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Attorneys for Plaintiff and the Aggrieved Employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

TANIS CLARK, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

NOW OPTICS, LLC, a Florida limited
liability company; and DOES 1 through
50, inclusive,

Defendants.

Case No.: 37-2020-00044817-CU-OE-CTL

(Assigned to the Hon. Richard S. Whitney, Dept. C-68)

**DECLARATION OF KRISTEN M. AGNEW
IN SUPPORT OF PLAINTIFF'S MOTION TO
APPROVE SETTLEMENT AGREEMENT
PURSUANT TO THE PRIVATE ATTORNEYS
GENERAL ACT**

Date: October 28, 2022

Time: 10:30 a.m.

Dept.: C-68

Reservation Number: 2830404

Complaint Filed: December 7, 2020

FAC Filed: August 26, 2021

SAC Filed: March 21, 2022

Trial Date: None Set

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I, Kristen M. Agnew, declare as follows:

1. I am an attorney at law, duly licensed to practice before all Courts in the State of California, and am with the law firm Diversity Law Group, P.C., counsel of record for Plaintiff Tanis Clark (“Plaintiff”). I have personal knowledge of the facts set forth below and if called to testify I could and would do so competently.

PROCEDURAL HISTORY

2. From the inception of the case, Plaintiff's counsel has zealously represented the interests of the Aggrieved Employees.

3. On November 18, 2020, Plaintiff submitted a written notice under Labor Code § 2699.3 (the “PAGA Notice”) to the California Labor and Workforce Development Agency (“LWDA”) and Defendant Now Optics, LLC (“Defendant” or “Now Optics”). As set forth in the PAGA Notice, Plaintiff alleged that Defendant failed to pay meal period premiums at the regular rate of pay, pay all wages owed upon separation of employment, and provide accurate itemized wage statements to its employees, in violation of California Labor Code sections 201, 202, 203, 226, 226.7 and 512.

4. On December 7, 2020, Plaintiff filed a class and representative PAGA action against Defendant in the Superior Court of California, County of San Diego. The complaint alleged causes of action for: (1) violation of Labor Code sections 226.7 and 512; (2) violation of Labor Code section 226; (3) violation of Business and Professions Code section 17200, *et seq.*; and (4) violation of Labor Code section 2698, *et seq.*, based on the facts described in Plaintiff's PAGA Notice.

5. On or about February 4, 2021, Defendant filed a motion to compel arbitration of Plaintiff's individual claims, based on an arbitration agreement containing a class waiver. Plaintiff opposed the motion. On August 6, 2021, the Court granted Defendant's motion to compel arbitration, dismissed Plaintiff's class claims, and stayed Plaintiff's PAGA claims pending arbitration of the individual claims.

6. On August 10, 2021, Plaintiff submitted a supplemental notice (“Supplemental

1 PAGA Notice”) to the LWDA and Defendant. In addition to the claims set forth in the PAGA
2 Notice, Plaintiff further alleged that Defendant failed to pay sick pay at the regular rate of pay.
3 The failure to properly pay sick pay wages resulted in derivative violations of California Labor
4 Code sections 201, 202, and 203, because Defendant did not pay employees all owing and
5 unpaid wages for work performed by them during their employment and at the end of their
6 employment.

7 7. In light of the Court’s order dismissing the class allegations, Plaintiff and
8 Defendant (together, the “Parties”) entered into a stipulation to allow Plaintiff to file an amended
9 complaint alleging a single cause of action for violation of Labor Code section 2698, *et seq.*,
10 based on the facts described in Plaintiff’s Supplemental PAGA Notice. The stipulation was
11 subsequently approved by the Court, and on August 26, 2021, Plaintiff filed a First Amended
12 Representative Action Complaint (“First Amended Complaint”).

13 8. The First Amended Complaint alleged a single cause of action for violation of
14 PAGA arising from claims that Defendant: (a) failed to pay meal period premiums at the correct
15 regular rate of pay that included all non-discretionary remuneration, in violation of Labor Code
16 sections 226.7 and 512; (b) failed to pay employee sick pay wages at the correct regular rate of
17 pay that included all non-discretionary incentive wages, in violation of Labor Code sections 201,
18 202, 203 and 246; (c) failed to pay all wages owed upon separation of employment due to the
19 unpaid meal period premiums, in violation of Labor Code sections 201, 202 and 203; and (d)
20 failed to provide accurate itemized wage statements, in violation of Labor Code section 226.

21 **DISCOVERY AND INVESTIGATION**

22 9. Following the filing of the First Amended Complaint, the Parties met and
23 conferred regarding the proper liability period and the underlying merits of the case. The Parties
24 discussed the settlement of a related lawsuit entitled *Mayreli Martinez v. Vision Precision*
25 *Holdings, LLC*, Superior Court of California, County of Kern case number BCV-18-103076,
26 alleging similar wage and hour PAGA claims against Vision Precision Holdings (“Vision
27 Precision”). Vision Precision Holdings is an affiliated entity of Defendant.

28 10. I reviewed a copy of the PAGA notice and operative complaint in *Martinez*. The

1 plaintiff in *Martinez* pursued PAGA penalties predicated on Vision Precision's alleged failure to:
2 (a) pay minimum wages, in violation of Labor Code section 1197.1; (b) pay overtime wages, in
3 violation of Labor Code section 510; (c) provide meal periods, in violation of Labor Code
4 section 510; (d) provide rest periods, in violation of Labor Code section 226.7; (e) pay wages due
5 at termination, in violation of Labor Code sections 201, 202 and 203; (f) provide accurate
6 itemized wage statements and payroll records, in violation of Labor Code section 226(a); (g) pay
7 earned wages twice per month, in violation of Labor Code section 204; and (h) provide paid sick
8 days, in violation of Labor Code section 246.

9 11. As materially relevant to Defendant's liability in this Action, Vision Precision
10 ceased employing individuals in California, effective December 31, 2019. As of January 1, 2020,
11 Defendant became the employer of all hourly, non-exempt employees of Vision Precision.
12 Defendant represented that it did not employ any individuals in California prior to January 1,
13 2020, and that to the extent any aggrieved employees worked for Vision Precision, such claims
14 would be compensated in the *Martinez* settlement. Defendant explained that it intended to move
15 to dismiss and/or stay the claims of the Aggrieved Employees who previously worked for Vision
16 Precision, pending the outcome of the *Martinez* litigation. Should Defendant have prevailed, the
17 State of California and Aggrieved Employees would have been left with no or a substantially
18 delayed recovery.

19 12. In light of the narrow liability period in this Action, the Parties agreed to engage
20 in early settlement discussions. Over the course of several months, the Parties engaged in arm's
21 length negotiations. In connection therewith, Defendant produced data relating to the number of
22 pay periods worked by aggrieved employees and the number of pay periods in which aggrieved
23 employees earned non-discretionary remuneration and meal period premium and/or sick pay. I
24 reviewed the data and records produced and conducted a full damages analysis.

