service award.

8 2. Over the course of the litigation, a number of attorneys in my firm have worked on this
9 matter. Their credentials are reflected in the Blumenthal Nordrehaug Bhowmik De Blouw LLP firm
10 resume, a true and correct copy of which is attached hereto as Exhibit #1. Some of the major cases our
11 firm has undertaken are also set forth in Exhibit #1. The bulk of the attorneys involved in this matter at
12 Blumenthal Nordrehaug Bhowmik De Blouw LLP have had substantial class litigation experience in the
13 areas of employment class actions, unfair business practices and other complex litigation. The attorneys
14 at my firm have extensive experience in cases involving labor code violations and overtime claims. Class
15 Counsel has litigated similar overtime cases against other employers on behalf of employees, including
16 cases against Walmart, Legoland, Sharp Healthcare, Cigna, HealthNet, See’s Candies, Securitas, Okta,
17 Advanced Home Health, El Pollo Loco, Total Renal, Panda Express, Walt Disney Resorts, Pharmaca,
18 Nortek Security, California Fine Wine, Solarcity, Walgreens, Space Exploration, Union Bank, Verizon,
19 Apple, Wells Fargo, Kaiser, Universal Protection Services, and California State Automobile Association.
20 Class Counsel have been approved as experienced class counsel during contested motions in state and
21 federal courts throughout California. It is this level of experience which enabled the firm to undertake the
22 instant matter and to successfully combat the resources of the defendants and their capable and
23 experienced counsel. Class Counsel have participated in every aspect of the settlement discussions and
24 have concluded the settlement is fair, adequate and reasonable and in the best interests of the Class.

25
26 3. Summary of the Proposed Settlement.

27 (a) A true and correct copy of the Class Action Settlement Agreement (the “Agreement”) between

1 the parties is attached hereto as Exhibit #2. Plaintiffs and Defendant DJO, LLC (“Defendant”) reached
2 a full and final settlement of the above-captioned action, which is embodied in the Agreement filed
3 concurrently with the Court. As consideration for this Settlement, the Gross Settlement Amount to be
4 paid by Defendant is One Million Five Hundred Thousand Dollars (\$1,500,000). (Agreement at ¶ 1.22.)
5 Because of the escalator provision in the Agreement, the Gross Settlement Amount increased to
6 \$1,950,515.97. Under the Settlement, the Gross Settlement Amount consists of the following elements:
7 (1) payment of the Individual Class Payments to the Participating Class Members; (2) Class Counsel Fees
8 Payment and Class Counsel Litigation Expenses Payment; (3) Administration Expenses Payment; (4) the
9 Class Representative Service Payments to Plaintiffs; and (5) the PAGA Penalties payment. (Agreement
10 at ¶ 1.22.)

11 (b) The Gross Settlement Amount does not include Defendant’s share of payroll taxes.
12 (Agreement at ¶ 3.1.) The Gross Settlement Amount shall be all-in with no reversion to Defendant.
13 (Agreement at ¶ 3.1.)

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

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

1 however, Class Members had the right to challenge the number of Workweeks.

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

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

15 (g) ILYM Group was appointed by the Court as the Administrator for the Settlement. (Agreement
16 at ¶ 1.2.) The Administrator will be paid for settlement administration in an amount not to exceed
17 \$15,000. (Agreement at ¶ 3.2(c).) As set forth in the Polites Decl. at ¶ 21, the fees and costs incurred
18 to-date, as well as anticipated fees and costs for completion of the settlement administration, are
19 \$12,430.88.

20 (h) Subject to Court approval, the Agreement provides for Class Counsel to be awarded a sum
21 not to exceed one-third of the Gross Settlement Amount, as the Class Counsel Fees Payment. (Agreement
22 at ¶ 3.2(b).) Class Counsel will also be allowed to apply separately for an award of Class Counsel
23 Litigation Expenses Payment in an amount not to exceed \$21,500. (Agreement at ¶ 3.2(b).) Subject to
24 Court approval, the Agreement provides for a payment of no more than \$10,00 each to the Plaintiffs as
25 the Class Representative Service Payments. (Agreement at ¶ 3.2(a).) In support of this request for
26 attorneys' fees, reimbursement of expenses and service awards, Class Counsel is providing evidentiary
27 support, for these requests, including lodestar.

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

9 (j) The Settlement is fair, adequate and reasonable to the class and should be finally approved for
10 the same reasons the Court granted preliminary approval of the Settlement, agreeing that the settlement
11 is "fair, adequate, and reasonable". (Preliminary Approval Order at 7:7-9.) In sum, the Settlement valued
12 at \$1,950,515.97 is an excellent result for the Class. This result is particularly favorable in light of the
13 fact that liability and class certification in this case were far from certain in light of the defenses asserted
14 by Defendant. Given the complexities of this case, the defenses asserted, the uncertainty of class
15 certification, along with the uncertainties of proof at trial and appeal, the proposed settlement is fair,
16 reasonable and adequate, and should be finally approved.

17
18 4. Procedural status of the settlement - The reaction of the Class unequivocally supports
19 approval of the Settlement. On January 11, 2024 the Administrator mailed the Court-approved Class
20 Notice to the Class Members, which provided each class member with the terms of the Settlement,
21 including notice of the claims at issue and the financial terms of the settlement, including the attorneys'
22 fees, costs, and service award that were being sought, how individual settlement awards would be
23 calculated, and the specific, estimated payment amount to that individual. See Declaration of Cassandra
24 Politics ("Politics Decl.") at ¶ 9, Exh. A. In disseminating the notice, the Administrator followed the
25 notice procedures authorized by the Court in its Preliminary Approval Order. Significantly, there have
26 been no objections and no requests for exclusion. Politics Decl. at ¶¶ 13-14. As such, the entire Class
27 will participate in the Settlement and will be sent a settlement check. See Politics Decl. at ¶¶ 17 and 18.

1 5. Description of Plaintiffs' claims - The Action generally alleges that Plaintiffs and other
2 Class Members were not properly paid all overtime wages for hours worked, were not provided meal and
3 rest periods, were not timely paid earned wages, were not provided reimbursement for required expenses,
4 were not provided accurate itemized wage statements, were not paid all wages at the time of termination.
5 The Action seeks unpaid wages, penalties, attorney fees, litigation costs, and any other equitable or legal
6 relief allegedly due and owing to Plaintiffs and the other Class Members by virtue of the foregoing
7 claims.

8
9 6. Procedural History of the Litigation

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

24 (b) On August 2, 2022, a Representative Action Complaint against Defendant in the Superior
25 Court of the State of California, County of Santa Clara, asserting a single cause of action for violation
26 of the Labor Code Private Attorneys General Act, Cal. Labor Code §§ 2698, et seq. ("PAGA"), Case No.
27 22CV401621 ("PAGA Action") based upon the same alleged violations as in the class action.

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

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

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

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

27 (g) Although a settlement has been reached, Defendant denies any liability or wrongdoing of any

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

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

24 7. History of Settlement Discussions

25 (a) This Settlement is the result of extensive and hard-fought litigation as well as negotiations
26 before an experienced and well-respected mediator. Defendant has expressly denied and continue to deny
27

1 any wrongdoing or legal liability arising out of the conduct alleged in the Action. Plaintiffs and Class
2 Counsel have determined that it is desirable and beneficial to the Class to resolve the Released Class
3 Claims in accordance with this Settlement. Class Counsel are experienced and qualified to evaluate the
4 class claims, the viability of the defenses asserted, and the risks and benefits of trial and settlement, and
5 Class Counsel are experienced in wage and hour class actions, as Class Counsel has previously litigated
6 and certified similar claims against other employers.

7 (b) The Parties attended an arms-length mediation session with Mark Rudy, a respected and
8 experienced mediator of wage and hour class actions, in order to reach this Settlement. In preparation
9 for the mediation, Defendant provided Class Counsel with necessary information for the members of the
10 Class, including payroll data and information concerning the composition of the Class. Plaintiffs
11 analyzed the data with the assistance of damages expert, Berger Consulting, and prepared and submitted
12 a mediation brief and damage valuation to the Mediator. Following this all-day mediation, the Parties
13 agreed to this Settlement based upon the Mediator's proposal, which was memorialized in the form of a
14 Memorandum of Understanding. The final settlement terms were negotiated and set forth in the
15 Agreement now presented for this Court's approval.

16 (c) From February 2023 to June 2023, the settlement agreement and exhibits thereto were
17 finalized and executed, and then presented by motion to this Court for preliminary approval. On August
18 11, 2023, the Court issued its Order granting preliminary approved of the settlement as fair and
19 reasonable to the Class.

20 (d) Plaintiffs and Class Counsel believe that this settlement is fair, reasonable and adequate. In
21 my judgment as experienced Class Counsel, this Settlement should be finally approved.

22
23 8. The outcome of this case would have been uncertain and fraught with risks.

24 (a) Here, a number of defenses asserted by Defendant present serious threats to the claims of the
25 Plaintiffs and the other Class Members. Defendant asserted that Defendant's practices complied with all
26 applicable Labor laws. Defendant argued that all work time was properly recorded and paid for and that
27 there was no miscalculation of the regular rate. Defendant contends that its meal and rest period policies

1 fully complied with California law, and Defendant did not fail to provide the opportunity for legally
2 required rest breaks. As to meal periods, Defendant established that it paid meal period premiums for
3 any missed meal periods, and Defendant contended that it did not underpay such meal period premiums
4 paid to the Class. As to expense reimbursement, Defendant contended that it did not fail to provide
5 reimbursement for necessary business expenses and that claimed expenses were incurred voluntarily
6 and/or for the convenience of employees and is therefore not required reimbursement. Defendant argued
7 that the decisions in *Brinker v. Superior Court*, 53 Cal. 4th 1004 (2012), *Lockheed Martin Corp. v.*
8 *Superior Ct.*, 29 Cal. 4th 1096, 1108 (2003), and *Salazar v. See's Candy Shops Inc.*, 64 Cal.App.5th 85
9 (2021), weakened Plaintiffs' claims, on liability, value, and class certifiability as to the meal and rest
10 period claims. Defendant also argues that based on its facially lawful practices, it acted in good faith and
11 without willfulness, which if accepted would negate the claims for waiting time penalties and/or
12 inaccurate wage statements. If successful, Defendant's defenses could eliminate or substantially reduce
13 any recovery to the Class. While Plaintiffs believes that these defenses could be overcome, Defendant
14 maintains these defenses have merit and therefore present a serious risk to recovery by the Class.

15 (b) There was also a significant risk that, if the Action was not settled, Plaintiffs would be unable
16 to obtain class certification and thereby not recover on behalf of any employees other than himself.
17 Defendant argued that the individual experience of each putative class member varied with respect to the
18 claims. Defendant could also contest class certification by arguing injury and good faith were case-by-
19 case determinations that precluded class certification. Plaintiffs are aware of other cases where class
20 certification of similar claims was denied. *See e.g. Cacho v. Eurostar, Inc.*, 43 Cal. App. 5th 885 (2019)
21 (denying certification of rest break claims). Finally, even if class certification was successful, as
22 demonstrated by the California Supreme Court decision in *Duran v. U.S. Bank National Assn.*, 59 Cal.
23 4th 1 (2014), there are significant hurdles to overcome for a class wide recovery even where the class has
24 been certified. While other cases have approved class certification in wage and hour claims, class
25 certification in this action would have been hotly disputed and was by no means a foregone conclusion.

26 (c) As demonstrated by the decision in *Duran*, the complexities and duration of further litigation
27 cannot be overstated. There is little doubt that Defendant would post a bond and appeal in the event of

1 an adverse judgment. A post-judgment appeal by Defendant would have required many more years to
2 resolve, assuming the judgment was affirmed. If the judgment was not affirmed in total, then the case
3 could have dragged on for years after the appeal. The benefits of a guaranteed recovery today outweigh
4 an uncertain result three or more years in the future. Plaintiffs and Class Counsel recognize the expense
5 and length of continuing to litigate and trying this Action against Defendant and then litigating possible
6 appeals which could take several years. Class Counsel has also taken into account the uncertain outcome
7 and risk of litigation, especially in complex class actions such as this Action. Class Counsel is also
8 mindful of and recognizes the inherent problems of proof under, and alleged defenses to, the claims
9 asserted in the Action. Based upon their evaluation, Plaintiffs and Class Counsel have determined that
10 the Settlement set forth in the Agreement is in the best interest of the Class Members.

11 (d) The Settlement in this case is fair, reasonable and adequate considering Defendant's defenses
12 to Plaintiffs' claims. As set forth in the Declaration of Nordrehaug in support of preliminary approval
13 which discussed the value of the class claims in detail, the Gross Settlement Amount compares favorably
14 to the value of the claims. The calculations to compensate for the amount due to the Class Members at
15 the time this Settlement was negotiated were calculated by Plaintiffs' expert, Berger Consulting, in
16 advance of mediation. Class Counsel analyzed the data for putative class members and determined the
17 potential maximum damages for the class claims. For the Class, the maximum value of the claim for
18 unpaid overtime wages due to the alleged miscalculation of the regular rate was \$79,744, the maximum
19 potential damages for underpaid meal period premiums were estimated to be \$83,359, the maximum
20 potential rest period damages were estimated to be \$794,390 based upon one missed rest period per week,
21 and the maximum potential damages for failure to provide expense reimbursement were calculated to be
22 \$46,250. In total, the damages for the Class were calculated to have a maximum potential total value of
23 \$1,003,743. In addition, Plaintiff calculated that the maximum value of the potential waiting time
24 penalties were \$434,270, and the maximum value of the potential wage statement penalties were

1 \$496,450.¹ Defendant vigorously disputed Plaintiffs' calculations and exposure theories. Consequently,
2 the Gross Settlement Amount represents more than the potential maximum damages at issue for the Class
3 in this case, assuming these amounts could all be proven in full at trial.² The above maximum
4 calculations should then be adjusted in consideration for both the risk of class certification and the risk
5 of establishing class-wide liability on all claims. Given the amount of the Settlement as compared to the
6 potential value of the claims, the Settlement is most certainly fair and reasonable. Clearly, the goal of
7 this litigation has been met.

