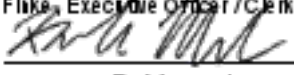


03/12/2025

Clad Fike, Executive Officer / Clerk of the Court

By:  Deputy
B. Mercado

DOUGLAS HAN (SBN 232858)
SHUNT TATAVOS-GHARAJEH (SBN 272164)
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Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA**

DELAINE PHILLIPS, individually, and on
behalf of other members of the general public
similarly situated;

Plaintiff,

v.

PENUMBRA, INC., a Delaware limited
liability company; and DOES 1 through 100,
inclusive;

Defendants.

Case No.: 23CV030740

Assigned for All Purposes to:
Honorable Brad Seligman
Department 22

CLASS ACTION

**[PROPOSED] SECOND AMENDED
ORDER OF FINAL APPROVAL AND
JUDGMENT**

[Reservation ID: 289477146995]

Hearing Date: March 11, 2025
Hearing Time: 3:00 p.m.
Hearing Place: Department 22

Complaint Filed: April 7, 2023
FAC Filed: November 6, 2023
SAC Filed: May 7, 2024
TAC Filed: August 20, 2024
Trial Date: None Set

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

5 On September 13, 2024, Plaintiff and Defendant Penumbra, Inc. (“Defendant”) entered
6 the Settlement Agreement to settle this lawsuit.

7 On October 14, 2024, the Court entered an order preliminarily approving the settlement
8 of this lawsuit (“Preliminary Approval Order”), consistent with the Code of Civil Procedure
9 section 382 and Rule of Court 3.769, ordering notice to be sent to the Class Members, providing
10 the Class Members with an opportunity to object to the Settlement or exclude themselves from
11 the Class, and scheduling a Final Approval Hearing.

12 On March 11, 2025, the Court held a Final Approval Hearing to determine whether to
13 give final approval to the Settlement of this lawsuit.

14 1. Incorporation of Other Documents. This Second Amended Order of Final
15 Approval and Judgment (“Order and Judgment”) incorporates the Settlement Agreement,
16 attached as **Exhibit 7** to the Declaration of Douglas Han in Support of Motion for Final
17 Approval of Class Settlement. Unless otherwise provided herein, all capitalized terms in this
18 Order and Judgment shall have the same meaning as set forth in the Settlement Agreement.

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

23 3. Final Class Certification. The Court finds that the Class satisfies all
24 applicable requirements of Code of Civil Procedure section 382, Rule of Court 3.769, and due
25 process. The Court certifies the Class consisting of all current and former hourly-paid or non-
26 exempt employees of Defendant, including all direct hires as well as indirect hires for whom the
27 contact information can be obtained from applicable Third-Party Employers, within the State of
28 California at any time during the period from April 7, 2019, through June 22, 2024 (“Class,”

1 “Class Members,” and “Class Period”). There are 5,464 Class Members who did not submit
2 valid and timely Requests for Exclusion from the Settlement (“Participating Class Members”).¹

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

6 5. Class Notice. The Court finds that the Court Approved Notice of Class
7 Action and PAGA Settlement and Hearing Date for Final Court Approval (“Class Notice”) and
8 its distribution to the Class Members were implemented pursuant to the Settlement and
9 Preliminary Approval Order. The Court finds that the Class Notice:

- 10 a. Constitutes notice reasonably calculated to apprise the Class Members of:
11 (i) pendency of this lawsuit; (ii) material terms and provisions of the
12 Settlement Agreement and their rights; (iii) their right to object to any
13 aspect of the Settlement Agreement; (iv) their right to exclude themselves
14 from the Settlement Agreement; (v) their right to receive settlement
15 payments; (vi) their right to appear at the Final Approval Hearing; and
16 (vii) the binding effect of the orders and judgment in this lawsuit on all the
17 Participating Class Members;
18 b. Constitutes notice that fully satisfied the requirements of Code of Civil
19 Procedure section 382, Rule of Court 3.769, and due process;
20 c. Constitutes the best practicable notice to the Class Members under the
21 circumstances of this lawsuit; and
22 d. Constitutes notice reasonable, adequate, and sufficient for the Class
23 Members.