25 13. On or about December 15, 2021, the Parties reach a settlement of the entire
26 action, as detailed in the Joint Stipulation of Settlement and Release Under the Private Attorneys
27 General Act, California Labor Code § 2698, *et seq.* ("Settlement Agreement"). Attached hereto
28 as **Exhibit A** is a true and correct copy of the Settlement Agreement.

1 14. As a condition of the settlement, Plaintiff filed a second supplemental notice
2 (“Second Supplemental PAGA Notice”) with the LWDA and Defendant, on January 19, 2022.
3 Given the overlap between the aggrieved employees represented in this Action and *Martinez*, the
4 Second Supplemental PAGA Notice encompasses the PAGA allegations at issue in *Martinez*. In
5 the Second Supplemental PAGA Notice, Plaintiff alleges that Defendant failed to pay minimum
6 and overtime wages to employees for time spent performing work-related tasks, failed to provide
7 paid, duty-free rest periods and/or pay rest period premium pay, failed to pay all earned wages
8 twice a month and upon separation of employment, and failed to maintain accurate time records.¹

9 15. On March 21, 2022, Plaintiff filed a Second Amended Representative Action
10 Complaint (“Second Amended Complaint”). The Second Amended Complaint is the operative
11 complaint and alleges claims based on the facts described in Plaintiff’s Second Supplemental
12 PAGA Notice.

13 **SUMMARY OF THE PROPOSED SETTLEMENT**

14 16. As defined by the settlement, “Aggrieved Employees” means all current and
15 former California non-exempt employees of Defendant who were paid wages by Defendant at
16 any time during the PAGA Period.” Settlement Agreement § B-2. The PAGA Period
17 encompasses “the period of January 1, 2020 to March 31, 2022.” *Id.* at § B-15. Based upon
18 Defendant’s records, there are an estimated 293 Aggrieved Employees who worked
19 approximately 9,300 workweeks during the PAGA Period. *Id.* at § C-2. The 9,300 workweeks
20 translates to approximately 4,650 pay periods during the PAGA Period.

21 17. The Settlement Agreement requires Defendant to pay the gross amount of One
22 Hundred Seventy-Four Thousand Dollars (\$174,000.00) (the “Maximum Settlement Amount”).
23 Settlement Agreement § B-13.

24 18. The balance of the Maximum Settlement Amount remaining after deduction of
25

26
27 ¹ On April 6, 2022, the Kern County Superior Court entered an order granting approval of the
28 PAGA settlement in *Martinez*. The court approved releases encompasses claims for PAGA civil
penalties predicated on alleged violations of the following California Labor Code sections 201,
202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, and 1198.

1 the approved enhancement payment to Plaintiff, attorneys' fees and costs, and settlement
2 administration costs (the "PAGA Penalties Fund"), will be available for distribution to the
3 LWDA and Aggrieved Employees. Settlement Agreement §§ B-14, C-4. The PAGA Penalties
4 Fund is estimated to be at least \$102,143.76. Seventy-five percent (75%) of the PAGA Penalties
5 Fund, or approximately \$76,607.82, will be paid to the LWDA for PAGA penalties. *Id.* at § C-4.
6 The remaining twenty-five percent (25%), or approximately \$25,535.94, will be distributed to
7 Aggrieved Employees. *Id.*

8 19. As part of the Settlement Agreement, Defendant does not object to Plaintiff's
9 Counsel's request for attorneys' fees of approximately thirty-three and one-half percent (33.5%)
10 of the Maximum Settlement Amount, *i.e.*, Fifty-Eight Thousand Three Hundred Thirty-Three
11 Dollars and Thirty-Three Cents (\$58,333.33), plus up to Five Thousand Dollars (\$5,000.00) for
12 reimbursement of litigation costs, subject to the Court approving this Settlement. Settlement
13 Agreement § C-8. Plaintiff's Counsel's anticipated actual litigation costs total \$2,022.91. The
14 costs were all directly incurred in the prosecution of this action, including filing fees, postage,
15 copying, and service of process fees. Attached hereto as **Exhibit B** is a true and correct copy of
16 my office's cost bill, which reflects costs incurred in prosecuting this case. Any costs not
17 awarded by the Court will revert to the PAGA Penalties Fund for distribution to the LWDA and
18 Aggrieved Employees.

19 20. Defendant has also agreed to not object to Plaintiff's request for an Enhancement
20 Payment of Seven Thousand Five Hundred Dollars (\$7,500.00). Settlement Agreement § C-7.

21 21. Finally, the Settlement Agreement provides for the payment of the fees and
22 expenses reasonably incurred by the Settlement Administrator. Settlement Agreement § C-9. The
23 Parties have agreed to utilize Phoenix Settlement Administrators to administer the settlement,
24 with the administration costs estimated to be \$4,000.00. The Parties believe the administration
25 fee to be reasonable.

26 **VALUE OF SETTLEMENT PER PAY PERIOD**

27 22. Based on the total settlement amount, Defendant will pay approximately \$37.42
28 per pay period ($\$174,000 \div 4,650$ pay periods) to resolve the claims in this case.

23. The amount any particular Aggrieved Employee will be entitled to recover will depend on the number of pay periods he or she worked during the PAGA Period, with some entitled to receive more and others less. Settlement Agreement § C-5. This is fair, as it directly allocates greater penalties to individuals who have allegedly suffered greater harm.

POTENTIAL CIVIL PENALTIES

24. PAGA penalties are difficult to evaluate in a matter like this, but there are reasons to believe that they would be limited. Defendant has indicated that there were approximately 9,300 workweeks (or 4,650 pay periods) that Aggrieved Employees worked during the PAGA Period. Assuming that Plaintiff were to prevail on the merits of the PAGA claim, applying the standard penalty of \$100 per pay period yields \$465,000 in potential liability.

25. In the alternative, if the Court were to “stack” penalties, (*ie*, award multiple PAGA penalties for different Labor Code violations in the same pay period), the potential PAGA the could total as high as \$2,338,900:

Lab. Code Section	Violation	Pay Periods	PAGA Penalties
Lab. Code §§ 226.7, 512	Failure to provide meal/rest periods	4,650	\$465,000
Lab. Code §§ 510, 558, 1194, 1197, and 1197.1	Failure to pay minimum and/or overtime wages	4,650	\$465,000
Lab. Code § 204	Failure to pay wages twice per month	4,650	\$465,000
Lab. Code § 246	Failure to pay sick pay at the correct rate	139	\$13,900
Lab. Code § 226	Failure to provide accurate wage statements	4,650	\$465,000
Lab. Code § 1174	Failure to maintain accurate payroll records	4,650	\$465,000

TOTAL		\$2,338,900
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26. However, I believe that is unrealistic to assume that the Court would permit the “stacking” of PAGA penalties in this manner. I am not aware of any PAGA award in which the trial court assessed more than one penalty per pay period.