8 (e) In sum, the Settlement is a fair and reasonable result, and provides the Class with a significant
9 recovery, particularly when viewed in light of the fact that the Defendant asserted serious and substantial
10 defenses both to liability and to class certification. Currently, the maximum and average class member
11 allocation are \$5,344.92 and \$681.85, respectively. *See* Politics Decl. ¶18. Given the complexities of this
12 case, the defenses, along with the uncertainties of proof and appeal, the proposed Settlement is fair,
13 reasonable and adequate, and should be finally approved.

14 (f) It is impossible to predict with certainty whether, under the facts of this case, Plaintiff would
15 prevail against the Defendant's factual and legal defenses. While Plaintiffs and Class Counsel believe
16 in the merits of the claims, Defendant has asserted real and substantial defenses to these claims and to
17 class certification. Settlement in this case clearly benefits the Class when measuring the strengths of
18 Plaintiffs' case and the risk of establishing class wide liability and damages.

21 ¹ While Plaintiffs alleged claims for statutory penalties pursuant to Labor Code Sections 203 and
22 226, at mediation Plaintiffs recognized that these claims were subject to additional, separate defenses
23 asserted by Defendant, including, a good faith dispute defense as to whether any premium wages for
24 meal or rest periods or other wages were owed given Defendant's position that Plaintiffs and Class
25 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.").

26 ² Because the PAGA claim does not provide a recovery to the Class, Plaintiff did not include the
27 PAGA claim in this discussion of the class claim valuation. The PAGA claim was addressed in the
28 Motion for Preliminary Approval in the Declaration of Nordrehaug at ¶ 33.

1 **ATTORNEYS' FEES, LITIGATION EXPENSES AND SERVICE AWARD**

2 9. The Agreement For The Payment of Fees and Expenses Should Is Appropriate And Should
3 Be Enforced

4 (a) Class Counsel successfully negotiated a class action settlement which provides for a
5 common fund settlement to be paid by Defendant DJO, LLC ("Defendant") to the Class in the amount
6 of One Million Five Hundred Thousand Dollars (\$1,500,000). (Agreement at ¶ 1.22.) Because of the
7 escalator provision in the Agreement, the Gross Settlement Amount increased to \$1,950,515.97 (the
8 "Gross Settlement Amount"). As part of the settlement, the parties agreed to an award of attorneys' fees
9 equal to one-third (1/3) of the Gross Settlement Amount as the Class Counsel Fees Payment. (Agreement
10 at ¶3.2(b).) By this motion, Class Counsel respectfully requests approval of the Class Counsel Fees
11 Payment in an amount equal to one-third of the Gross Settlement Amount.

12 (b) In the class action context, that means "attempting to award the fee that informed
13 private bargaining, if it were truly possible, might have reached." Here, informed arms-length bargaining
14 between experienced counsel and Defendant resulted in Defendant negotiating the fee award to one-third
15 of the Gross Settlement Amount. Such bargaining is obviously the best measure of the market for fees.
16 Moreover, fee awards in common fund settlements as this one have resulted in a percentage of fees in an
17 equivalent percentage to the sum sought by Class Counsel herein, further reflecting the accurate market
18 value of the award requested.

19 (c) The requested fee award, agreed to by the parties as part of the Settlement, should be
20 approved. The requested fee award was bargained for during arms' length adversarial bargaining by
21 counsel for each of the parties as part of the Settlement.

22
23 10. The Class Counsel Fee Award Is Properly Calculated as a Percentage of the Total Value
24 Created for the Benefit of the Class

25 (a) As part of the settlement, the parties agreed to an award of attorneys' fees equal to
26 one-third of the Gross Settlement Amount of \$1,950,515.97, which equals \$650,171.99 for attorneys'
27 fees. As part of the Agreement, Defendant also agreed that Class Counsel will also be paid reasonable

1 litigations expenses incurred as per Class Counsel's billing statement in an amount not to exceed \$21,500.
2 Finally, Defendant also agreed that Plaintiffs can be awarded a Class Representative Service Payment in
3 the amount of \$10,000 each, as their service award under the Agreement.

4 (b) In defining a reasonable fee, the Court should mimic the marketplace for cases
5 involving a significant contingent risk such as this one. Our legal system places unique reliance on
6 private litigants to enforce substantive provisions of employment law through class actions. Therefore,
7 attorneys providing these substantial benefits should be paid an award equal to the amount negotiated in
8 private bargaining that takes place in the legal market place.

9 (c) There is a substantial difference between the risk assumed by attorneys being paid by
10 the hour and attorneys working on a contingent fee basis. The attorney being paid by the hour can go to
11 the bank with his fee. The attorney working on a contingent basis can only log hours while working
12 without pay towards a result that will hopefully entitle him to a marketplace contingent fee taking into
13 account the risk and other factors of the undertaking. Otherwise, the contingent fee attorney receives
14 nothing. In this case, the nature of the fee was wholly contingent. Class Counsel subjected themselves
15 to this contingent fee market risk in this all or nothing contingent fee case wherein the necessity and
16 financial burden of private enforcement makes the requested award appropriate. This case was litigated
17 on a contingent basis for over a year, with all of the risk factors inherent in such an uncertain undertaking.
18 Indeed, I am aware of other similar cases where the court dismissed the class allegations or denied class
19 certification. Under such circumstances, courts have held that a risk multiplier must be applied to the fee
20 award.

21 (d) Here, the contingent nature of the fee award, both from the point of view of eventual
22 settlement and the point of view of establishing eligibility for an award, also warrant the requested fee
23 award. A number of difficult issues, the adverse resolution of any one of which could have doomed the
24 successful prosecution of the action, were present here. Attorneys' fees in this case were not only
25 contingent but risky, with a very real chance that Class Counsel would receive nothing at all for their
26 efforts, having devoted time and advanced costs. Class Counsel has previously invested in cases which
27 resulted in no recovery, and here Class Counsel is recovering a fee award that comparable to the

1 multiplier approved in other cases.

2 (e) At the time this case was brought, the result was far from certain as discussed above
3 at paragraphs 8(a) and 8(b).

4 (f) The Settlement was possible only because Class Counsel was able to convince
5 Defendant that Plaintiffs could potentially prevail on the contested issues regarding liability, maintain
6 class certification, overcome difficulties in proof as to monetary relief and take the case to trial if need
7 be. In successfully navigating these hurdles Class Counsel displayed the necessary skills in both wage
8 and hour and class action litigation. The high quality of the Class Counsel's work in this case was
9 mandated by the vigorous defense presented by counsel for Defendant. Over the course of more than a
10 year of litigation, Class Counsel was required to invest substantial time and resources in investigation,
11 litigation, the determination of potential damages and communicating with and responding to opposing
12 counsel's and class members' requests and inquiries.

13 (g) To represent the Class on a contingent fee basis, Class Counsel also had to forego
14 compensable hourly work on other cases to devote the necessary time and resources to this contingent
15 case. In so doing, Class Counsel gave up the hourly work that a firm can bank on for the risky contingent
16 fee work in this case which could potentially have paid nothing.

17 (h) Class Counsel were required to advance all costs in this litigation. Especially in this
18 type of litigation where the corporate defendant and their attorneys are well funded, this can prove to be
19 very expensive and risky. Accordingly, because the risk of advancing costs in this type of litigation can
20 be significant, it is therefore cost prohibitive to many attorneys. The financial burdens undertaken by
21 Plaintiff and Class Counsel in prosecuting this action on behalf of the Class were very substantial. Class
22 Counsel has previously litigated cases and advanced costs, but received no recovery. To date, Class
23 Counsel advanced more than \$21,500 in costs which could not have been recovered if this case had been
24 lost. The Plaintiffs also undertook the risk of liability for Defendant's costs had this case not succeeded,
25 as well as other potential negative financial ramifications from having sued Defendant on behalf of the
26 Class. Accordingly, the contingent nature of the fee and the financial burdens on Class Counsel and on
27 Plaintiffs also support the requested awards.

1 (i) In a common fund settlement “[t]he lodestar method is merely a cross-check on
2 the reasonableness of a percentage figure”. *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1050, n.5 (9th
3 Cir. 2002). In this case, the reasonableness of the requested attorneys’ fee of one-third equal to
4 \$650,171.99 is also established by reference to Class Counsel’s lodestar in this matter. The
5 contemporaneous billing records for Class Counsel evidence that through March 22, 2024, Class
6 Counsel’s total lodestar is \$235,046.25, with significant additional fees still to be incurred to complete
7 final approval and the settlement process. The requested fee award is therefore currently equivalent to
8 Class Counsel’s total lodestar with a multiplier of less than 2.8, and there will be additional lodestar
9 incurred by Class Counsel to complete the settlement process and manage the settlement distribution and
10 reports. Such a multiplier is within the range of multipliers approved in other cases such as *Laffitte* and
11 *Vizcaino*. As a result, this Court may conclude that the requested award is fair and reasonable and is
12 justified under California law.

13 (j) Counsel retained on a contingency fee basis, whether in private matters or in representative
14 litigation of this sort, is entitled to a premium beyond his standard, hourly, non-contingent fee schedule
15 in order to compensate for both the risks and the delay in payment for the simple fact that despite the most
16 vigorous and competent of efforts, success is never guaranteed. This is particularly true here where Class
17 Counsel has prosecuted this case on a contingency basis for over a year. Indeed, if counsel is not
18 adequately compensated for the risks inherent in difficult class actions, competent attorneys will be
19 discouraged from prosecuting similar cases.

20 11. On December 4, 2018, in *Panda Express Wage and Hour Cases* (Los Angeles Superior
21 Court, Case No. JCCP 4919), Judge Carolyn Kuhl awarded Class Counsel a one-third fee award in a wage
22 and hour class settlement. On January 31, 2020, in *El Pollo Loco Wage and Hour Cases* (Orange County
23 Superior Court Case No. JCCP 4957), Judge William Claster awarded Class Counsel a one-third award
24 in a wage and hour class settlement. On February 11, 2020, in *Singh v. Total Renal Care* (San Francisco
25 Superior Court Case No. CGC-16-550847), Judge Ethan Schulman awarded Class Counsel a one-third
26 award in a wage and hour class settlement. On April 15, 2021, in *Walker v. Brink's Global Services USA*
27 (Los Angeles County Superior Court Case No. BC564369), Judge Amy Hogue awarded Class Counsel

1 a one-third award in a wage and hour class settlement. On June 2, 2021, in *Pacia v. CIM Group, L.P.* (Los
2 Angeles Superior Court Case No. BC709666), Judge Amy D. Hogue awarded Class Counsel a one-third
3 fee award in a wage and hour class settlement. On November 8, 2021, in *Securitas Wage and Hour Cases*
4 (Los Angeles Superior Court Case No. JCCP4837), Judge David Cunningham awarded a one-third fee
5 award in a wage and hour class settlement. On November 17, 2021, in *Leon v. Sierra Aluminum*
6 *Company* (San Bernardino Superior Court Case No. CIVDS2010856), Judge David Cohn awarded a
7 one-third fee award in a wage and hour class settlement. On March 17, 2022, in *See's Candies Wage and*
8 *Hour Cases* (Los Angeles Superior Court Case No. JCCP5004), Judge Maren Nelson awarded a one-third
9 fee award in a wage and hour class action settlement. On April 12, 2022, in *O'Donnell v. Okta, Inc.*, (San
10 Francisco Superior Court Case No. CGC-20-587665), Judge Richard Ulmer awarded a one-third fee
11 award in a wage and hour class action settlement. On June 30, 2022, in *Armstrong, et al. v. Prometric*
12 *LLC* (Los Angeles Superior Court Case No. 20STCV29967), Judge Maren E. Nelson awarded a one-third
13 fee award in a wage and hour class action. On July 13, 2022, in *Crum v. S&D Carwash Management*
14 *LLC*, (Sacramento Superior Court Case No. 2019-00251338), Judge Christopher E. Krueger awarded a
15 one-third fee award in a wage and hour class action settlement. On August 10, 2022, in *Spears, et al. v.*
16 *Health Net of California, Inc.*, (Sacramento Superior Court Case No. 34-2017-00210560-CU-OE-GDS),
17 Judge Christopher E. Krueger awarded a one-third fee award in a wage and hour class action settlement.
18 On September 7, 2022, in *Lucchese, et al. v. Kone, Inc.*, (San Francisco Superior Court Case No. CGC-
19 20-588225), Judge Richard B. Ulmer, Jr. awarded a one-third fee award in a wage and hour class action
20 settlement. On November 4, 2022, in *Infinity Energy Wage and Hour Cases* (San Diego Superior Court,
21 Case No. JCCP5139), Judge Keri Katz awarded a one-third fee award in a wage and hour class action
22 settlement. On February 1, 2023, in *Hogan v. AECOM Technical Services, Inc.* (Los Angeles Superior
23 Court Case No. 19STCV40072), Judge Stuart Rice awarded a one-third fee award in a wage and hour
24 class settlement. On March 2, 2023, in *Leon v. Calaveras Materials* (Kings County Superior Court Case
25 No. 21C-0105), Judge Melissa D'Morias awarded a one-third fee award in a wage and hour class
26 settlement. On June 20, 2023, in *Gonzalez v. Pacific Western Bank* (San Bernardino County Superior
27 Court Case No. CIVSB2127657) Judge David Cohn awarded a one-third fee award in a wage and hour

1 class settlement, On June 30, 2023, in *Aguirre v. Headlands Ventures* (Sacramento County Superior
2 Court Case No. 34-2021-00297290), Judge Jill Talley approved a one-third fee award in a wage and hour
3 class settlement. On October 16, 2023, in *Flores v. Walmart*, (San Bernardino County Superior Court
4 Case No. CIVDS2023061) Judge Joseph T. Ortiz awarded a one-third fee award in a wage and hour class
5 settlement. On November 17, 2023, in *Silva v. Woodward HRT* (Los Angeles County Superior Court
6 Case No. 21STCV42692), Judge Maren Nelson awarded a one-third fee award in a wage and hour class
7 settlement. On November 29, 2023, in *Ochoa-Andrade v. See's Candies* (San Mateo County Superior
8 Court Case no. 22-CIV-02481), Judge Marie Weiner approved a one-third fee award in a wage and hour
9 class settlement.