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

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28 ¹ The Administrator mailed Class Notice to 5,468 Class Members and received four (4)
requests for exclusion. As a result, there are 5,464 Participating Class Members.

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

7 8. Binding Effect. The terms and provisions of the Settlement Agreement
8 and this Order and Judgment are binding on Plaintiff, Participating Class Members, Aggrieved
9 Employees, and their spouses, heirs, registered domestic partners, executors, administrators,
10 successors, and assigns. In addition, those terms shall have res judicata and other preclusive
11 effect in all pending and future claims, lawsuits, or other proceedings maintained by or on behalf
12 of any such persons to the extent those claims, lawsuits, or other proceedings involve matters
13 that were or could have been raised in this lawsuit and are encompassed by the Released Class
14 Claims and Released Private Attorneys General Act of 2004 ("PAGA") Claims.

15 9. Release by Participating Class Members. Effective on the date when
16 Defendant fully funds the Gross Settlement Amount and all employer's payroll taxes owed on
17 the Wage Portion of the Individual Class Payments, all Participating Class Members, on behalf
18 of themselves and their former and present representatives, agents, attorneys, heirs,
19 administrators, successors, transferees, and assigns, release the Released Parties from the
20 Released Class Claims.

21 a. Release by the State of California. Effective on the date when Defendant
22 fully funds the Gross Settlement Amount and all employer's payroll taxes
23 owed on the Wage Portion of the Individual Class Payments, Plaintiff, as
24 an agent and proxy of the State of California, and State of California itself
25 (including the California Labor and Workforce Development Agency) are
26 deemed to release the Released Parties from the Released PAGA Claims.

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- b. Release by Plaintiff. Effective on the date when Defendant fully funds the Gross Settlement Amount and all employer's payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiff and his former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally releases from the Plaintiff's Release. Plaintiff also expressly waives and relinquishes the provisions, rights, and benefits, if any, of section 1542 of the Civil Code.
- c. Released Parties. The Released Parties include Defendant and each of its former and present directors, officers, shareholders, owners, members, agents, employees, attorneys, insurers, parent companies, predecessors, successors, assigns, subsidiaries, affiliates, representatives, heirs, executors, administrators, and transferees along with the Third-Party Employers.

10. Class Representative Service Payment. The Court finds that the Class Representative Service Payment of \$8,500, to be paid out of the Gross Settlement Amount, to be reasonable and appropriate. The Class Representative Service Payment is to be paid pursuant to the terms and provisions set forth in the Agreement.

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

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b. The Court reviewed Plaintiff's declaration outlining his involvement. Given the risks inherent in the services as the class representative, duration of the case and time involved, and benefits created for the Class, the Court approves the payment of the Class Representative Service Payment of \$8,500 to Plaintiff.

11. Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment. The Court finds that the Class Counsel Fees Payment of \$1,249,854.49, to be paid out of the Gross Settlement Amount, to be reasonable and appropriate. The Court finds that the Class Counsel Litigation Expenses Payment as reimbursement for actual litigation costs incurred of \$19,909.37, to be paid to Class Counsel out of the Gross Settlement Amount, to be reasonable and appropriate. Such fees and costs are to be paid pursuant to the terms and provisions set forth in the Settlement Agreement. Defendant shall not be required to pay for any other attorneys' fees and expenses, costs, or disbursements incurred by Class Counsel or any other counsel representing Plaintiff or Class Members. Defendant shall also not be required to pay for any other attorneys' fees and expenses, costs, or disbursements incurred by Plaintiff or Class Members in connection with or related in any manner to this lawsuit, Settlement Agreement, settlement administration, and/or Released Class Claims and Released PAGA Claims.