27. The above penalty calculations further assume that Plaintiff will prevail on the merits. However, Plaintiff’s claims are contested. Defendant contends that it maintains compliant written meal/rest period and overtime policies, which strictly prohibit employees from working off-the-clock. With respect to the alleged unpaid sick time, Defendant maintains that there is no private right of action to bring a paid sick pay claim. This argument presents novel legal issues and there is substantial ground for difference of opinion as to the remedies, if any, available to employees who have experienced a violation of the Healthy Workplaces, Healthy Families Act (“HWHFA”), codified at Labor Code section 245, *et. seq.* I am unaware of the existence of any published California Court of Appeal decision that grapples with this issue. There are a handful of unreported district court opinions, including *Titus v. McLane Foodservice, Inc.*, which have held that only the Labor Commissioner may recover penalties for a violation of HWHFA. 2016 WL 4797497. While *Titus* is by no means controlling authority, the Court may look to it as a persuasive authority, despite Plaintiff’s contention that it was wrongly decided. Even had Plaintiff ultimately prevailed on the merits, given the novelty of the legal questions it raised, Defendant may have sought immediate appellate review through a writ or appeal. Furthermore, the alleged wage statement violation is in part derivative in nature, and therefore vulnerable to a motion for summary judgment. *See Maldonado v. Epsilon Plastics, Inc.*, 22 Cal. App. 5th 1308 (2018) (finding that the employees did not suffer a violation under 226(a) where their wage statement cause of action was derived from an underlying wage and hour violation for overtime).

28. In negotiating the amount of the settlement, I also took into account the inherent uncertainty in the potential recovery in a PAGA action. By statute, the Court can decline to award the full amount of PAGA penalties where “...if, based on the facts and circumstances of the particular case, to do otherwise, would result in an award that is unjust, arbitrary and

1 oppressive, or confiscatory.” See Cal. Labor Code § 2699(e)(2). Assuming that Plaintiff
2 prevailed on liability, under the facts of this case, I appreciate the substantial risk that Defendant
3 could present a persuasive argument to reduce the amount of PAGA penalties at trial. The Court
4 has discretion under PAGA to reduce the maximum allowable PAGA penalties.

5 29. I am also aware that Courts routinely award far less than the statutory maximum
6 amount of civil penalties, even where an underlying violation of the Labor Code is found. As
7 shown in the Court of Appeal’s decision in *Carrington v. Starbucks Corp.*, while the plaintiff
8 prevailed on his PAGA claim at trial, the trial court reduced the maximum PAGA penalty
9 amount by 90%, citing the employer’s good faith attempt at complying with the law. 30 Cal.
10 App. 5th 504, 517 (2018). Upon review, the Court of Appeal found such reduction to be proper.
11 *Id.* at 539; see *O’Connor v. Uber Technologies, Inc.*, 201 F.Supp.3d 1110, 1133 (N.D. Cal.,
12 2016). Thus, assuming that the Court uses *Carrington* as a benchmark and assesses PAGA
13 penalties of approximately 10% of the total maximum, a more realistic estimate of the maximum
14 PAGA penalties at issue—even with “stacking”—is \$233,890.

15 **THE SETTLEMENT IS FAIR, REASONABLE AND ADEQUATE**

16 30. I believe that Plaintiff could prevail at trial. However, I also believe in the fairness
17 of the settlement, which is based on factoring in the uncertainty and risks attendant to not
18 prevailing on one or more theories of liability, the possibility of losing at trial and potential for
19 appeals. Moreover, as Defendant adamantly denies that it should be liable for the full extent of
20 the alleged penalties, there is a possibility that Plaintiff and the Aggrieved Employees would be
21 awarded less or recover nothing at trial. Thus, after taking into account sharply disputed legal
22 issues involved in this litigation, the risks associated with further prosecution, delays caused by
23 potential appeals, and the substantial benefits to be received pursuant to the Settlement, I believe
24 that the proposed settlement is fair, reasonable, and adequate and is in the best interests of
25 Plaintiff and the Aggrieved Employees.

26 **NOTICE TO LWDA**

27 31. Concurrent with the filing of the Motion to Approve PAGA Settlement, my office
28 uploaded the Motion, Settlement Agreement, and proposed order to the LWDA’s website.

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33. I am one of the primary attorneys on this matter. My qualifications are as follows: I was the 2003 recipient of the Spelman Presidential Scholarship to Emory University School of Law. During law school, I was a summer associate at the law firm of Sonnenschein, Nath and Rosenthal, and clerked with the Atlanta office of the Equal Employment Opportunity Commission. I received my J.D. from Emory University in 2006 and was admitted to the California Bar in December 2006. Following law school, I was an associate at Sonnenschein from September 2006 to May 2009.

35. While at Ogletree and Seyfarth, I served as the lead associate on a number of wage and hour class actions, including *Martha Cardenas v. Gold's Gym*, Los Angeles County Superior Court Case No. BC445112; *Nathaniel Werner v. Crown Equipment Corporation*, Los Angeles County Superior Court Case No. BC439428; *Christopher Williams v. Allstate Insurance Co.*, Los Angeles County Superior Court Case No. BC382577; *Hwang v. Caltech*, Los Angeles County Superior Court Case No. BC464894; *Melissa Roberts v. Zale Delaware, Inc.*, Los Angeles Superior Court Case No. BC523610; *Michael Oliver v. Konica Minolta Business Solutions U.S.A., Inc.*, Santa Clara County Superior Court Case No. 114-CV-263183; *Tessa*

1 *Hodge v. Zale Delaware, Inc., d/b/a Piercing Pagoda*, San Bernardino Superior Court Case No
2 CIVVS1301632; *Warren v. Paychex, Inc.*, N.D. Cal. Case No. 3:10-cv-02006; *Tapia v. Zale*
3 *Delaware Inc. et al*, S.D. Cal. Case No. 3:13-cv-01565; and *Benjamin Burgess et al v. Tesoro*
4 *Refining and Marketing Company et al*, C.D. Cal. Case No. 2:10-cv-05870.

5 36. In June 2016, I joined Diversity Law Group, P.C. where I spend most of my time
6 handling employment cases. I primarily represent employees.