10 12. The contemporaneous billing records for Class Counsel evidence that through March 22,
11 2024, Class Counsel's total lodestar is \$235,046.25, with significant additional fees still to be incurred
12 to complete final approval and the settlement process. The requested fee award is therefore currently
13 equivalent to Class Counsel's total lodestar with a reasonable multiplier cross-check of less than 2.8, and
14 there will be additional lodestar incurred by Class Counsel to complete the settlement process and manage
15 the settlement distribution and reports. From April 17, 2022 to March 22, 2024, my firm worked on this
16 matter for over 304 hours, with hourly rates for attorneys ranging from \$450 to \$995, resulting in a total
17 incurred lodestar for my firm in the amount of \$235,046.25. A detailed breakdown of the total fees and
18 the services performed by the firm on this case is attached hereto as Exhibits #3 and 4.³ In addition, Class
19 Counsel will be performing significant additional work that is not included in this lodestar amount,
20 including finalizing the final approval motion, attending the hearing on final approval, and monitoring
21 completion of the settlement process. I expect this additional work will result in \$20,000 in additional
22 lodestar for my firm, which if factored in would result in a 2.5 lodestar multiplier cross-check. The rates
23 charged by my firm are in line with the prevailing rates of attorneys in the local legal community for
24 similar work and, if this were a commercial matter, these are the charges that would be made and
25

26 ³ My firm switched billing systems in June 2022, so Exhibit #3 contains the billing for inception to
27 June 2022, and Exhibit #4 contains the billing from June 2022 to March 22, 2023.

1 presented to the client. My firm's hourly rates are based upon the Laffey Matrix with the appropriate 2%
2 increase adjustment for Southern California. A true and correct copy of the current Laffey Matrix is
3 attached hereto as Exhibit #5. These hourly rates have been approved by Court's throughout California,
4 including the Courts in the Superior Court of California. In fact, on August 1, 2018, District Judge Andre
5 Birotte Jr. explicitly found that Class Counsel's "rates generally appear reasonable and 'in line with those
6 prevailing in the [relevant] community'—the Central District of California". Finally, the reasonableness
7 of Class Counsel's hourly rates is further confirmed by comparing such rates with the rates of comparable
8 counsel practicing complex and class litigation as detailed in the National Law Journal Billing Survey.
9 See e.g. *Zest IP Holdings, LLC v. Implant Direct MFG., LLC*, 2014 U.S. Dist. LEXIS 167563 (S.D. Cal.
10 2014) (finding that "Mayer Brown's \$775 average billing rate for partners" and "Mayer Brown's \$543
11 average associate billing rate" are reasonable rates when compared within 21 other firms practicing in
12 the Southern District of California.) This survey is useful to show that Class Counsel's rates are in line
13 with the comparable rates of the defense counsel that opposes these types of class claims, such as Mayer
14 Brown who is defense counsel in cases currently being prosecuted by Class Counsel. In another historical
15 example, Sheppard Mullin Richter & Hampton, who is opposing counsel in many cases prosecuted by
16 Class Counsel, a few years ago charged rates as high as \$875 for partners and \$535 for associates.
17 Similarly, Paul Hastings, another opposing counsel in these types of cases, in years past charged between
18 \$900 and \$750 for partners and \$755 and \$335 for associates. Thus, the rates charged by Class Counsel
19 for comparable work are less than these historical examples, and are therefore undoubtedly reasonable.
20 Therefore, the requested fee award as a percentage of the fund is supported by the currently lodestar
21 incurred with a reasonable multiplier which will be even less by the completion of the settlement. This
22 is comparable to the multiplier approved in other cases. The requested award is therefore reasonable
23 viewed by the Lodestar/Multiplier cross-check.

24
25 Litigation Expenses

26 13. The Agreement provides at paragraph 3.2(b), that Class Counsel may seek "a Class
27 Counsel Litigation Expenses Payment of not more than \$21,500." Class Counsel requests approval of

1 the Class Counsel Litigation Expenses Payment in the amount of \$21,500 based upon counsel's billing
2 records which evidence total expenses of \$21,991.50. The requested amount is less than actual expenses
3 incurred by Class Counsel. These litigation expenses include the expenses incurred for filing fees,
4 mediation expenses, expert fees (Berger Consulting Group and), attorney service charges (Knox, One
5 Legal), and Lexis charges, all of which are costs normally billed to and paid by the client. The details of
6 the litigation expenses incurred are set forth in Exhibits #3 and 4 hereto.⁴ These costs were reasonably
7 incurred in the prosecution of the Action.

8
9 Service Awards

10 14. Plaintiffs respectfully submit that for their service as the class representatives, Plaintiffs
11 should be awarded the agreed service award of \$10,000 each, in accordance with the Agreement for their
12 time, risk and effort expended on behalf of the Class. (Agreement at ¶ 3.2(a).) Defendant has agreed to
13 this payment and there have been no objections to the requested service award. The previously submitted
14 Declarations of the Plaintiffs in support of this request are attached hereto as Exhibit #6 and 7. As the
15 representatives of the Class, Plaintiffs performed their duty to the Class admirably and without exception.
16 Plaintiffs worked extensively with Class Counsel during the course of the litigation, responding to
17 numerous requests, searching for documents, working with counsel, and reviewing the settlement
18 documentation. As set forth in the Agreement, the Plaintiffs are also providing a comprehensive release
19 as part of the Settlement, far beyond the class release. The Declaration of the Plaintiffs detail the
20 involvement, stress and risks they undertook as a result of this Action. Plaintiffs also assumed the serious
21 risk that they might possibly be liable for costs and fees to Defendant, as well as the reputational risk of
22 being "blacklisted" by other future employers for having filed a class action on behalf of fellow former
23 employees. Without the Plaintiffs' participation, cooperation and information, no other employees would
24 be receiving any benefit. The payment of service awards to successful class representatives is appropriate

25
26
27 ⁴ My firm switched billing systems in June 2022, so Exhibit #3 contains the billing for inception to
28 June 2022, and Exhibit #4 contains the billing from June 2022 to March 22, 2023.

1 and the amount of \$10,000 is well within the currently awarded range for similar settlements. The
2 requested award is also reasonable by reference to the amounts that other California courts have found
3 to be reasonable in wage and hour class action settlements: *Mathein v. Pier 1 Imps.*, 2018 U.S. Dist.
4 LEXIS 71386, 168 Lab. Cas. (CCH) P36,620 (E.D. Cal. 2018) (approving two service awards of \$12,500
5 each); *Holman v. Experian Info. Solutions, Inc.*, 2014 U.S. Dist. LEXIS 173698 (approving \$10,000
6 service award where class member recovery was \$375); *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D.
7 245, 268 (N.D. Cal. 2015) (approving \$10,000 award); *Ontiveros v. Zamora*, 303 F.R.D. 356, 366 (E.D.
8 Cal. 2014) (reducing \$20,000 award to \$15,000 where the plaintiff brought a class claim in lieu of
9 bringing an individual action); *Glass v. UBS Fin. Servs.*, 2007 U.S. Dist. LEXIS 8476 at *51-*52
10 (N.D. Cal. 2007) (awarding \$25,000 service award in overtime wage class action); *Zamora v. Balboa Life*
11 *& Casualty, LLC*, Case No. BC360036, Los Angeles County Superior Court (Mar. 7, 2013) (awarding
12 \$25,000 service award); *Aguiar v. Cingular Wireless, LLC*, Case No. CV 06-8197 DDP (AJWx) (C.D.
13 Cal. Mar. 17, 2011) (awarding \$14,767 service award); *Magee v. American Residential Services, LLC*,
14 Case No. BC423798, Los Angeles County Superior Court (Apr. 21, 2011) (awarding \$15,000 service
15 award); *Mares v. BFS Retail & Commercial Operations, LLC*, Case No. BC375967, Los Angeles County
16 Superior Court (June 24, 2010) (awarding \$15,000 service award); *Baker v. L.A. Fitness Int'l, LLC*, Case
17 No. BC438654, L.A. County Superior Court (Dec. 12, 2012) (awarding \$10,000 service awards to three
18 named plaintiffs); *Blue v. Coldwell banker Residential Brokerage Co.*, Case No. BC417335, Los Angeles
19 County Superior Court (Mar. 21, 2011) (awarding \$10,000 service award); *Buckmire v. Jo-Ann Stores,*
20 *Inc.*, Case No. BC394795, Los Angeles County Superior Court (June, 11, 2010) (awarding \$10,000
21 service awards); *Coleman v. Estes Express Lines, Inc.*, Case No. BC429042, Los Angeles County
22 Superior Court (Oct. 3, 2013) (awarding \$10,000 service award); *Ethridge v. Universal Health Services,*
23 *Inc.*, Case No. BC391958, Los Angeles County Superior Court (May 27, 2011) (awarding \$10,000 service
24 award); *Hickson v. South Coast Auto Ins. Marketing, Inc.*, Case No. BC390395, Los Angeles County
25 Superior Court (Mar. 27, 2012) (awarding \$10,000 service award); *Hill v. sunglass Hut Int'l, Inc.*, Case
26 No. BC422934, Los Angeles County Superior Court (July 2, 2012) (awarding \$10,000 service award);
27 *Kambamba v. Victoria's Secret Stores, LLC*, Case No. BC368528, Los Angeles County Superior Court,

(Aug. 19, 2011)(awarding \$10,000 service award together with additional compensation for their general release); *Nevarez v. Trader Joe's Co.*, Case No. BC373910, Los Angeles County Superior Court (Jan. 29, 2010)(awarding \$10,000 service award); *Ordaz v. Rose Hills Mortuary, L.P.*, Case No. BC386500, Los Angeles County Superior Court, (Mar. 19, 2010)(awarding \$10,000 service award); *Sheldon v. AHMC Monterey Park Hosp. LP*, Case No. BC440282, Los Angeles County Superior Court (Feb. 22, 2013)(awarding \$10,000 service award); *Silva v. Catholic Mortuary Services, Inc.*, Case No. BC408054, Los Angeles County Superior Court (Feb. 8, 2011)(awarding \$10,000 enhancement award); *Weisbarth v. Banc West Investment Services, Inc.*, Case No. BC422202, Los Angeles County Superior Court (May 24, 2013)(awarding \$10,000 service award); *Lazar v. Kaiser Foundation Health Plan*, Case No. 14-cv-273289, Santa Clara County Superior Court (Dec. 28, 2015) (awarding \$10,000 service award); *Acheson v. Express, LLC*, Case No. 109CV135335, Santa Clara County Superior Court (Sept. 13, 2011)(awarding \$10,000 service award); *Bejarano v. Amerisave Mortgage Corp.*, Case No. EDCV 08-00599 SGL (Opx)(C.D. Cal. June 22, 2010)(awarding \$10,000 service award); *Carbajal v. Sally Beauty Supply LLC*, Case No. CIVVS 1004307, San Bernardino County Superior Court (Aug. 6, 2012)(awarding \$10,000 service award); *Contreras v. Serco Inc.*, Case No. 10-cv-04526-CAS-JEMx (C.D. Cal. Sep. 10, 2012)(awarding \$10,000 service award); *Guerro v. R.R. Donnelley & Sons Co.*, Case No. RIC 10005196, Riverside County Superior Court (July 16, 2013)(awarding \$10,000 service award); *Kisliuk v. ADT Security Services Inc.*, Case No. CV08-03241 DSF (RZx)(C.D. Cal. Jan. 10, 2011)(awarding \$10,000 service award); *Morales v. BCBG Maxazria Int'l Holdings, Inc.*, Case No. JCCP 4582, Orange County Superior Court (Jan. 24, 2013)(awarding \$10,000 service award); *Barrett v. Doyon Security Services, LLC*, Case No. BS900199, BS900517, San Bernardino County Superior Court (Apr. 23, 2010)(awarding \$10,000 service award); *Zirpolo v. UAG Stevens Creek II*, Santa Clara Superior Court Case no. 17CV313457 (July 10, 2018) (awarding \$10,000 service award); *Taylor v. TIC - The Industrial Complany*, U.S.D.C. Central District of California Case No. EDCV 16-186-VAP (Aug. 1, 2018) (awarding \$10,000 service award).