a. The Court has an independent right and responsibility to review the Class Counsel Fees Payment and only award so much as it determines reasonable. (*Garabedian v. Los Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 127-128.) The Class Counsel Fees Payment of \$1,249,854.49 is thirty percent (30%) of the common fund created for the benefit of the Class and is supported by use of the percentage-fee method. (*Laffitte v. Robert Half International, Inc.* (2016) 1 Cal.5th 480, 504.)²

² After receiving and reviewing the Class Data, the Administrator determined that the De-escalator Clause had been triggered, resulting in the Gross Settlement Amount being decreased to \$4,166,181.64. Since the Class Counsel Fees Payment is thirty percent (30%) of the Gross Settlement Amount, this also resulted in the Class Counsel Fees Payment being decreased to \$1,249,854.49.

1 Considering the results achieved, financial risk undertaken, difficult nature
2 of this litigation, skills required, percentage fees award in previous and
3 other cases, and contingent fees charged in the marketplace, the Court
4 finds that the Class Counsel Fees Payment is consistent with the
5 marketplace, is reasonable, and is approved.

- 6 b. The Court reviewed the Declaration of Douglas Han regarding the costs
7 expended in prosecuting this case. Under the terms of the Settlement,
8 Class Counsel may seek reimbursement of up to \$20,000 in litigation
9 costs. The Court finds that Class Counsel expended \$19,909.37 in
10 litigation costs and that such costs were reasonable. Thus, the Court
11 approves the payment of the Class Counsel Litigation Expenses Payment
12 of \$19,909.37 from the Gross Settlement Amount for the reimbursement
13 of Class Counsel's litigation costs.

14 12. Administration Expenses Payment. The Court finds that the
15 Administration Expenses Payment of \$30,000, to be paid by Defendant to the Administrator out
16 of the Gross Settlement Amount, to be reasonable and appropriate. The Administration Expenses
17 Payment are to be paid pursuant to terms and provisions set forth in the Settlement Agreement.

- 18 a. The Court reviewed the Declaration of Nick Castro from ILYM Group,
19 Inc., the Court-approved Administrator. The Court finds that notice was
20 provided to the Class pursuant to the Preliminary Approval Order,
21 constitutes the best practicable notice to the Class, and satisfies due
22 process. Thus, the Court approves the payment of the Administration
23 Expenses Payment of \$30,000 for the Administrator's services in
24 administering the Settlement.

25 13. PAGA Penalties. The Court finds that the PAGA Penalties of \$400,000,
26 seventy-five percent (75%) of which (\$300,000) will be paid to the California Labor and
27 Workforce Development Agency out of the Gross Settlement Amount and twenty-five percent
28 (25%) of which (\$100,000) shall be distributed to the Aggrieved Employees, on a pro rata basis,

1 to be reasonable and appropriate. The PAGA Penalties are to be paid pursuant to the terms and
2 provisions set forth in the Settlement Agreement.

3 14. Funding the Gross Settlement Amount. Defendant shall fully fund the
4 Gross Settlement Amount and amounts necessary to fully pay employer's share of payroll taxes
5 by transmitting the funds to the Administrator no later than fourteen (14) calendar days after the
6 Effective Date. Within fourteen (14) calendar days after Defendant funds the Gross Settlement
7 Amount, the Administrator will mail checks to the appropriate entities and persons.

8 15. Fairness of the Settlement. As noted in the Preliminary Approval Order,
9 the Settlement is entitled to a presumption of fairness. In the moving papers, Plaintiff contends
10 the Settlement was the product of arm's-length negotiations following extensive litigation,
11 discovery, and exchange of documentation. The negotiations were facilitated with the aid of
12 Brandon McKelvey, an experienced and well-respected mediator.

13 a. The fairness of the Settlement is demonstrated by there being no
14 objections to and only four (4) requests for exclusion from the Settlement.
15 The individuals who requested exclusion are Lionel Chapital, Jahreal
16 Black, Yanjun Luo, and Matthew Hadley.