7 37. I have been approved as class counsel in numerous other wage/hour class actions
8 that have been granted class certification and final approval, including: *Antonio Becerra-Mata v.*
9 *PSC Industrial Outsourcing, LP*, San Benito County Superior Court Case No. CU-15-00030;
10 *Kosal So v. Owens-Brockway Glass Container, Inc.*, Los Angeles County Superior Court Case
11 No. BC608609; *Sarah Rodriguez v. Manpower, Inc.*, Santa Clara County Superior Court Case
12 No. 1-16-CV-294904; *Shannon Sanchez v. American Para Professional Systems, Inc.*, Santa
13 Clara County Superior Court Case No. 17CV306751; *Foaad Hanna v. Equinix, LLC*, Santa Clara
14 County Superior Court Case No. 18CV339365; *Alicia Harris v. 24 Seven LLC*, Los Angeles
15 County Superior Court Case No. BC720144; *Mary Della Maggiora v. Watsonville Community*
16 *Hospital*, Santa Cruz Superior Court Case No. 18CV00191; *Michael Randolph v. Pacific Racing*
17 *Association*, Alameda County Superior Court Case No. RG18908139; *Cody Wirbick v. Sundt*
18 *Construction, Inc.*, U.S. District Court for the Eastern District of California Case No. 2:19-cv-
19 02067-MCE-CKD; *Jose Vasquez Ruiz v. Perdue Foods, LLC*, Sonoma County Superior Court
20 Case No. SCV 264649; *Delmer Wood III v. Reeve Trucking Company Inc.*, San Joaquin
21 Superior Court Case No. STK-CV-UOE-2018-0004414; *Eric Chavez v. Converse, Inc.*, U.S.
22 District Court for the Northern District of California Case No. 15-cv-03746-NC; *Jharett Siron v.*
23 *Raypak, Inc.*, Ventura County Superior Court Case No. 56-2019-00527959-CU-OE-VTA;
24 *Prexxie Pascual and Arturo Fonseca v. Satellite Healthcare, Inc.*, Santa Clara Superior Court
25 Case No. 19CV345211; and *Markham v. Quik Stop Markets, Inc.*, Santa Clara Superior Court
26 Case No. 19CV341582.

27 38. I also second chaired two jury trials where I represented the prevailing defendant.
28 Both cases involved employees who brought claims against their former employers pursuant to

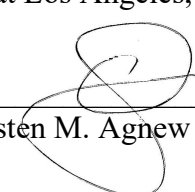
1 the Fair Employment & Housing Act. The cases are: *Jeff Cowell v. Eaton Aerospace LLC et al*,
2 Los Angeles County Superior Court Case No. BC401543; and *Richard Gulden v. Pratt &*
3 *Whitney Rocketdyne Inc. et al.*, Los Angeles County Superior Court Case No. BC468909. More
4 recently, I was lead trial counsel on a PAGA bench trial, in which the plaintiff was the prevailing
5 party.

6 39. To date, I have incurred approximately 54.10 hours in connection with the
7 litigation of this lawsuit. Attached hereto as **Exhibit C** is a summary of the hours I have spent on
8 this case to date. This figure does not include the estimated hours for appearing at the fairness
9 hearing, conferring and reviewing e-mails with defense counsel and the Settlement
10 Administrator, and answering questions from Aggrieved Employees regarding payments and
11 related issues. I anticipate I will expend approximately five (5) hours working on these matters,
12 in addition to the hours described in Exhibit C.

13 40. The total lodestar for my hours will be approximately \$41,370 based on an hourly
14 rate of \$700.00 per hour ([54.10 hours + 5 hours] x 700). I have been approved at an hourly rate
15 of \$700.00 per hour by various Courts, including: *Foaad Hanna v. Equinix, LLC*, Santa Clara
16 County Superior Court Case No. 18CV339365; *Alicia Harris v. 24 Seven LLC*, Los Angeles
17 County Superior Court Case No. BC720144; *Mary Della Maggiora v. Watsonville Community*
18 *Hospital*, Santa Cruz Superior Court Case No. 18CV00191; *Michael Randolph v. Pacific Racing*
19 *Association*, Alameda County Superior Court Case No. RG18908139; *Prexxie Pascual and*
20 *Arturo Fonseca v. Satellite Healthcare, Inc.*, Santa Clara Superior Court Case No. 19CV345211;
21 *Chavez v. Converse, Inc.*, United States District Court, Northern District of California Case No.
22 15-cv-03746-NC; and *Carrillo v. New Balance Athletics, Inc.*, Santa Clara Superior Court Case
23 No. 19CV352469.

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

26 Executed on this 24th day of May 2022, at Los Angeles, California.

27
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Kristen M. Agnew

**DECLARATION OF KRISTEN M. AGNEW IN SUPPORT OF PLAINTIFF'S MOTION TO APPROVE
PAGA SETTLEMENT**

EXHIBIT A

Larry W. Lee (State Bar No. 228175)
Kristen M. Agnew (State Bar No. 247656)
Nicholas Rosenthal (State Bar No. 268297)
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Attorneys for Plaintiff and the Aggrieved Employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

TANIS CLARK, as an individual and
on behalf of all others similarly
situated,

Plaintiff,

vs.

NOW OPTICS, LLC, a Florida
limited liability company; and DOES
1 through 50, inclusive,

Defendants.

Case No. 37-2020-00044817-CU-OE-
CTL

**JOINT STIPULATION OF
SETTLEMENT AND RELEASE UNDER
THE PRIVATE ATTORNEYS GENERAL
ACT, CALIFORNIA LABOR CODE §
2698, *ET SEQ.***

1 This Joint Stipulation of Settlement and Release (“Agreement” or “Settlement”) under
2 the Private Attorneys General Act, California Labor Code section 2698 *et seq.* (“PAGA”), is
3 made by and between Tanis Clark (“Clark” or “Plaintiff”), individually and as representative on
4 behalf of Aggrieved Employees as further defined herein and the State of California, and Now
5 Optics, LLC (“Now Optics” or “Defendant”). Clark and Now Optics are collectively referred to
6 herein as the “Parties” and may be individually referred to as a “Party.”

7 **A. FACTUAL BACKGROUND**

8 1. This Settlement is made and entered into by and between Plaintiff and
9 Defendant, and is subject to the terms and conditions hereof, and to the Court’s approval. The
10 Parties expressly acknowledge that this Agreement is entered into solely for the purpose of
11 compromising significantly disputed claims and that nothing herein is an admission of liability
12 or wrongdoing by Defendant. Defendant denies that it is liable to Plaintiff or the Aggrieved
13 Employees and denies that it has violated any law.

14 2. On November 16, 2020, Plaintiff filed a notice with the Labor & Workforce
15 Development Agency (“LWDA”) alleging that Defendant violated Labor Code sections 201,
16 202, 203, 226, 226.7 and 512 (“PAGA Notice”).

17 3. On December 7, 2020, Plaintiff filed a Class Action Complaint for Damages. As
18 set forth in the Class Action Complaint for Damages, Plaintiff alleged the following claims: (1)
19 failure to pay meal period premiums at the correct regular rate of pay that included all non-
20 discretionary remuneration in violation of Labor Code sections 226.7 and 512; (2) failure to
21 provide accurate, itemized wage statements in violation of Labor Code section 226; (3) civil
22 penalties pursuant to Labor Code section 2698 *et. seq.*; and (4) unfair business practices in
23 violation of the UCL.