15. The requested service awards are also reasonable in light of the reputational risk that Plaintiff assumed in bringing this action against their former employer. Plaintiffs put their future

1 employment prospects at risk by becoming a class representative as the fact that they filed a lawsuit "is
2 searchable on the internet and may become known to prospective employers when evaluating" her for
3 employment. *Guippone v. BH S&B Holdings, LLC*, 2011 U.S., Dist. LEXIS 126026, *20 (S.D.N.Y. Oct.
4 28, 2011). Employers routinely screen employee candidates to determine whether they have ever filed
5 a suit against other employers, allowing them to screen out the litigious candidates. An entire industry
6 exists that allows employers to run extensive background searches on potential employees. Companies
7 who provide these services specifically highlight the fact that their services allows employers to weed out
8 litigious employment candidates. Reliable Plant outlines ways that employers can "get a sense of whether
9 a prospective employee is likely to sue" the employer, through background checks and other means, to
10 screen out these employees.⁵ Onicra Credit Rating Agency states: "Background screening has become
11 a necessity in today's litigious society." Back Track Screening also represents: "In today's litigious
12 culture, employers simply cannot afford to hire employees who will put their company at risk."⁶
13 PreciseHire also offers employment screening and similarly warns: "with today's business climate being
14 extremely competitive and highly litigious, conducting pre employment background checks has become
15 a necessity."⁷

16 16. As a result, Class Counsel respectfully requests approval of the application for award of
17 the Class Counsel Fees Payment equal to one-third (1/3) of the common fund, an award of litigation
18 expenses in the amount of \$21,500, and approval of the requested service awards to the Plaintiffs.

19 17. In accordance with California Rules of Court, rule 3.769, I make the following disclosure.
20 The Class Counsel Fees Payment will be made to Blumenthal Nordrehaug Bhowmik De Blouw LLP.
21

22 I declare under penalty of perjury under the laws of the State of California that the foregoing is
23

24 ⁵ www.reliableplant.com/Read/6959/a-solution-to-fear-of-hiring-litigious-employees.

25 ⁶ <http://www.btscreening.com/wp-content/uploads/2012/09/Screening-101.pdf>.

26 ⁷ [https://precisehireblog.wordpress.com/2013/11/21/pre-employment-background-checks-](https://precisehireblog.wordpress.com/2013/11/21/pre-employment-background-checks-have-become-a-busines-necissity/)
27 [have-become-a-busines-necissity/](https://precisehireblog.wordpress.com/2013/11/21/pre-employment-background-checks-have-become-a-busines-necissity/).

1 true and correct. Executed this 22nd day of March 2024, at San Diego, California.

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/s/ Norman Blumenthal
NORMAN B. BLUMENTHAL

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DECLARATION OF NORMAN BLUMENTHAL IN SUPPORT OF MOTION FOR FINAL APPROVAL OF CLASS
SETTLEMENT, ATTORNEYS' FEES, COSTS AND SERVICE AWARDS

EXHIBIT #1

Blumenthal Nordrehaug Bhowmik De Blouw LLP

2255 Calle Clara, La Jolla, California 92037

Tel: (858) 551-1223

Fax: (858) 551-1232

FIRM RESUME

Areas of Practice: Employee, Consumer and Securities Class Actions, Wage and Hour Class Actions, Civil Litigation, Business Litigation.

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

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

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)

Ricardo Ehmman

Associate Attorney

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

Associate Attorney

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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Associate Attorney

Practice Areas: Civil Litigation; Wage and Hour Class Actions

Admitted: 2016, California

Educated: San Diego State University; California Western School of Law

Christine Levu

Associate Attorney

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

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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

EXHIBIT #2

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

A handwritten signature in black ink, appearing to read "Kyle Nordrehaug", written over a horizontal line.

Kyle Nordrehaug

Blumenthal Nordrehaug Bhowmik De Blouw LLP
Attorney for Plaintiffs

Dated: June 6, 2023

A handwritten signature in black ink, appearing to read "Seth L. Neulight", written over a horizontal line.

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

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

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

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

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
28

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
28

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

EXHIBIT #3

BLUMENTHAL NORDREHAUG

BHOWMIK DE BLOUW LLP
2255 CALLE CLARA
LA JOLLA, CA 92037
(858) 551-1223

MARCH 22, 2024

TAMIKA WALKER

RE: DJO
FILE NUMBER: CA2651.001

ATTORNEY FEES

<u>DATE</u>	<u>ATTY</u>	<u>DESCRIPTION</u>	<u>HOURS</u>	<u>RATE</u>	<u>AMOUNT</u>
04/17/22	ND	REVIEW AND ANALYZE ORIGINAL INTAKE NOTES. CONFERENCE WITH PLAINTIFF WALKER REGARDING CLAIMS. LEGAL RESEARCH REGARDING RELATED LITIGATION IN STATE AND FEDERAL COURT.	3.60	850	3,060.00
04/22/22	ND	REVIEW DOCS AND EMAILS FROM PLAINTIFF WALKER REGARDING DFEH AND RETALIATION CLAIMS. ANALYZE OFF THE CLOCK WORKS TASKS AND OVERTIME CLAIMS. LEGAL RESEARCH REGARDING THE SAME.	3.30	850	2,805.00
05/01/22	ND	REVIEW AND ANALYZE ENTIRE CASE FILE OF PLAINTIFF WALKER. ANALYZE PAY STUBS FOR OVERTIME AND 226(A) VIOLATIONS. REVIEW RECENT COURT OPINIONS REGARDING THE SAME.	4.50	850	3,825.00
05/02/22	ND	CONFERENCE WITH ADDITIONAL PLAINTIFF PEETE. REVIEW AND ANALYZE ENTIRE EMPLOYEMNT FILE FOR LEGAL CLAIMS. REVIEW 204 LATE PAYMENT OF WAGE CLAIMS AND SICK PAY CLAIMS.	3.50	850	2,975.00
05/03/22	ND	DRAFT ORIGINAL COMPLAINT.	4.70	850	3,995.00
05/04/22	ND	REVIEW INDIVIDUAL CLAIMS OF PLAINTIFF PEETE REGARDING RETALIATION AND HARASSMENT. LEGAL RESEARCH REGARDING THE SAME. ANALYZE MEAL AND REST	2.90	850	2,465.00

<u>DATE</u>	<u>ATTY</u>	<u>DESCRIPTION</u>	<u>HOURS</u>	<u>RATE</u>	<u>AMOUNT</u>
		BREAK CLAIMS. REVIEW DONOHUE DECISION.			
05/15/22	ND	DRAFT COMPLAINT. ANALYZE FACTS AND LAW.	3.00	850	2,550.00
05/18/22	ND	REVIEW AND REVISE COMPLAINT PER PLAINTIFFS' INSTRUCTIONS. SEND TO PLAINTIFFS FOR APPROVAL. REVIEW CALIFORNIA SECRETARY OF STATE WEBSITE FOR DEFENDANT INFORMATION.	3.20	850	2,720.00
05/19/22	ND	DRAFT PAGA NOTICE. UPLAOD TO LWDA WEBSITE.	2.20	850	1,870.00
05/20/22	ND	REVIEW COMPLAINT AND PAGA NOTICE. DRAFT INTERNAL CASE NOTES MEMO DETAILING FACTS AND VIOLATIONS.	2.20	850	1,870.00
<u>TOTAL BILLED HOURS</u>					
NICK DEBLOUW		33.10 hr @ 850.00	\$	28,135.00	
TOTAL PROFESSIONAL SERVICES			33.10		<u>\$ 28,135.00</u>
COSTS ADVANCED					
05/19/22	PAGA FILING FEE				<u>75.00</u>
TOTAL COSTS ADVANCED					<u>\$ 75.00</u>
TOTAL CURRENT CHARGES					<u>\$ 28,210.00</u>

EXHIBIT #4

Blumenthal Nordrehaug Bhowmik DeBlouw LLP

2255 CALLE CLARA
LA JOLLA, CA - California 92037-3107

INVOICE

Invoice # 1
Date: 03/22/2024
Due On: 04/21/2024

Tamika Walker
2487 Alum Rock Avenue
San Jose, CA 95116

CA2651

DJO

Services

Type	Date	Notes	Quantity	Rate	Total
Service	06/28/2022	Review complaint for filing, analyze, advise ND	2.80	\$450.00	\$1,260.00
Service	07/05/2022	Review and outline file for onboarding in advance of drafting mediation data request; compile documents.	1.30	\$550.00	\$715.00
Service	07/06/2022	Review and outline documents; develop exhibit book.	1.50	\$550.00	\$825.00
Service	07/06/2022	Draft mediation data request.	1.00	\$550.00	\$550.00
Service	07/06/2022	Multiple correspondence with AB and opposing counsel regarding mediation.	0.30	\$550.00	\$165.00
Service	07/07/2022	Review case notes/damage analysis	0.50	\$675.00	\$337.50
Service	07/07/2022	Review & analyze employment file documents	1.00	\$675.00	\$675.00
Service	07/11/2022	Revise complaint for filing, advise ND	2.60	\$450.00	\$1,170.00
Service	07/11/2022	Review employment documents; review final draft of complaint; provide input	1.00	\$950.00	\$950.00
Service	07/12/2022	Review, edit & finalize class action complaint draft	2.30	\$675.00	\$1,552.50
Service	07/13/2022	Draft summons and civil case cover sheet re class action	0.50	\$675.00	\$337.50
Service	07/13/2022	Review & finalize class action complaint package; file in Santa Clara Sup. Ct.	0.60	\$675.00	\$405.00
Service	07/13/2022	Review court-returned documents; review civil case	0.50	\$675.00	\$337.50

		notice; review docket; memo to firm re judicial/ department assignment and status of initial CMC			
Service	07/28/2022	Review filed documents; review status of case; review emails regarding mediation; analysis of issues and claims	1.00	\$950.00	\$950.00
Service	07/29/2022	Draft service list; multiple correspondence with mediator's office in response to request for information.	0.60	\$550.00	\$330.00
Service	08/02/2022	Draft PAGA only representative action complaint	2.70	\$675.00	\$1,822.50
Service	08/02/2022	Draft summons & civil case cover sheet re paga action	0.50	\$675.00	\$337.50
Service	08/02/2022	Review & finalize paga only complaint package; file in Santa Clara Sup. Ct.	0.60	\$675.00	\$405.00
Service	08/02/2022	Review court-returned documents; review civil lawsuit notice; memo to firm re judicial/department assignment and status of initial CMC	0.50	\$675.00	\$337.50
Service	08/02/2022	Review case file and PAGA Notice. Review and revise PAGA Only complaint. Discuss with R. Ehmann. Status update to Plaintiffs.	1.80	\$850.00	\$1,530.00
Service	08/03/2022	Upload PAGA only complaint to LWDA website; save confirmation for future verification of notice to LWDA	0.40	\$675.00	\$270.00
Service	08/03/2022	Review filed documents and PAGA complaint	0.50	\$950.00	\$475.00
Service	08/11/2022	Draft revised mediation data request; finalize and serve.	0.80	\$550.00	\$440.00
Service	08/11/2022	Analyze claims/complaint/docs. Review/approve mediation data request.	2.00	\$895.00	\$1,790.00
Service	08/11/2022	Review status and mediation data request; advise AJ	0.50	\$950.00	\$475.00
Service	08/16/2022	Finalize Notice of Posting Complex Fees.	0.20	\$750.00	\$150.00
Service	08/23/2022	Review/analyze mediation confirmation letter. Prep for mediation.	1.00	\$895.00	\$895.00
Service	08/26/2022	Prepare initial documents for service of process re class action; prepare POS-015 Notice & Acknowledgment of Receipt form; send to defense counsel; instruct staff to send hard copies per code	1.00	\$675.00	\$675.00
Service	08/26/2022	Prepare initial documents for service of process re paga action; prepare POS-015 Notice & Acknowledgment of Receipt form; send to defense counsel; instruct staff to send hard copies per code	1.00	\$675.00	\$675.00
Service	08/30/2022	Draft POS-010 Proof of Service of Summons re class action; attach Notice & Acknowledgment of Receipt; file; memo to firm re post-service written discovery	0.50	\$675.00	\$337.50
Service	08/30/2022	Draft POS-010 Proof of Service of Summons re paga	0.50	\$675.00	\$337.50

		action; attach Notice & Acknowledgment of Receipt; file; memo to firm re post-service written discovery			
Service	08/30/2022	Receive and review complaint; review file for status of discovery and mediation; draft summary correspondence with CL.	0.60	\$550.00	\$330.00
Service	10/28/2022	Review file for status of meet and confer efforts, draft follow up correspondence.	0.40	\$550.00	\$220.00
Service	10/28/2022	Correspondence with AC regarding stipulation to stay pending mediation.	0.30	\$550.00	\$165.00
Service	10/31/2022	Multiple meet and confer correspondence with opposing counsel.	0.50	\$550.00	\$275.00
Service	11/02/2022	Review and outline pleadings and orders; draft stipulation and proposed order to stay matter in Class action; submit to opposing counsel for review.	1.50	\$550.00	\$825.00
Service	11/02/2022	Review and outline pleadings and orders; draft stipulation and proposed order to stay matter in PAGA action; submit to opposing counsel for review.	1.00	\$550.00	\$550.00
Service	11/02/2022	Finalize, file and serve stipulations and proposed orders in Class and PAGA actions.	0.60	\$550.00	\$330.00
Service	11/02/2022	Review emails; review mediation status and draft stipulation.	0.50	\$950.00	\$475.00
Service	11/03/2022	Receive and review notice from Clerk; draft follow up correspondence with AC.	0.50	\$550.00	\$275.00
Service	11/04/2022	Review docket for status of filing stipulations to stay; draft follow up correspondence.	0.60	\$550.00	\$330.00
Service	11/07/2022	Review docket for status of filing joint statement in Class action; draft multiple follow up correspondence regarding revised filing.	0.50	\$550.00	\$275.00
Service	11/09/2022	Review docket for status of stipulation and order; draft follow up correspondence with opposing counsel.	0.50	\$550.00	\$275.00
Service	11/15/2022	Email from P. Lamborn re: Stipulation and CMC remaining on calendar.	0.20	\$750.00	\$150.00
Service	11/16/2022	Review docket for status of filing of stipulation in Class action; multiple correspondence with opposing counsel regarding the same.	0.40	\$550.00	\$220.00
Service	11/17/2022	Email from Chambers continuing the Case Management Conference.	0.20	\$750.00	\$150.00
Service	11/21/2022	Telephone call to P. Lamborn re: meet and confer re: mediation data request; Email from/to P. Lamborn re: same.	0.30	\$750.00	\$225.00
Service	11/22/2022	Emails and voicemails from P. Lamborn re: mediation	0.30	\$750.00	\$225.00