17 b. The fairness of the Settlement is further illustrated by the gross *average*
18 Individual Class Payment being approximately \$424.15, and the gross
19 *highest* Individual Class Payment being about \$1,300.67.

20 16. Uncashed Checks. The Class Members must cash or deposit their
21 settlement checks within one hundred eighty (180) calendar days after the checks are mailed to
22 them. Uncashed settlement checks will be paid to *cy pres* recipient Legal Aid At Work.

23 17. Modification of Agreement. The Participating Class Members are
24 authorized to agree to and adopt amendments to or modifications of the Agreement by an express
25 written instrument signed by all Parties or their representatives and approved by the Court. Such
26 amendments or modifications shall be consistent with this Order and Judgment and cannot limit
27 the rights of the Participating Class Members under the Agreement.

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1 18. Amended Order and Judgment. The Parties will draft and file an Amended
2 Order and Judgment if there are any additional responses received from the Class Members by
3 the time the Response Deadline expires.

4 19. Final Accounting and Compliance. The Court sets a Compliance Hearing
5 for October 31, 2025 in Department 22. At least five (5) court days before this hearing, Plaintiff
6 shall file a compliance status report along with a proposed amended judgment. Pursuant to Code
7 of Civil Procedure section 384, the compliance status report shall specify the total amount paid to
8 Class Members and residual of the unclaimed settlement funds that will be paid to the entity
9 identified as the recipient of such funds in the Settlement Agreement.

10 a. Holdback Provision. Ten percent (10%) of the Class Counsel Fees
11 Payment (\$124,985.45) shall be held in an interest-bearing account, that
12 will be maintained by the Administrator, pending the submission and
13 approval of a final compliance status report after completion of the
14 distribution process.

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

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

23 b. Entering such additional orders as may be necessary or appropriate to
24 protect or effectuate this Order and Judgment approving the Settlement
25 Agreement, and permanently enjoining Plaintiff from initiating or
26 pursuing related proceedings, or to ensure the fair and orderly
27 administration of the Settlement Agreement; and
28

1 c. Entering any other necessary or appropriate orders to protect and
2 effectuate this Court's retention of continuing jurisdiction.

3 The Motion for Final Approval of Class Action Settlement, Class Counsel Fees Payment,
4 Class Counsel Litigation Expenses Payment, and Class Representative Service Payment is
5 GRANTED. The Administrator is directed to carry out the terms of the Settlement forthwith.

6 THE PARTIES ARE ORDERED TO COMPLY WITH THE TERMS OF THE
7 SETTLEMENT AGREEMENT. PURSUANT TO RULES OF COURT 3.769, THE COURT
8 ENTERS FINAL JUDGMENT BASED UPON THE TERMS OF THIS ORDER AND
9 SETTLEMENT AGREEMENT AND, WITHOUT AFFECTING THE FINALITY OF THIS
10 MATTER, RETAINS EXCLUSIVE AND CONTINUING JURISDICTION TO ENFORCE
11 THIS ORDER, THE SETTLEMENT AGREEMENT, AND THE JUDGMENT THEREON.

12 IT IS SO ORDERED.

13
14 DATED: 03/12/2025



15 HONORABLE BRAD SELIGMAN
16 SUPERIOR COURT JUDGE
17 ~~Brad Seligman, Judge~~

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**PROOF OF SERVICE
1013A(3) CCP**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

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

On March 12, 2025, I served the foregoing document described as

SECOND AMENDED ORDER OF FINAL APPROVAL AND JUDGMENT

for the following case: **Phillips v. Penumbra, Inc.**
LWDA/Court Case No.: **LWDA Case No.: CM-932949-23**
Court Case No.: 23CV030740
Alameda County Superior Court

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

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

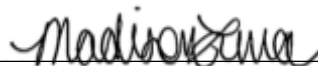
[X] BY ELECTRONIC SUBMISSION

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

[X] STATE

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

Executed on March 12, 2025, at Pasadena, California.



Madison Luna