24 4. On or about February 4, 2021, Defendant filed a motion to compel individual
25 arbitration, arguing that Plaintiff’s individual claims were subject to an arbitration agreement
26 and that Plaintiff had waived his class claims. Plaintiff opposed the motion. On August 6, 2021,
27 the Court granted Defendant’s motion to compel arbitration as to Plaintiff’s individual claims,
28

1 dismissed Plaintiff's class claims, and stayed Plaintiff's PAGA claims pending arbitration.

2 5. On August 10, 2021, Plaintiff sent a supplemental PAGA Notice to the LWDA
3 of alleging that Defendant violated Labor Code sections 201, 202, 203, 204, 226.7 and 246.

4 6. The Parties met and conferred and entered into a stipulation to allow Plaintiff to
5 amend his complaint to pursue his representative PAGA cause of action. After approval by the
6 Court, on August 26, 2021, Plaintiff filed the First Amended Representative Action Complaint.
7 The First Amended Complaint alleged a single cause of action for violation of Labor Code
8 section 2698, *et. seq.* arising from claims that Defendant (a) failed to pay meal period premiums
9 at the correct regular rate of pay that included all non-discretionary remuneration in violation of
10 Labor Code § 226.7 and 512; (b) failed to pay employees sick pay at the correct regular rate of
11 pay that included all non-discretionary remuneration, in violation of Labor Code §§ 201-203
12 and 246; (c) failed to pay all wages owed upon separation of employment due to the unpaid
13 missed meal period premiums, in violation of Labor Code §§ 201, 202, and 203; and (d) failed
14 to provide accurate, itemized wage statements in violation of Labor Code § 226.

15 7. On October 11, 2021, Defendant filed an Answer denying all allegations in the
16 Action and all claims of any wrongdoing whatsoever by Defendant or any of its parents,
17 subsidiaries, affiliates, divisions, agents, servants, or employees for any claims.

18 8. Following the filing of the First Amended Complaint, the Parties engaged in
19 robust meet and confer effort regarding the proper liability period and the underlying merits of
20 the case. As part of these discussions, the Parties discussed a related pending lawsuit, *Mayreli*
21 *Martinez v. Vision Precision Holdings, LLC*, filed in Kern County Superior Court, Case No.
22 BCV-18-103076, alleging similar wage and hour claims under PAGA against an affiliated
23 entity of Defendant (the "*Martinez Settlement*"). Defendant represented that it did not employ
24 any individuals in California prior to January 1, 2020 and to the extent any Aggrieved
25 Employees worked for any related entities, their claims are being paid out by the *Martinez*
26 Settlement.
27
28

1 9. In light of the narrow claims at issue, the Parties agreed to redirect their
2 resources to exploring the possibility of an early settlement. Over the course of several months,
3 the Parties engaged in arm's length negotiations. In connection therewith, Defendant produced
4 data relating to the aggregate number of pay periods worked by aggrieved employees, and the
5 number of pay periods in which aggrieved employees received non-discretionary incentive
6 compensation and meal period premiums and/or sick pay, which allowed Plaintiff's Counsel to
7 conduct a full damages analysis.

8 10. On or about December 15, 2021, the Parties reached a settlement of the entire
9 action.

10 11. As a condition of settlement, on January 19, 2022, Plaintiff sent a second
11 supplemental PAGA Notice to the LWDA of alleging that Defendant violated Labor Code
12 sections 204, 510, 558, 1174, 1194, 1197 and 1197.1.

13 12. On March 21, 2022, Plaintiff filed the Second Amended Representative Action
14 Complaint. The Second Amended Representative Action Complaint is the operative complaint
15 ("Complaint").

16 13. The Parties recognize the risk, expense, and delay in continuing the Action, and
17 therefore believe the Settlement to be fair, reasonable, and adequate. Accordingly, the Parties
18 desire to settle, compromise, and discharge all disputes and claims arising from or relating to
19 the Action.

20 **B. DEFINITIONS**

21 1. "Action" means *Tanis Clark v. Now Optics*, filed on December 7, 2020 in the
22 Superior Court of California, County of San Diego, Case No. 37-2020-00044817-CU-OE-CTL.

23 2. "Aggrieved Employees" means all current and former California non-exempt
24 employees of Defendant who were paid wages by Defendant any time during the PAGA Period.

25 3. "Agreement" means this Settlement Agreement.

26 4. "Plaintiff's Counsel" means Diversity Law Group, P.C. and Polaris Law Group
27 LLP.
28

1 5. “Complaint” means the operative complaints in this Action.

2 6. “Court” means the San Diego County Superior Court of California.

3 7. “Defendant” or “Now Optics” mean Now Optics LLC.

4 8. “Defense Counsel” or “Counsel for the Defendant” means:

5 September Rea, State Bar No. 261121

6 Armida Derzakarian, State Bar No. 322608

7 POL SINELLI LLP

8 2049 Century Park East, Suite 2900

9 Los Angeles, CA 90067

10 Telephone: (310) 556-1801

11 Fax: (310) 556-1802

12 9. “Effective Date” means the latest date by which all of the following have
13 occurred:

14 (i) the Court has issued an order approving of the Settlement;

15 (ii) the Court has entered the Final Order; and

16 (iii) Satisfaction of the conditions set forth in Section D of this Agreement. If
17 any of the conditions set forth in Section 3 of this Agreement are not met, the
18 Settlement shall be void *ab initio* and of no further force or effect, and the
19 Parties shall be returned in all respects to their respective positions as of the day
20 before this Agreement was signed.

21 10. “Enhancement Payment” means the amount that the Court authorizes to be paid
22 to Plaintiff, in addition to his Individual Settlement Payment, in recognition of his efforts and
23 risks in assisting with the prosecution of the Action. Subject to the Court granting approval of
24 the Settlement, the Parties agree that Plaintiff shall be paid up to Seven Thousand Five Hundred
25 Dollars (\$7,500.00). The Enhancement Payment will be paid from the Maximum Settlement
26 Amount. It is understood by Plaintiff that the Court has final discretion in any Enhancement
27 Payment.

28 11. “Final Order” means the final Court order entered in this Action in accordance
with the terms herein, the Court adopting and approving this Agreement (and the terms of
Settlement described herein), dismissing all PAGA claims that were or could have been alleged

1 in the Complaint with prejudice as to Defendant and the Court retaining jurisdiction over the
2 enforcement, implementation, construction, administration, and interpretation of the Settlement.

3 12. "Individual Settlement Payment" means the amount payable from the Net PAGA
4 Payment to each Aggrieved Employee.

5 13. "Maximum Settlement Amount" means the maximum settlement amount of One
6 Hundred Seventy-Four Thousand Dollars (\$174,000.00) to be paid by Defendant as provided by
7 this Agreement to fully and finally settle, resolve, and conclude this Action as to Released
8 Parties, as providing under this Agreement, without any admission of fault or liability. The
9 Maximum Settlement Amount shall be inclusive of all civil penalties, attorneys' fees, costs, and
10 other elements of recovery recoverable by the Aggrieved Employees. Under no circumstances
11 shall the total exceed \$174,000.