		documents.			
Service	11/22/2022	Telephone call to P. Lamborn re: mediation documents.	0.20	\$750.00	\$150.00
Service	11/29/2022	Multiple correspondence with opposing counsel regarding mediation data.	0.40	\$550.00	\$220.00
Service	11/30/2022	Teleconference with opposing counsel regarding mediation data; draft summary.	0.50	\$550.00	\$275.00
Service	11/30/2022	Multiple follow up correspondence with opposing counsel regarding proposed sampling of data.	0.30	\$550.00	\$165.00
Service	12/13/2022	Email from P. Lamborn re: sample size; discuss sampling with AJ.	0.30	\$750.00	\$225.00
Service	12/19/2022	Follow up correspondence with opposing counsel regarding mediation data.	0.30	\$550.00	\$165.00
Service	12/19/2022	Multiple correspondence with opposing counsel regarding sampling of mediation data and programs.	0.30	\$550.00	\$165.00
Service	01/03/2023	Receipt and review production of documents 1-12984.	0.60	\$750.00	\$450.00
Service	01/05/2023	Review and analyze data produced for mediation purposes. Analyze court docket and case file. Prepare for mediation.	4.70	\$850.00	\$3,995.00
Service	01/10/2023	Conference with both Plaintiffs regarding facts for mediation brief, mediation process and settlement authority. Review and analyze 2802 and rest break claims. Legal research regarding the same.	3.40	\$850.00	\$2,890.00
Service	01/12/2023	Review and analyze Defendant's wage and hour policy documents. Review all pay stubs exemplars for wage statement and overtime claims. Legal research regarding the same.	3.90	\$850.00	\$3,315.00
Service	01/14/2023	Review emails and status; review analysis from BD and from AR; analysis of claims; review data and documents for mediation	2.00	\$950.00	\$1,900.00
Service	01/17/2023	Review facts and law. Draft mediation brief.	6.50	\$850.00	\$5,525.00
Service	01/18/2023	Email from C. Li re: excel pay data and analysis of expert.	0.30	\$750.00	\$225.00
Service	01/18/2023	Correspondence with expert regarding data; review and outline produced documents; draft follow up correspondence.	0.40	\$550.00	\$220.00
Service	01/21/2023	Legal research regarding previous settlements with similar claims and workweeks for mediation valuation. Draft mediation brief.	5.20	\$850.00	\$4,420.00
Service	01/25/2023	Review file for status of mediation data; outline documents and draft follow up correspondence.	0.70	\$550.00	\$385.00

Service	01/25/2023	Speak with client in advance of mediation, analyze claims, advise AJB	2.60	\$450.00	\$1,170.00
Service	01/26/2023	Review emails and summary of client interviews; review research from ND; analysis of issues	1.30	\$950.00	\$1,235.00
Service	01/27/2023	Review mediation brief and materials; analysis of claims; provide input to AJ for mediation;	1.00	\$950.00	\$950.00
Service	01/30/2023	Add individual claims to case notes, calculate damages, advise AJB	2.60	\$450.00	\$1,170.00
Service	01/31/2023	Prepare for mediation, review and analyze mediation brief, advise AJB	2.60	\$450.00	\$1,170.00
Service	02/01/2023	Receive and review additional mediation documents; draft follow up correspondence.	0.60	\$550.00	\$330.00
Service	02/01/2023	Review and analyze all exhibits to mediation brief. Analyze expert report damage analysis. Review case demographics. Draft MOU for mediation.	3.20	\$850.00	\$2,720.00
Service	02/01/2023	Review mediation exhibits and mediation briefing; review expert report; analysis of claims and provide input and analysis to AJ for mediation	2.00	\$950.00	\$1,900.00
Service	02/02/2023	Prep and appear for mediation.	10.00	\$895.00	\$8,950.00
Service	02/02/2023	Attend mediation	8.00	\$450.00	\$3,600.00
Service	02/02/2023	Text AJ re mediation	0.10	\$250.00	\$25.00
Service	02/02/2023	Review outcome of mediation and report from AJ regarding mediation; respond to issues	0.50	\$950.00	\$475.00
Service	02/14/2023	Review and outline claims and orders in Class action; draft joint post mediation status conference statement.	1.20	\$550.00	\$660.00
Service	02/14/2023	Review and outline claims and orders in PAGA action; draft joint post mediation status conference statement.	0.60	\$550.00	\$330.00
Service	02/15/2023	Revise joint statement in Class action; submit to opposing counsel for review.	0.50	\$550.00	\$275.00
Service	02/15/2023	Revise joint statement in PAGA action; submit to opposing counsel for review.	0.50	\$550.00	\$275.00
Service	02/16/2023	Multiple follow up correspondence with opposing counsel regarding joint statements.	0.50	\$550.00	\$275.00
Service	02/16/2023	Teleconference regarding status of mediation; draft revisions to joint statements.	0.50	\$550.00	\$275.00
Service	02/16/2023	Revise, finalize and file joint statements in Class and PAGA actions.	1.00	\$550.00	\$550.00
Service	02/17/2023	Receive and review returned documents from Court; save to file.	0.40	\$550.00	\$220.00

Service	02/23/2023	Review docket for status of joint statement in Class action; multiple correspondence with CTL regarding the same.	0.40	\$550.00	\$220.00
Service	03/02/2023	[Class] Prepare for Case Management Conference.	0.30	\$750.00	\$225.00
Service	03/02/2023	[PAGA] Prepare for Case Management Conference.	0.30	\$750.00	\$225.00
Service	03/02/2023	Attend Case Management Conference.	0.50	\$750.00	\$375.00
Service	03/02/2023	Review/analyze corr from team re cmc. Analyze next steps to add pressure before deadline to respond to mediator's bracket.	2.00	\$895.00	\$1,790.00
Service	03/02/2023	Review status and report from team re CMC; review memo from AJ	0.40	\$950.00	\$380.00
Service	03/03/2023	Receipt and review Notice of Further CMC.	0.20	\$750.00	\$150.00
Service	03/10/2023	Draft template POS for Class and PAGA cases	0.50	\$250.00	\$125.00
Service	03/16/2023	Review file for status of mediator's proposal; draft correspondence with AB regarding the same.	0.40	\$550.00	\$220.00
Service	03/16/2023	Prepare for and attend CMC in Class and PAGA actions; draft and circulate summary.	1.80	\$550.00	\$990.00
Service	03/16/2023	Review corr from mediator re status of mediator's bracket. Review mediation notes/corr re settlement. Prep and have call w/ mediator. Draft/send corr to mediator re counter-demand.	2.00	\$895.00	\$1,790.00
Service	03/16/2023	Review status and mediator correspondence; evaluate proposal and bracket; provide input to AJ and discuss response; review response by AJ	1.00	\$950.00	\$950.00
Service	03/17/2023	Advise managing partner on status of settlement negotiations.	2.00	\$895.00	\$1,790.00
Service	03/17/2023	Review report from AJ; provide input on strategy and next steps	0.40	\$950.00	\$380.00
Service	03/20/2023	Receipt and review notice of further CMC.	0.20	\$750.00	\$150.00
Service	03/22/2023	Review/analyze corr from mediator containing corr and docs from defense attorney. Research percentage bonus defense. Review Russell v. Gov't Empl. Ins. Co., 787 F. App'x 953, 954 (9th Cir. 2019) and Barragan v. Home Depot U.S.A., Inc; and, draft and send argument to mediator w/ counter demand.	4.00	\$895.00	\$3,580.00
Service	03/23/2023	Review research from AJ; counter-demand from AJ	0.50	\$950.00	\$475.00
Service	04/04/2023	Review file for status of mediator's proposal; teleconference regarding the same.	0.30	\$550.00	\$165.00
Service	04/04/2023	Follow up correspondence regarding mediator's proposal and discovery.	0.30	\$550.00	\$165.00

Service	04/04/2023	Review corr from mediator re proposal to add temp workers to settlement and added workweeks. Review mediation notes/exposure chart and adjust damages based on added workweeks. Review/analyze additional corr from mediator re defense's target for settlement. Review all prior corr from mediator since mediation and research use of temp workers on internet by defendant. Draft/send corr to mediator re: affect of added wws and options for issuance of mediator's proposal. Review proposal issued by mediator. Consider accepting or rejecting.	4.00	\$895.00	\$3,580.00
Service	04/04/2023	Review updated damage valuation and issues from AJ; provide input	0.60	\$950.00	\$570.00
Service	04/11/2023	Draft/send corr to respond to mediator's proposal. Review/analyze mediator's corr re outcome of proposal. Draft/circulate MOU.	2.00	\$895.00	\$1,790.00
Service	04/12/2023	Review MOU, analyze. Advise AJ.	2.00	\$995.00	\$1,990.00
Service	04/12/2023	Check if mediator's proposal accepted, there's a word MOU in the file	0.20	\$250.00	\$50.00
Service	04/12/2023	Review correspondence and mediator's proposal; review draft MOU; advise AJ; review memo from NBB	1.00	\$950.00	\$950.00
Service	04/14/2023	Review draft MOU and review Defendant's revisions; memo to AJ and ND	0.50	\$950.00	\$475.00
Service	04/17/2023	Review & analyze MOU; confer with C Levu re drafting of amended/consolidated complaint per MOU	0.50	\$675.00	\$337.50
Service	04/17/2023	Multiple correspondence regarding status; receive and review memorandum of understanding; follow up correspondence with CTL regarding settlement agreement and amendments.	0.80	\$550.00	\$440.00
Service	04/17/2023	Review mediation notes. Review and analyze MOU terms. Conference with Plaintiffs to discuss terms. Send MOU to Plaintiffs for signatures. Follow up.	1.40	\$850.00	\$1,190.00
Service	04/18/2023	Review file; draft First Amended Consolidated Class and Representative Action Complaint; email to C Levu re draft FACC	3.75	\$675.00	\$2,531.25
Service	04/18/2023	Draft Stip to consolidate and file FACC	1.00	\$250.00	\$250.00
Service	04/19/2023	Review and outline MOU for drafting longform settlement agreement; draft summary.	1.20	\$550.00	\$660.00
Service	04/19/2023	Begin drafting longform settlement agreement.	0.70	\$550.00	\$385.00
Service	04/19/2023	Run costs only for CTL // Update spreadsheet re MOU signed	0.50	\$250.00	\$125.00
Service	04/20/2023	Continue drafting longform settlement agreement.	1.50	\$550.00	\$825.00

Service	04/20/2023	Review MOU, analyze. Outline long form.	2.25	\$995.00	\$2,238.75
Service	04/21/2023	Complete draft of longform settlement agreement; review file for individual settlements; draft follow up correspondence.	2.20	\$550.00	\$1,210.00
Service	04/21/2023	Review draft agreement and review correspondence from team; advise staff	1.00	\$950.00	\$950.00
Service	04/24/2023	Draft revisions to settlement agreement; draft follow up correspondence.	1.00	\$550.00	\$550.00
Service	04/25/2023	Multiple correspondence with CTL regarding settlement agreement.	0.30	\$550.00	\$165.00
Service	04/26/2023	Email to M. Sutherland re: bid for class notice of settlement.	0.30	\$750.00	\$225.00
Service	04/27/2023	Receipt and review email from K. Sutherland re: ILYM bid for class settlement administration.	0.20	\$750.00	\$150.00
Service	04/27/2023	Receipt and review email to/from M. Sutherland re: ILYM bid for class settlement administration; review and analyze bid.	0.40	\$750.00	\$300.00
Service	04/28/2023	Review Admin estimate and emails	0.30	\$950.00	\$285.00
Service	05/01/2023	Email from/to S. Neulight re: settlement agreement.	0.30	\$750.00	\$225.00
Service	05/01/2023	Revise Long Form Settlement Agreement.	2.30	\$750.00	\$1,725.00
Service	05/01/2023	Revise Stipulation for Leave to File First Amended Consolidated Complaint.	0.50	\$750.00	\$375.00
Service	05/01/2023	Revise First Amended Consolidated Complaint.	0.40	\$750.00	\$300.00
Service	05/01/2023	Receive and review revisions to settlement agreement; multiple correspondence regarding the same.	0.60	\$550.00	\$330.00
Service	05/02/2023	Review revisions to draft Agreement from Defendant; analyze and advise CL	2.00	\$950.00	\$1,900.00
Service	05/02/2023	Review revisions to Long Form Settlement Agreement; Email from S. Neulight re: Defendant's revisions.	0.80	\$750.00	\$600.00
Service	05/02/2023	Revise Long Form Settlement Agreement; Discuss with Kyle re: same.	0.60	\$750.00	\$450.00
Service	05/02/2023	Multiple email from/to S. Neulight re: additional revisions to Long Form Settlement Agreement.	0.30	\$750.00	\$225.00
Service	05/02/2023	Revise Long Form Settlement Agreement.	0.70	\$750.00	\$525.00
Service	05/02/2023	Finalize stip to file FAC, add prop order cvr sheet, attach POS, att Exhibit 1, file (one L) serve (email), courtlinks	1.00	\$250.00	\$250.00
Service	05/05/2023	Review draft agreement and revisions thereto; analysis	1.50	\$950.00	\$1,425.00

		of remaining issues; memo to staff			
Service	05/05/2023	Work on drafts of exhibits	2.00	\$950.00	\$1,900.00
Service	05/05/2023	Check status of Joint Stipulation to Consolidate, not signed yet	0.20	\$250.00	\$50.00
Service	05/09/2023	Receipt and review court-filed Stipulation to Consolidate.	0.20	\$750.00	\$150.00
Service	05/10/2023	Dwnld c'd stip to file FACC, email CTL re OK to send to NDB for signature?	0.20	\$250.00	\$50.00
Service	05/10/2023	Email NDB re sign FACC for filing	0.20	\$250.00	\$50.00
Service	05/11/2023	Finalize First Amended Consolidated Complaint for filing.	0.30	\$750.00	\$225.00
Service	05/11/2023	Revise Long Form Settlement Agreement; Discuss revisions with Kyle; Email to S. Neulight re: final version of long form settlement agreement for signature.	0.60	\$750.00	\$450.00
Service	05/11/2023	File FACC with NDB's signatue (NDB OK), draft POS, file via one legal, serve via email, circulate	0.50	\$250.00	\$125.00
Service	05/11/2023	Review issues from CL; discuss and advise CL regarding settlement	0.50	\$950.00	\$475.00
Service	05/12/2023	Email from S. Neulight re: settlement agreement exhibits.	0.20	\$750.00	\$150.00
Service	05/12/2023	Telephone call from S. Neulight re: motion for preliminary approval.	0.30	\$750.00	\$225.00
Service	05/12/2023	Review agreement for final and MPA. Analyze, advise KN.	1.50	\$995.00	\$1,492.50
Service	05/12/2023	Email complex dept re reserve hearing for MPA	0.20	\$250.00	\$50.00
Service	05/12/2023	Review status; review settlement agreement; discuss with NBB	1.00	\$950.00	\$950.00
Service	05/13/2023	Revise Long Form Settlement Agreement; Email to S. Neulight re: same.	0.30	\$750.00	\$225.00
Service	05/15/2023	Review email from court and staff; email Defendant; advise staff	0.30	\$950.00	\$285.00
Service	05/15/2023	Dwnld c'd FAC, upload to LWDA, save conf email in correspondence, email KN re date FAC stamped	0.50	\$250.00	\$125.00
Service	05/16/2023	Review emails and Defendant revisions to Class notice; final exhibit and respond to Defendant	1.00	\$950.00	\$950.00
Service	05/16/2023	Email KN re available dates for MPA // KN: 8/10 OK, email Ms. Walker to reserve//asked CJ to calendar confirmed res.	0.50	\$250.00	\$125.00

Service	05/16/2023	Review status and email from AC; draft approval outline; analysis of next steps and advise team	1.00	\$950.00	\$950.00
Service	05/26/2023	Telephone call to S. Neulight re: long form settlement agreement.	0.30	\$750.00	\$225.00
Service	05/26/2023	Email to S. Neulight re: revisions to long form settlement agreement.	0.20	\$750.00	\$150.00
Service	05/30/2023	Email from S. Neulight re: final revisions to long form settlement agreement and request for exhibits to same.	0.20	\$750.00	\$150.00
Service	05/30/2023	Finalize long form settlement agreement and exhibits A-C of same.	0.30	\$750.00	\$225.00
Service	05/30/2023	Email to S. Neulight re: long form settlement agreement and exhibits A-C and circulation for signature.	0.30	\$750.00	\$225.00
Service	05/30/2023	Review and revise class notice; prepare final class notice; email Def; advise CL	0.75	\$950.00	\$712.50
Service	05/30/2023	Review settlement agreement terms for conformity with MOU terms. Send to two Plaintiffs for signatures. Calls to discuss terms and timing of payment.	1.30	\$850.00	\$1,105.00
Service	05/31/2023	Prepare signed agreement; review staff emails; email Defendant	0.75	\$950.00	\$712.50
Service	06/01/2023	Review and analysis of relevant file materials, including Court orders, pleadings, settlement documents, and Court docket, to determine course of handling with respect to pending CMC.	0.40	\$675.00	\$270.00
Service	06/07/2023	Telephone call to S. Neulight re: fully executed settlement agreement.	0.20	\$750.00	\$150.00
Service	06/07/2023	Email to S. Neulight re: fully executed settlement agreement.	0.20	\$750.00	\$150.00
Service	06/07/2023	Review status; work on approval / settlement issues; prepare outline; begin work on preliminary approval	2.00	\$950.00	\$1,900.00
Service	07/12/2023	Finalize exhibits to settlement; prepare executed agreement for motion; review status of next steps and work on approval issues	1.50	\$950.00	\$1,425.00
Service	07/12/2023	Draft motion for preliminary approval; research for motion; analysis of expert report and valuation issues per AJ; email defendant and circulate draft motion	4.00	\$950.00	\$3,800.00
Service	07/12/2023	Review analyze draft of memo to ensure conformance w/ MOU/mediation/notes/Kullar analysis.	2.50	\$895.00	\$2,237.50
Service	07/12/2023	Review prelim motion papers, analyze to file. Advise KN.	2.75	\$995.00	\$2,736.25
Service	07/12/2023	Review Court guidelines and research for motion	1.00	\$950.00	\$950.00

Service	07/13/2023	Review file; draft declaration of Tamika Walker re preliminary approval/service award request	2.50	\$675.00	\$1,687.50
Service	07/13/2023	Review input from NBB; update motion and review to ensure conformity with court guidelines and prior rulings	1.00	\$950.00	\$950.00
Service	07/14/2023	Review file; draft declaration of Shannon Peete re preliminary approval/service award request	1.50	\$675.00	\$1,012.50
Service	07/17/2023	Draft declaration ISO motion for prelim; work on exhibits; prepare decl for filing	3.50	\$950.00	\$3,325.00
Service	07/17/2023	Review and revise motion for preliminary approval; prepare proposed order; prepare motion for filing; file and serve motion; serve LWDA; email the Def	2.75	\$950.00	\$2,612.50
Service	07/24/2023	Review and revise Stipulation and Protective Order; Email to S. Neulight re: same.	1.30	\$750.00	\$975.00
Service	07/24/2023	Email from/to S. Neulight re: further revisions to Stipulation and Protective Order; Revise and Finalize Stipulation and Protective Order.	0.40	\$750.00	\$300.00
Service	07/26/2023	Preparation for deadline for Case Management Statement by review of relevant file materials and determination of plan for same.	0.30	\$675.00	\$202.50
Service	07/27/2023	Preparation for and draft of Joint Case Management Statement; contemporaneous examination of all relevant file materials, including pleadings, settlement documents, correspondence, and Court dockets to determine overall case status and to advise Court of same.	1.20	\$675.00	\$810.00
Service	07/28/2023	Review file for status; multiple correspondence with RH regarding joint report.	0.30	\$550.00	\$165.00
Service	08/03/2023	Receipt and review of Joint Case Management Statement from Defendant; finalization, execution, filing, and service of same.	0.50	\$675.00	\$337.50
Service	08/04/2023	Review and analyze letter re subpoena from Express Network.	0.30	\$750.00	\$225.00
Service	08/04/2023	Review and analyze Defendant's subpoena to Eastridge Workforce Technology.	0.30	\$750.00	\$225.00
Service	08/04/2023	Review and analyze Defendant's subpoena to Pridestaff Inc.	0.30	\$750.00	\$225.00
Service	08/04/2023	Review and analyze Defendant's subpoena to TCW Global.	0.20	\$750.00	\$150.00
Service	08/04/2023	Review and analyze Defendant's subpoena to Qualstaff Resources.	0.20	\$750.00	\$150.00
Service	08/04/2023	Review and analyze Defendant's subpoena to Real	0.20	\$750.00	\$150.00

Time Staffing Services inc.					
Service	08/04/2023	Review and analyze Defendant's subpoena to Randstad Employment Solutions LP.	0.20	\$750.00	\$150.00
Service	08/04/2023	Review and analyze Defendant's subpoena to Express Employment Professionals.	0.20	\$750.00	\$150.00
Service	08/04/2023	Review analysis from team regarding subpoenas; analyze issues	0.50	\$950.00	\$475.00
Service	08/07/2023	Email to S. Neulight re: subpoenas from Express Network and withdrawing due to settlement.	0.30	\$750.00	\$225.00
Service	08/07/2023	Review/analyze subpoenas served by Defendant and appropriate response. Advise team.	2.00	\$895.00	\$1,790.00
Service	08/07/2023	Receipt, review, and analysis of multiple records subpoenas from Defendant, and determination as to whether any action is required.	0.20	\$675.00	\$135.00
Service	08/09/2023	Review status of subpoenas served by Defendant, case is settled, email CJ re deadline to quash subpoenas	0.20	\$250.00	\$50.00
Service	08/09/2023	Review tentative ruling; revise class notice per ruling; email Def	1.00	\$950.00	\$950.00
Service	08/09/2023	Review and analyze tentative ruling on Motion for Preliminary Approval and proposed order revisions.	0.30	\$750.00	\$225.00
Service	08/09/2023	Review subpoenas; advise staff	0.40	\$950.00	\$380.00
Service	08/09/2023	Email from S. Neulight re: third party staffing agencies and subpoenas.	0.40	\$750.00	\$300.00
Service	08/09/2023	Email from S. Neulight requesting ILYM case manager information.	0.20	\$750.00	\$150.00
Service	08/09/2023	Email to K. Sutherland re: ILYM case manager information for information on employees.	0.20	\$750.00	\$150.00
Service	08/10/2023	Court appearance - motion for prelim; review documents and prepare for hearing; update outline	1.00	\$950.00	\$950.00
Service	08/11/2023	Review case dates re MPA, email CTL re schedule reminders to prepare drafts of MFA and AT's fees	0.10	\$250.00	\$25.00
Service	08/11/2023	Receipt, review, and analysis of LexisNexis case track alert re change in case status, and determination as to further handling of same.	0.10	\$675.00	\$67.50
Service	08/14/2023	Review Order; prepare documents and memo to Administrator	0.75	\$950.00	\$712.50
Service	08/14/2023	Review and analyze Order Concerning Preliminary Approval.	0.30	\$750.00	\$225.00
Service	08/15/2023	Review and analyze Administration Timeline.	0.30	\$750.00	\$225.00

Service	08/15/2023	Review Administration timeline and email; review formatted documents; respond	0.50	\$950.00	\$475.00
Service	08/21/2023	Receipt, review, and analysis of LexisNexis case track alert re change in case status, and determination as to further handling of same.	0.10	\$675.00	\$67.50
Service	10/24/2023	Review and analyze docket and preliminary approval order in preparation for final approval and fees motion; Discuss with Kyle re: same.	0.40	\$750.00	\$300.00
Service	11/07/2023	Ran fees/cost report in Clio and Tussman, saved in file, email CTL	0.20	\$250.00	\$50.00
Service	11/13/2023	Email from C. Polities re: calculations for escalator clause.	0.20	\$750.00	\$150.00
Service	11/13/2023	Email from S. Neulight re explanations and questions related to calculations for escalator clause.	0.20	\$750.00	\$150.00
Service	11/14/2023	Review issues regarding data and escalator; respond to issues	0.75	\$950.00	\$712.50
Service	11/28/2023	Receipt and review Order of Case Reassignment.	0.30	\$750.00	\$225.00
Service	12/11/2023	Email to/from C. Polities re - revised preliminary calculations.	0.30	\$750.00	\$225.00
Service	12/11/2023	Draft Notice of Motion for Final Approval; Review and analyze Preliminary Approval Order.	0.90	\$750.00	\$675.00
Service	12/11/2023	Draft Memorandum of Points and Authorities in support of Motion for Final Approval.	4.60	\$750.00	\$3,450.00
Service	12/11/2023	Draft Proof of Service re Motion for Final Approval.	0.60	\$750.00	\$450.00
Service	12/11/2023	Draft Declaration of N. Blumenthal in support of Motion for Final Approval.	3.60	\$750.00	\$2,700.00
Service	12/11/2023	Review draft documents and status; advise Team regarding issues and continuance	1.00	\$950.00	\$950.00
Service	12/12/2023	Email to S. Neulight re: meet and confer re Stipulation to Continue hearing on final approval and discuss escalator clause with 3dp administrator; Email from C. Polities re: escalator clause; Discuss with Kyle re: same.	0.50	\$750.00	\$375.00
Service	12/12/2023	Revise Stipulation to Continue hearing on final approval related to settlement notice and escalator clause.	0.70	\$750.00	\$525.00
Service	12/12/2023	Telephone call to court's complex litigation coordinator (Rowena) re request to continue 1/18/24 hearing.	0.20	\$250.00	\$50.00
Service	12/12/2023	Email from S. Neulight re: meet and confer call with IYLM.	0.20	\$750.00	\$150.00
Service	12/12/2023	Email from C. Polities re: meet and confer call with	0.20	\$750.00	\$150.00