12 14. "PAGA Penalties Fund" means the balance of the Maximum Settlement Amount
13 remaining after deduction of the approved Enhancement Payment to Plaintiff, Attorneys' Fees
14 and Costs and Settlement Administration Costs.

15 15. "PAGA Period" means the period of January 1, 2020 to March 31, 2022

16 16. "Parties" means Plaintiff and Defendant, together.

17 17. "Plaintiff" means Tanis Clark.

18 18. "Released Parties" means Defendant and any and all parents, affiliated
19 companies, subsidiaries, divisions, predecessors, successors, subsidiaries of Now Optics, LLC,
20 and each of their respective past, present, and future parents, affiliated companies, subsidiaries,
21 divisions, predecessors, successors, partners, joint venturers, shareholders, consultants,
22 advisors, insurers, reinsurers and assigns and each of their past, present and future officers,
23 investors, directors, executives, trustees, agents, employees, attorneys, representatives, benefit
24 plans sponsored or administered by the Released Parties, including but not limited to California
25 Physicians Eyecare Group, and any other persons or entities acting on behalf of or in concert
26 with any of the foregoing.
27
28

1 19. “Released Claims” means all claims for penalties under the California Private
2 Attorneys’ General Act, including costs and attorneys’ fees that: (1) arose or may be alleged to
3 have arisen or occurred at any time during the PAGA Period, and (2) are based on or arise from
4 alleged violations of the following California Labor Code sections: 201, 202, 203, 226, 226.7,
5 246, 510 512, 558, 1174, 1194, 1197, and 1197.1 and all applicable IWC Wage Orders, which
6 arise from the facts alleged in the Complaint or Plaintiff’s letters to the LWDA, or otherwise
7 asserted by Plaintiff in the Action; or any other claims that are reasonably related to Plaintiff’s
8 allegations in the Complaint or the letters to the LWDA. It is understood and agreed that this
9 Agreement neither releases the Released Parties from liability, if any, to Aggrieved Employees
10 for violations of any predicate statutes other than PAGA, nor effects a waiver of claims by
11 Aggrieved Employees against the Released Parties for any individual wage and hour claims.

12 20. “Settlement” means the Parties’ Joint Stipulation of Settlement and Release.

13 21. “Settlement Administration Costs” means the fees and expenses reasonably
14 incurred by the Settlement Administrator as a result of the procedures and processes expressly
15 required by this Agreement, which are estimated at Four Thousand Dollars and Zero Cents
16 (\$4,000.00). Any portion of the Settlement Administration Costs not used or approved by the
17 Court shall be added to the PAGA Penalties Fund.

18 22. “Settlement Administrator” means Phoenix Settlement Administrators.

19 **C. PAYMENT OF CONSIDERATION**

20 1. Settlement Consideration. Defendant shall pay the sum of the Maximum
21 Settlement Amount as specified in this Agreement, which shall be used to pay: (1) Individual
22 Settlement Payments; (2) Attorneys’ Fees and Costs; (3) Enhancement Payment; (4) Settlement
23 Administration Costs; and (5) payment to the LWDA. The Parties agree that this is a non-
24 reversionary Settlement and that no portion of the Maximum Settlement Amount shall revert to
25 Defendant.

26 2. Escalator Clause. The Maximum Settlement Amount was calculated with, and is
27 premised on, Defendant’s representation that there are approximately 293 Aggrieved
28

1 Employees and approximately 9,300 workweeks during the PAGA Period for those 293
2 Aggrieved Employees. Should the actual number of workweeks during the PAGA Period
3 materially exceed 9,300 (materially being defined as an excess of greater than 10%), the
4 PAGA Penalties Fund will increase in proportion to the increase in excess of the materiality
5 threshold. For illustrative purposes, if the actual number of workweeks during the PAGA
6 Period increases by 12%, then the PAGA Penalties Fund will increase by 2% (*i.e.*, 12% less
7 10%). Should the actual number of workweeks during the PAGA Period significantly increase
8 (significantly increase being defined as an excess of greater than 25% than the original
9 estimated workweeks of 9,300), the Maximum Settlement Amount (not only the PAGA
10 Penalties Fund) will increase by 10%. Defendant shall also be responsible for any settlement
11 administration costs of this additional payment, which will not be taken out of the additional
12 payment but will be separately be paid for by Defendant within ten business days after notice of
13 the increase.

14 3. Funding of the Maximum Settlement Amount. In exchange for the releases,
15 obligations, and promises set forth in this Agreement (and subject to the terms and conditions
16 contained in this Agreement), within fifteen (15) calendar days of the Effective Date, Defendant
17 shall deposit the Maximum Settlement Amount (which is the total and all-inclusive amount
18 Defendant will be obligated to pay with respect to the Released Claims) with the Settlement
19 Administrator who shall place that sum into a Qualified Settlement Fund ("QSF"). The QSF
20 shall be an interest-bearing account established by the Settlement Administrator at a federally-
21 insured bank that is mutually acceptable to the Parties and the Settlement Administrator. The
22 funds in the QSF shall be invested either in short-term U.S. Treasury securities with maturity
23 dates of less than 90 days at the time of deposit, or in an SEC-registered money market fund
24 investing exclusively in U.S. Treasury securities with average maturities of less than 90 days
25 and rated AAA by Standard & Poor's. The Parties agree that the QSF is intended to be a
26 "Qualified Settlement Fund" under Section 468B of the Internal Revenue Code and Treas. Reg.
27 § 1.468B-1, 26 C.F.R. § 1.468B-1, *et seq.*, and will be administered by the Settlement
28

1 Administrator as such. With respect to the QSF, the Settlement Administrator shall: (1) open
2 and administer the Settlement Account in such a manner as to qualify and maintain the
3 qualification of the QSF as a “Qualified Settlement Fund” under Section 468B of the Internal
4 Revenue Code and Treas. Reg. § 1.468B-1; (2) satisfy all federal, state, and local income and
5 other tax reporting, return, and filing requirements with respect to the QSF, and any interest or
6 other income earned by the QSF, and (3) satisfy out of the QSF all (i) taxes (including any
7 estimated taxes, interest, or penalties) with respect to the interest or other interest earned by the
8 QSF, and (ii) fees, expenses and costs incurred in connection with the opening and
9 administration of the QSF and the performance of its duties and functions as described in this
10 Agreement. The aforementioned taxes, fees, costs, and expenses shall be treated as, and shall
11 be, included in the costs of administering the QSF and as Claims Administration Expenses. The
12 Parties and the Settlement Administrator shall treat the QSF as coming into existence as a
13 Qualified Settlement Fund on the earliest date permitted as set forth in 26 C.F.R. § 1.468B-
14 1(j)(2)(i), and such election statement shall be attached to the appropriate returns as required by
15 26 C.F.R. § 1.468B-1(j)(e)(ii). The Parties agree to cooperate with the Settlement Administrator
16 and one another to the extent reasonably necessary to carry out the provisions of this Section.