defense counsel re class list.					
Service	12/18/2023	Email from C. Polites re data analysis of class data.	0.20	\$750.00	\$150.00
Service	12/19/2023	Review status of case and court's website, download order concerning MFA, draft stipulation to continue hearing for MFA	0.50	\$250.00	\$125.00
Service	12/19/2023	Review order; analysis of data issues	0.50	\$950.00	\$475.00
Service	12/20/2023	Receive signed stipulation to continue hearing for final approval from OPC, add cover sheet and proof of service, finalize and file via one legal, serve via email	0.50	\$250.00	\$125.00
Service	12/20/2023	Email from S. Neulight re: revised POS.	0.20	\$750.00	\$150.00
Service	12/21/2023	Receipt and review Email from C. Politics re: revised preliminary calculations.	0.20	\$750.00	\$150.00
Service	01/04/2024	Email form C. Politics re: administration timeline; review and analyze administration timeline.	0.20	\$750.00	\$150.00
Service	01/04/2024	Email from S. Neulight re: preliminary calculations for review.	0.20	\$750.00	\$150.00
Service	01/05/2024	Review calculations; revise revised timeline; respond to Admin; review revised formatted notice and respond; memo to staff	1.00	\$950.00	\$950.00
Service	01/12/2024	Email from C. Politics re: notice of settlement confirmation.	0.10	\$750.00	\$75.00
Service	01/12/2024	[Class/PAGA] Review status of case in court docket, Confirm 1/18 CMC hearing off calendar, no need to set appearance	0.30	\$250.00	\$75.00
Service	01/17/2024	Review docket for status of CMC and final approval hearings; retrieve and review orders; draft and circulate summary.	0.30	\$550.00	\$165.00
Service	02/01/2024	Review status and Admin report	0.30	\$950.00	\$285.00
Service	02/15/2024	Receipt and review Administrator's Report; Email from C. Politics re same.	0.30	\$750.00	\$225.00
Service	02/15/2024	Review Plaintiffs pay stubs and dates of employment. Analyze complaint. Analyze class notices. Send emails to claims administrator regarding workweek dispute. Calls with Plaintiffs to discuss resolution.	1.50	\$850.00	\$1,275.00
Service	02/15/2024	Review status and Admin report; review weeks issue with ND	0.50	\$950.00	\$475.00
Service	02/23/2024	Email form C. Polites re: status report of administration; review tatus report of administration	0.30	\$750.00	\$225.00
Service	02/23/2024	Review status and Admin report; review weeks issue with ND	0.50	\$950.00	\$475.00

Service	02/23/2024	Review status and Admin report	0.25	\$950.00	\$237.50
Service	03/01/2024	Correspondence with class members regarding settlement status and class notices.	1.00	\$850.00	\$850.00
Service	03/04/2024	Receipt and review Status Report.	0.30	\$750.00	\$225.00
Service	03/07/2024	Email from C. Politics re Administration Report re settlement; review and analyze Administration Report re settlement	0.30	\$750.00	\$225.00
Service	03/13/2024	Revise Motion for Final Approval; Notice; and Proof of Service; Review and analyze Declaration of C. Politics in preparation for revision.	1.40	\$750.00	\$1,050.00
Service	03/13/2024	Review status; emails with staff regarding motion	0.30	\$950.00	\$285.00
Service	03/13/2024	Review and Analyze: review settlement agreement; review court's orders; advise KN and CL	0.50	\$750.00	\$375.00
Service	03/14/2024	Review Admin declaration and review spreadsheet calculations; update approval outline accordingly; redline revisions to Admin decl and respond to Admin.	1.00	\$950.00	\$950.00
Service	03/14/2024	Review and revise motion for final approval; research issues; email draft motion to Defendant; memo to VR regarding next steps and issues to watch / correct.	3.50	\$950.00	\$3,325.00
Service	03/14/2024	Review and revise proposed order; prepare redline for Def.	0.60	\$950.00	\$570.00
Service	03/14/2024	Review and Analyze: review and analyze motion for final approval; review order re preliminary approval; review correspondence between parties	0.90	\$750.00	\$675.00
Service	03/15/2024	Draft: draft declaration in support of motion for final approval; review motion for final approval; review order re preliminary approval; review preliminary approval papers; review correspondence between parties	3.60	\$750.00	\$2,700.00
Service	03/18/2024	Work on issue regarding weeks for named plaintiffs; emails with Adin; review and send supporting documents	0.75	\$950.00	\$712.50
Service	03/18/2024	Populate updated tables of contents and authorities for MFA and Mtn for Attorneys' fees.	1.50	\$250.00	\$375.00
Service	03/18/2024	Review and Revise: review and revise declaration in support of motion for final approval; review preliminary approval papers; review correspondence between parties	1.70	\$750.00	\$1,275.00
Service	03/18/2024	Email from C. Politics re: revised workweeks and payperiods.	0.20	\$750.00	\$150.00
Service	03/19/2024	Review and Revise: review and revise declaration in support of motion for final approval; review billing records; review correspondence from TPA; advise KN;	2.00	\$750.00	\$1,500.00

review and revise motion for preliminary approval					
Service	03/19/2024	Receipt and review adjusted estimated awards for named plaintiffs; Email from C. Politics.	0.20	\$750.00	\$150.00
Service	03/22/2024	Review and revise draft declaration ISO motion	1.00	\$950.00	\$950.00
Service	03/22/2024	Review billing for accuracy	0.50	\$950.00	\$475.00
Service	03/22/2024	Review and revise motion for final; prepare exhibits; finalize motion; file and serve motion; serve LWDA	2.75	\$950.00	\$2,612.50
Services Subtotal				\$206,911.25	

Expenses

Type	Date	Notes	Quantity	Rate	Total
Expense	08/02/2022	Onelegal/Filing Fee	1.00	\$1,496.17	\$1,496.17
Expense	08/23/2022	Mediation Fees - Mark Rudy	1.00	\$12,500.00	\$12,500.00
Expense	08/30/2022	Onelegal Fee/Filing Fee	1.00	\$16.57	\$16.57
Expense	08/30/2022	Onelegal Fee/Filing Fee	1.00	\$16.57	\$16.57
Expense	08/31/2022	KNOX - Filing and Messenger Service.	1.00	\$1,131.75	\$1,131.75
Expense	08/31/2022	Onelegal/Filing Fee	1.00	\$41.95	\$41.95
Expense	08/31/2022	Onelegal/Filing Fee	1.00	\$41.95	\$41.95
Expense	10/31/2022	OneLegal filing fee.	1.00	\$12.87	\$12.87
Expense	11/03/2022	OneLegal filing fee.	1.00	\$39.43	\$39.43
Expense	11/07/2022	OneLegal filing fee.	1.00	\$12.87	\$12.87
Expense	11/08/2022	OneLegal filing fee.	1.00	\$39.43	\$39.43
Expense	02/08/2023	Berger Consulting	1.00	\$4,275.00	\$4,275.00
Expense	02/17/2023	OneLegal filing fee.	1.00	\$19.22	\$19.22
Expense	02/17/2023	OneLegal filing fee.	1.00	\$19.22	\$19.22
Expense	05/10/2023	OneLegal filing fee	1.00	\$39.89	\$39.89
Expense	05/15/2023	OneLegal filing fee	1.00	\$19.22	\$19.22
Expense	06/02/2023	Lexisnexis	1.00	\$227.00	\$227.00
Expense	07/03/2023	Lexis Nexis	1.00	\$220.00	\$220.00
Expense	07/18/2023	Filing fee - motion	1.00	\$88.28	\$88.28
Expense	08/02/2023	LexisNexis	1.00	\$220.00	\$220.00

Expense	08/03/2023	One Legal filing fee	1.00	\$19.22	\$19.22
Expense	09/01/2023	Lexis Nexis	1.00	\$253.00	\$253.00
Expense	10/02/2023	LexisNexis	1.00	\$209.00	\$209.00
Expense	12/03/2023	LexisNexis	1.00	\$176.00	\$176.00
Expense	12/20/2023	One Legal Filing	1.00	\$39.89	\$39.89
Expense	01/02/2024	LexisNexis	1.00	\$209.00	\$209.00
Expense	02/05/2024	LexisNexis	1.00	\$242.00	\$242.00
Expense	03/04/2024	LexisNexis	1.00	\$231.00	\$231.00
Expense	03/21/2024	Filing fee - motion	1.00	\$60.00	\$60.00
				Expenses Subtotal	\$21,916.50

Time Keeper	Quantity	Rate	Total
AJ Bhowmik	33.5	\$895.00	\$29,982.50
Norm Blumenthal	8.5	\$995.00	\$8,457.50
Scott Blumenthal	21.2	\$450.00	\$9,540.00
Nicholas De Blouw	33.9	\$850.00	\$28,815.00
Ricardo Ehmann	21.35	\$675.00	\$14,411.25
Randy Hy	2.8	\$675.00	\$1,890.00
Christine LeVu	36.9	\$750.00	\$27,675.00
Kyle Nordrehaug	61.9	\$950.00	\$58,805.00
Victoria Rivapalacio	8.7	\$750.00	\$6,525.00
Andrew Ronan	33.7	\$550.00	\$18,535.00
Adolfo Sanchez Contreras	6.9	\$250.00	\$1,725.00
Yesenia Silva	2.2	\$250.00	\$550.00
		Subtotal	\$228,827.75
		Total	\$228,827.75

EXHIBIT #5

LAFFEY MATRIX

History

Case Law

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			Years Out of Law School *				
Year	Adjustmt Factor**	Paralegal/ Law Clerk	1-3	4-7	8-10	11-19	20 +
6/01/23- 5/31/24	1.059295	\$239	\$437	\$538	\$777	\$878	\$1057
6/01/22- 5/31/23	1.085091	\$225	\$413	\$508	\$733	\$829	\$997
6/01/21- 5/31/22	1.006053	\$208	\$381	\$468	\$676	\$764	\$919
6/01/20- 5/31/21	1.015894	\$206	\$378	\$465	\$672	\$759	\$914
6/01/19- 5/31/20	1.0049	\$203	\$372	\$458	\$661	\$747	\$899
6/01/18- 5/31/19	1.0350	\$202	\$371	\$455	\$658	\$742	\$894
6/01/17- 5/31/18	1.0463	\$196	\$359	\$440	\$636	\$717	\$864
6/01/16- 5/31/17	1.0369	\$187	\$343	\$421	\$608	\$685	\$826
6/01/15- 5/31/16	1.0089	\$180	\$331	\$406	\$586	\$661	\$796
6/01/14- 5/31/15	1.0235	\$179	\$328	\$402	\$581	\$655	\$789
6/01/13- 5/31/14	1.0244	\$175	\$320	\$393	\$567	\$640	\$771
6/01/12- 5/31/13	1.0258	\$170	\$312	\$383	\$554	\$625	\$753
6/01/11- 5/31/12	1.0352	\$166	\$305	\$374	\$540	\$609	\$734
6/01/10- 5/31/11	1.0337	\$161	\$294	\$361	\$522	\$589	\$709
6/01/09- 5/31/10	1.0220	\$155	\$285	\$349	\$505	\$569	\$686
6/01/08- 5/31/09	1.0399	\$152	\$279	\$342	\$494	\$557	\$671
6/01/07-5/31/08	1.0516	\$146	\$268	\$329	\$475	\$536	\$645
6/01/06-5/31/07	1.0256	\$139	\$255	\$313	\$452	\$509	\$614
6/1/05-5/31/06	1.0427	\$136	\$249	\$305	\$441	\$497	\$598
6/1/04-5/31/05	1.0455	\$130	\$239	\$293	\$423	\$476	\$574
6/1/03-6/1/04	1.0507	\$124	\$228	\$280	\$405	\$456	\$549
6/1/02-5/31/03	1.0727	\$118	\$217	\$267	\$385	\$434	\$522
6/1/01-5/31/02	1.0407	\$110	\$203	\$249	\$359	\$404	\$487
6/1/00-5/31/01	1.0529	\$106	\$195	\$239	\$345	\$388	\$468
6/1/99-5/31/00	1.0491	\$101	\$185	\$227	\$328	\$369	\$444
6/1/98-5/31/99	1.0439	\$96	\$176	\$216	\$312	\$352	\$424
6/1/97-5/31/98	1.0419	\$92	\$169	\$207	\$299	\$337	\$406
6/1/96-5/31/97	1.0396	\$88	\$162	\$198	\$287	\$323	\$389
6/1/95-5/31/96	1.032	\$85	\$155	\$191	\$276	\$311	\$375

6/1/94-5/31/95	1.0237	\$82	\$151	\$185	\$267	\$301	\$363
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The methodology of calculation and benchmarking for this Updated Laffey Matrix has been approved in a number of cases. See, e.g., *DL v. District of Columbia*, 267 F.Supp.3d 55, 69 (D.D.C. 2017)

* $i_{\frac{1}{2}}$ Years Out of Law School $i_{\frac{1}{2}}$ is calculated from June 1 of each year, when most law students graduate. $i_{\frac{1}{2}}1-3$ " includes an attorney in his 1st, 2nd and 3rd years of practice, measured from date of graduation (June 1). $i_{\frac{1}{2}}4-7$ " applies to attorneys in their 4th, 5th, 6th and 7th years of practice. An attorney who graduated in May 1996 would be in tier $i_{\frac{1}{2}}1-3$ " from June 1, 1996 until May 31, 1999, would move into tier $i_{\frac{1}{2}}4-7$ " on June 1, 1999, and tier $i_{\frac{1}{2}}8-10$ " on June 1, 2003.

** The Adjustment Factor refers to the nation-wide Legal Services Component of the Consumer Price Index produced by the Bureau of Labor Statistics of the United States Department of Labor.

EXHIBIT #6

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

Norman B. Blumenthal (SBN 068687)

Kyle R. Nordrehaug (SBN 205975)

Aparajit Bhowmik (SBN 248066)

2255 Calle Clara

La Jolla, CA 92037

Telephone: (858) 551-1223

Facsimile: (858) 551-1232

Attorneys for Plaintiffs

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,

vs.

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

Defendants

Case No. 22CV400335

**DECLARATION OF SHANNON
PEETE 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, Shannon Peete, declare as follows:

2 1. I am over the age of eighteen, a Plaintiff and a proposed Class Representative in the
3 above-entitled matter. I submit this declaration in support of the Motion for Preliminary
4 Approval of Class Settlement and in support of my application for a Class Representative
5 Service Payment.
6

7 2. I have personal knowledge of all the facts stated herein. I could and would competently
8 testify under oath to these facts in court if requested to do so.

9 3. I worked for the defendant DJO, LLC ("DJO") in California from September of 2019 to
10 April of 2022 and was classified by DJO as a non-exempt employee during that time period.

11 4. I retained my attorneys who are experienced in both class action and PAGA
12 representative action litigation and claims against employers for violations of the California
13 Labor Code. I have no personal relationship or family ties to my attorneys or any officer of the
14 Court. I am not aware of having any actual or potential conflicts of interest with another class
15 member in this case nor am I aware of having any actual or potential conflicts of interest with
16 ILYM Group, the settlement administrator. I am not aware of any other pending matter or action
17 asserting claims that will be extinguished or adversely affected by this settlement.
18

19 5. I decided to file this class action lawsuit and be a plaintiff/class representative because
20 I felt that my legal rights as an employee and others like me were violated. For example, my
21 wage statements were inaccurate for multiple reasons including the total number of overtime
22 hours I worked. Also, I was paid non-discretionary bonus payments from time to time but these
23 payments were not factored into my regular rate for purposes of calculating my correct overtime
24 rate and I was underpaid as a result. I was also contacted by DJO on my personal cell phone for
25 work-related purposes on a regular basis but was not reimbursed by DJO for the cell phone
26
27

1 expenses I incurred for the benefit of the company.

2 6. Before the complaint was filed I spoke to my attorneys several times and discussed how
3 DJO implemented its company policies and procedures. I also assisted my attorneys in their
4 investigation into my claims by providing them documents and answering their questions. I
5 reviewed the complaint before it was filed and after it was filed I was given access to an
6 electronic file sharing program that alerted me via email when important documents were filed
7 so that I could review them and keep up with the developments in the case which I understood
8 was one of my duties as a class representative. I would also contact my attorneys from time to
9 time if I had any questions about the case.
10

11 7. Even though this action is in the process of settling, I was and remain prepared to
12 perform all the duties of a class representative. I understand that as a class representative I have
13 assumed a fiduciary responsibility to prosecute this class action on behalf of the absent class
14 members. I have understood that as a fiduciary, I have a duty to prosecute this action for the
15 benefit of the class members and surrender any right to compromise the group action for an
16 individual gain.
17

18 8. I understood that being a plaintiff/class representative in this case meant that I
19 was seeking damages not only for myself but also other current and/or former non-exempt
20 employees working for DJO in California. I felt that these individuals were not aware of their
21 labor law rights and even if they were they would probably be apprehensive about speaking up or
22 even simply because of the time, effort and risk involved in filing a class action lawsuit.
23

24 9. I understood that being a part of this lawsuit involved risks. For example, my
25 attorneys explained to me that if the case went to trial and we lost, I could be held responsible to
26 pay for all or part of the attorney fees and costs paid by DJO to defend this lawsuit. Also, I knew
27

1 there was a risk that future employers, if they ever found out about this lawsuit, could hold it
2 against me or downgrade me as a potential hire. As one of only two named Plaintiffs in this case
3 it would not be difficult for a future employer to become aware that I sued a former employer for
4 labor law violations. Ultimately I decided these risks were worth it and decided to fight for my
5 rights and the rights of others regardless of the risks, time and effort I spent on this case.
6

7 10. During the lawsuit I stayed in touch with my attorneys by phone and email. I also
8 kept up to date on important developments by reviewing court filings that were made available to
9 me electronically as I described above.

10 11. A mediation took place on February 2, 2023 with Mark Rudy, a well-respected
11 and experienced mediator of wage and hour class actions. After the all-day mediation the parties
12 were able to reach an agreement to settle the action based on a mediator's proposal. I
13 communicated with my attorneys regarding the terms of the settlement which was reached
14 between the parties and understood that I was representing absent class members and therefore
15 wanted the best possible result to be obtained for the class members and I believe a very positive
16 result was in fact achieved via settlement. I reviewed and signed the Memorandum of
17 Understanding on April 17, 2023 and when the final settlement papers were ready, I closely
18 reviewed the Settlement Agreement which I signed on May 30, 2023.
19

20 12. I have been actively involved with this lawsuit performing the duties described above.
21 Although I did not keep time records, I was in regular contact with my attorneys, reviewed court
22 filings, and spent a significant amount of time on the issues presented during the lawsuit and in
23 the settlement process. I estimate that I spent approximately 30-40 hours working on this case
24 up until this point. I believe I have been diligent and have done what is expected of a named
25 plaintiff and a proposed class representative to date, and will continue to do so. I have and
26

1 always will maintain the best interest of the class members.

2 13. My attorneys explained to me that the settlement process involves a two-step
3 review by the Court to determine whether the settlement is fair before approving the settlement.
4 I know this process also involves notifying all class members of the settlement terms and of their
5 rights to make a claim for their settlement share, to opt out of the settlement or to object to the
6 settlement.
7

8 14. I believe I did the right thing by filing this case on behalf of the class members who,
9 subject to court approval, are in line to receive monetary payments as a result of this case and
10 settlement. This is money they may never have ever gotten if I did not pursue this action on their
11 behalf. I feel significant personal satisfaction to know that I played a role in the class members
12 being entitled to monetary payments as a result of the filing of this lawsuit. I also believe that
13 the requested Class Representative Service Payment of \$10,000 from the settlement is fair
14 compensation for the work I performed and the risks I undertook.
15

16 15. As part of the settlement it was necessary for me to sign a general release of all
17 claims I may have against DJO. I believe the Class Representative Service Payment I have
18 requested provides me with some compensation for this agreed release.
19

20 16. In light of all the time and effort I have spent on this case, the risk I undertook by
21 suing a former employer, the exposure to being responsible for paying DJO's costs in the event
22 we did not win the case, the reputational risk that future employers may hold this lawsuit against
23 me, the general release, and in light of the size of the settlement, I believe the request for \$10,000

24 ///

25 ///

26 ///

1 as a Class Representative service payment is fair and reasonable.

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

4 Executed on Jul 14, 2023, at San Jose, Ca
5 (city, state)

6 *Shannon Peete*
7 Shannon Peete (Jul 14, 2023 18:28 PDT)

8 Shannon Peete

EXHIBIT #7

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

Norman B. Blumenthal (SBN 068687)

Kyle R. Nordrehaug (SBN 205975)

Aparajit Bhowmik (SBN 248066)

2255 Calle Clara

La Jolla, CA 92037

Telephone: (858) 551-1223

Facsimile: (858) 551-1232

Attorneys for Plaintiffs

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,

vs.

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

Defendants

Case No. 22CV400335

**DECLARATION OF TAMIKA
WALKER 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, Tamika Walker, declare as follows:

2 1. I am over the age of eighteen, a Plaintiff and a proposed Class Representative in the
3 above-entitled matter. I submit this declaration in support of the Motion for Preliminary
4 Approval of Class Settlement and in support of my application for a Class Representative
5 Service Payment.
6

7 2. I have personal knowledge of all the facts stated herein. I could and would competently
8 testify under oath to these facts in court if requested to do so.

9 3. I worked for the defendant DJO, LLC ("DJO") in California from September of 2019 to
10 April of 2022 and was classified by DJO as a non-exempt employee during that time period.

11 4. I retained my attorneys who are experienced in both class action and PAGA
12 representative action litigation and claims against employers for violations of the California
13 Labor Code. I have no personal relationship or family ties to my attorneys or any officer of the
14 Court. I am not aware of having any actual or potential conflicts of interest with another class
15 member in this case nor am I aware of having any actual or potential conflicts of interest with
16 ILYM Group, the settlement administrator. I am not aware of any other pending matter or action
17 asserting claims that will be extinguished or adversely affected by this settlement.
18

19 5. I decided to file this class action lawsuit and be a plaintiff/class representative because
20 I felt that my legal rights as an employee and others like me were violated. For example, my
21 wage statements were inaccurate for multiple reasons including the total number of overtime
22 hours I worked. Also, I was paid non-discretionary bonus payments from time to time but these
23 payments were not factored into my regular rate for purposes of calculating my correct overtime
24 rate and I was underpaid as a result. I was also contacted by DJO on my personal cell phone for
25 work-related purposes on a regular basis but was not reimbursed by DJO for the cell phone
26
27

1 expenses I incurred for the benefit of the company.

2 6. Before the complaint was filed I spoke to my attorneys several times and discussed how
3 DJO implemented its company policies and procedures. I also assisted my attorneys in their
4 investigation into my claims by providing them documents and answering their questions. I
5 reviewed the complaint before it was filed and after it was filed I was given access to an
6 electronic file sharing program that alerted me via email when important documents were filed
7 so that I could review them and keep up with the developments in the case which I understood
8 was one of my duties as a class representative. I would also contact my attorneys from time to
9 time if I had any questions about the case.
10

11 7. Even though this action is in the process of settling, I was and remain prepared to
12 perform all the duties of a class representative. I understand that as a class representative I have
13 assumed a fiduciary responsibility to prosecute this class action on behalf of the absent class
14 members. I have understood that as a fiduciary, I have a duty to prosecute this action for the
15 benefit of the class members and surrender any right to compromise the group action for an
16 individual gain.
17

18 8. I understood that being a plaintiff/class representative in this case meant that I
19 was seeking damages not only for myself but also other current and/or former non-exempt
20 employees working for DJO in California. I felt that these individuals were not aware of their
21 labor law rights and even if they were they would probably be apprehensive about speaking up or
22 even simply because of the time, effort and risk involved in filing a class action lawsuit.
23

24 9. I understood that being a part of this lawsuit involved risks. For example, my
25 attorneys explained to me that if the case went to trial and we lost, I could be held responsible to
26 pay for all or part of the attorney fees and costs paid by DJO to defend this lawsuit. Also, I knew
27

1 there was a risk that future employers, if they ever found out about this lawsuit, could hold it
2 against me or downgrade me as a potential hire. As one of only two named Plaintiffs in this case
3 it would not be difficult for a future employer to become aware that I sued a former employer for
4 labor law violations. Ultimately I decided these risks were worth it and decided to fight for my
5 rights and the rights of others regardless of the risks, time and effort I spent on this case.
6

7 10. During the lawsuit I stayed in touch with my attorneys by phone and email. I also
8 kept up to date on important developments by reviewing court filings that were made available to
9 me electronically as I described above.

10 11. A mediation took place on February 2, 2023 with Mark Rudy, a well-respected
11 and experienced mediator of wage and hour class actions. After the all-day mediation the parties
12 were able to reach an agreement to settle the action based on a mediator's proposal. I
13 communicated with my attorneys regarding the terms of the settlement which was reached
14 between the parties and understood that I was representing absent class members and therefore
15 wanted the best possible result to be obtained for the class members and I believe a very positive
16 result was in fact achieved via settlement. I reviewed and signed the Memorandum of
17 Understanding on April 17, 2023 and when the final settlement papers were ready, I closely
18 reviewed the Settlement Agreement which I signed on May 30, 2023.
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21 Although I did not keep time records, I was in regular contact with my attorneys, reviewed court
22 filings, and spent a significant amount of time on the issues presented during the lawsuit and in
23 the settlement process. I estimate that I spent approximately 30-40 hours working on this case
24 up until this point. I believe I have been diligent and have done what is expected of a named
25 plaintiff and a proposed class representative to date, and will continue to do so. I have and
26

1 always will maintain the best interest of the class members.

2 13. My attorneys explained to me that the settlement process involves a two-step
3 review by the Court to determine whether the settlement is fair before approving the settlement.
4 I know this process also involves notifying all class members of the settlement terms and of their
5 rights to make a claim for their settlement share, to opt out of the settlement or to object to the
6 settlement.
7

8 14. I believe I did the right thing by filing this case on behalf of the class members who,
9 subject to court approval, are in line to receive monetary payments as a result of this case and
10 settlement. This is money they may never have ever gotten if I did not pursue this action on their
11 behalf. I feel significant personal satisfaction to know that I played a role in the class members
12 being entitled to monetary payments as a result of the filing of this lawsuit. I also believe that
13 the requested Class Representative Service Payment of \$10,000 from the settlement is fair
14 compensation for the work I performed and the risks I undertook.
15

16 15. As part of the settlement it was necessary for me to sign a general release of all
17 claims I may have against DJO. I believe the Class Representative Service Payment I have
18 requested provides me with some compensation for this agreed release.
19

20 16. In light of all the time and effort I have spent on this case, the risk I undertook by
21 suing a former employer, the exposure to being responsible for paying DJO's costs in the event
22 we did not win the case, the reputational risk that future employers may hold this lawsuit against
23 me, the general release, and in light of the size of the settlement, I believe the request for \$10,000

24 ///

25 ///

26 ///

1 as a Class Representative service payment is fair and reasonable.

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

4 Executed on Jul 14, 2023, at San Jose, CA
5 (city, state)

6 
7 Tamika Walker (Jul 14, 2023 18:08 PDT)

Tamika Walker