17 4. Allocation of the PAGA Penalties Fund. The PAGA Penalties Fund shall be
18 used to satisfy Individual Settlement Payments to Aggrieved Employees and payment to the
19 LWDA in accordance with the terms of this Agreement. The PAGA Penalties Fund is the
20 maximum amount that will be available for distribution to the LWDA and Aggrieved
21 Employees in full satisfaction of all Released Claims. Pursuant to PAGA, seventy-five percent
22 (75%) of the PAGA Penalties Fund will be paid to the LWDA, and the remaining twenty-five
23 percent (25%), will be paid to all Aggrieved Employees (“Net PAGA Payment”).

24 5. Calculation of Individual Settlement Payment. The Settlement Administrator
25 shall calculate the Individual Settlement Payments by dividing the Net PAGA Payment by the
26 total number of pay periods worked by Aggrieved Employees during the PAGA Period. That
27 value will then be multiplied by the number of pay periods worked by each respective
28

1 Aggrieved Employee during the PAGA Period. Aggrieved Employees are entitled to 100% of
2 the Net PAGA Payment.

3 6. Tax Treatment of Individual Settlement Payment. All Individual Settlement
4 Payments shall be allocated as 100% as penalties. The amount of payments shall be reported on
5 an IRS Form 1099 (to the extent required by law) by the Settlement Administrator and shall not
6 be subject to local, state or federal tax withholdings. Plaintiff and each Aggrieved Employee
7 will be responsible for paying all applicable state, local and federal income taxes on their
8 respective amounts received pursuant to this Settlement, and they shall not seek any
9 indemnification from the Released Parties in this regard. Plaintiff and Plaintiff's Counsel shall
10 cooperate with Defendant and provide documentation to the extent possible and as reasonably
11 requested to demonstrate any payment of taxes made by Plaintiff and/or any Aggrieved
12 Employee should any taxing authority challenge the allocation of the Individual Settlement
13 Payment. In the event any taxing authority asserts that the characterization of the Individual
14 Settlement Payment hereunder is inappropriate, Plaintiff's Counsel and the Settlement
15 Administrator will cooperate with Defense Counsel to verify the Putative Aggrieved Employee
16 Penalty Payment is civil penalties paid pursuant to the PAGA and that 75% of the penalties
17 were paid to the LWDA.

18 7. Enhancement Payment. Defendant agrees not to oppose or impede any
19 application or motion by Plaintiff for an Enhancement Payment of up to Seven Thousand Five
20 Hundred Dollars (\$7,500.00) to Plaintiff. The Enhancement Payment shall be paid from the
21 Maximum Settlement Amount and shall be paid in addition to Plaintiff's Individual Settlement
22 Payment as an Aggrieved Employee. It is understood by Plaintiff that the Court has final
23 discretion in any Enhancement Payment. The Settlement Administrator shall issue an IRS
24 Form 1099 to Plaintiff reflecting the Enhancement Payment. Plaintiff shall be solely and
25 legally responsible to pay any and all applicable taxes on his Enhancement Payment and shall
26 hold harmless Defendant from any claim or liability for taxes, penalties, or interest arising as
27 a result of the Enhancement Payment. Any portion of the Enhancement Payment not awarded
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1 to Plaintiff shall be added to the PAGA Penalties Fund and shall be distributed to Aggrieved
2 Employees as provided in this Agreement.

3 8. Attorneys' Fees and Costs: In full satisfaction of all claims Plaintiff may have
4 for attorneys' fees, litigation costs, and expenses arising out of the Action, Defendant agrees
5 that Plaintiff's Counsel may apply to the Court for an amount of reasonable attorneys' fees not
6 to exceed Fifty-Eight Thousand Three Hundred Thirty-Three Dollars and Thirty-Three Cents
7 (\$58,333.33) and will request actual costs, up to a maximum of Five Thousand Dollars
8 (\$5,000.00) ("Attorneys' Fees and Costs"), pursuant to PAGA, which provides for the recovery
9 of attorneys' fees and costs, which shall be paid from the Maximum Settlement Amount. The
10 Settlement Administrator shall issue an IRS Form 1099 to Plaintiff's Counsel reflecting the
11 awarded attorneys' fees, costs, and expenses. Defendant shall not oppose Plaintiff's
12 Counsel's request for attorneys' fees and costs. Any immaterial modification of such
13 application, or award of less than the amount of attorneys' fees or costs sought by Plaintiff's
14 Counsel, by the Court shall not (i) affect the enforceability of the Settlement, (ii) provide any of
15 the Parties with the right to terminate the Settlement, or (iii) impose any obligation on the
16 Defendant to increase the consideration paid in connection with the Settlement. Plaintiff's
17 Counsel's entitlement to fees and costs is a material condition of this Settlement. Plaintiff's
18 Counsel may appeal the Fee Amount awarded by the Court.

19 9. Settlement Administration Costs. The Settlement Administrator shall administer
20 the entire Settlement which includes receipt of the Maximum Settlement Amount via wire
21 transfer from Defendant and distribution of the Individual Settlement Payment, Enhancement
22 Payment, and Attorneys' Fees and Costs. The Settlement Administrator shall be paid for the
23 reasonable costs of administration of the Settlement from the Maximum Settlement Amount
24 and shall not exceed Five Thousand Dollars (\$5,000.00). These costs, which shall be paid from
25 the Maximum Settlement Amount, shall include, *inter alia*, the required tax reporting on the
26 Individual Settlement Payments, the issuing of 1099 IRS Forms, establishing a Qualified
27 Settlement Fund, administering and distributing the Maximum Settlement Amount, and
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1 providing necessary reports and declarations. If the Settlement Administration Costs are less
2 than the estimated Five Thousand Dollars (\$5,000.00), the remainder shall be added to the
3 PAGA Penalties Fund and shall be distributed to Aggrieved Employees as provided in this
4 Agreement.

5 10. No Additional Contribution by Defendant. Defendant's monetary obligation
6 under this Agreement and to resolve Plaintiff's individual and Released Claims is limited to the
7 Enhancement Payment and Individual Settlement Payment. Nor shall Defendant be required to
8 pay more than the Maximum Settlement Amount to obtain the relief (including, but not limited
9 to, the Settlement, releases of claims and, issuance of the Final Order) provided in this
10 Agreement or to fully and finally settle and resolve the Released Claims. Notwithstanding the
11 above, in the event that this Agreement is voided or nullified, in whole or in part, however that
12 may occur, or the Settlement of the Action is barred by operation of law, or invalidated, or
13 ordered not to be carried out by a Court of competent jurisdiction, Defendant will cease to have
14 any obligation to pay any portion of the Maximum Settlement Amount to anyone under the
15 terms of this Agreement.

16 **D. ADMINISTRATION OF SETTLEMENT**

17 1. Approval of PAGA Settlement. Plaintiff's Counsel shall request the entry of an
18 order granting final approval, which shall include findings and orders: (i) approving the
19 settlement, (ii) adjudging the terms to be fair, reasonable, and adequate and binding on the State
20 of California, (iii) reciting the release terms, (iv) directing that the settlement's terms and
21 provisions be carried out; (v) entering final judgment in accordance with this Agreement and
22 without further fees or costs to any party except as expressly set forth in this Agreement; and
23 (vi) retaining jurisdiction to oversee administration and enforcement of the terms of this
24 Agreement and the Court's orders. Plaintiff's motion shall be unopposed by Defendant, unless
25 Plaintiff's approval motion seeks relief inconsistent with or not specified by this Agreement. In
26 such event, Defendant reserves the right to address any assertions that are not contained in this
27

1 Agreement. Because this Action includes PAGA Claims, this Agreement requires review and
2 approval by the Court. *See* CAL. LAB. CODE section 2699(1)(2). Accordingly, the Parties enter
3 into this Agreement on a conditional basis. This Agreement is expressly contingent upon the
4 Court's approval of this Settlement and the terms and material conditions of this Agreement
5 (including, but not limited to, issuance of and entry of the Final Order in accordance
6 therewith). If Court approval is not given and the Final Order is not entered, under the
7 specific material terms requested, this entire Agreement shall automatically be deemed null
8 and void *ab initio*, shall be of no force or effect whatsoever, and shall not be referred to or
9 used for any purpose whatsoever. The Parties acknowledge that the total of the amounts paid
10 by Defendant as civil penalties, attorneys' fees, or any other element of recovery under this
11 Agreement shall not exceed \$174,000.00. If the Court does not grant the request for approval
12 and issue the Final Order (including, but not limited to, dismissing the Released Claims with
13 prejudice in their entirety, and entering the Final Order in accordance with the terms and
14 conditions of this Agreement), under substantially similar material terms, the Parties agree to
15 meet and confer to address the Court's concerns and determine whether resolution of the
16 Action can be obtained in a manner consistent with the Court's concerns. But, under no
17 circumstances may a modified settlement be entered by the Court, without a written
18 agreement signed by both Parties. Plaintiff will fully cooperate to accomplish the terms of
19 this Agreement, including but not limited to, executing such documents and taking such other
20 action as may reasonably be necessary to implement the terms of this Agreement. The Parties
21 will jointly defend against any appeal filed with respect to the Final Order. Plaintiff shall
22 submit a copy of the Final Order in this Action and a copy of any other order providing for or
23 denying an award of civil penalties within ten (10) business days after service of the Final
24 Order, in compliance with section 2699(1)(3) of the California Labor Code.

25 2. Conditions Precedent. In addition to other conditions as may be set forth in this
26 Agreement, the Settlement embodied in this Agreement is contingent on (i) issuance by the
27 Court of a Final Order approving the Settlement, dismissing the PAGA Claims with prejudice
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1 in their entirety, (ii) entry of the Final Order enforcing the terms of the Settlement, and retaining
2 jurisdiction to ensure compliance with the Court's Final Order only, (iii) discharge of Defendant
3 and the Released Parties from liability for the PAGA Claims released by this Agreement,
4 (iv) release of the PAGA Claims released by this Agreement against the Released Parties by
5 Plaintiff, the State of California and all Aggrieved Employees, (v) submission of the Court's
6 Final Order by Plaintiff's Counsel to the LWDA within ten (10) business days of entry of the
7 order pursuant to California Labor Code section 2699(1)(3), and (vi) all Parties bearing their
8 respective fees and costs except as expressly provided in this Agreement.

9 3. Settlement Administration. The Parties agree to cooperate in the administration
10 of the Settlement and to make all reasonable efforts to control and minimize the costs and
11 expenses incurred in the administration of the Settlement. The Settlement Administrator shall
12 provide the following services:

- 13 a. Establish and maintain a Qualified Settlement Fund account;
- 14 b. Calculate the Individual Settlement Payment to be paid to each
15 Aggrieved Employee in accordance with the terms and provisions of this Agreement;
- 16 c. Print and issue Individual Settlement Payment checks;
- 17 d. Verify the last known address for each Aggrieved Employee through a
18 generally utilized, national address update database prior to mailing the Individual Settlement
19 Payment check;
- 20 e. Disburse any awards of costs and attorneys' fees and the Enhancement
21 Payment;
- 22 f. Prepare and issue 1099 Forms; and
- 23 g. Perform such other tasks necessary to effectuate the terms of this
24 Agreement or as the Parties mutually agree or the Court orders the Parties to perform.

25 4. Delivery of the Aggrieved Employee List and Data. Within fifteen (15) calendar
26 days after the Effective Date, Defendant shall provide the Settlement Administrator with a
27 Microsoft Office Excel spreadsheet and shall include each Aggrieved Employee's: full name;

1 employee number; most recent mailing address; social security number; and the number of
2 wage statements reflecting the payment of wages received during the PAGA Period.

3 5. Timing of Distribution. Within ten (10) calendar days after the payment of the
4 entire Maximum Settlement Amount, the Settlement Administrator will issue payments to: (a)
5 Aggrieved Employees; (b) the Labor and Workforce Development Agency; (c) Plaintiff; and
6 (d) Plaintiff's Counsel. The Settlement Administrator will issue the appropriate tax forms for all
7 payments issued under this Settlement.

8 6. Mailing of Individual Settlement Payments to Aggrieved Employees: Prior to
9 this disbursement, the Claims Administrator shall run a single skip trace for every separated
10 Aggrieved Employee. Aggrieved Employees who receive their Individual Settlement Payment
11 via U.S. Mail will receive a letter along with their Individual Settlement Payment explaining the
12 reason for the payment, attached hereto as Exhibit A. Checks will remain negotiable for 180
13 days. Any checks returned as non-deliverable on or before the check cashing deadline will be
14 sent promptly via regular First-Class U.S. Mail to the forwarding address affixed thereto. All
15 funds not claimed within 180 days of mailing of payment shall be sent to the California State
16 Controller's Office Unclaimed Property Fund with an identification of the amount of unclaimed
17 funds attributable to each Aggrieved Employee. If any Aggrieved Employee's check is not
18 cashed within 120 days after mailing, the Settlement Administrator will send the Aggrieved
19 Employee a letter or postcard informing the Aggrieved Employee that unless the check is
20 cashed in the next 60 days, it will expire and become non-negotiable. The letter or postcard
21 will also offer to replace the check if it was lost and not cashed.

22 **E. RELEASE OF CLAIMS**

23 1. Release of Claims by Aggrieved Employees Upon the Effective Date, each of
24 the Aggrieved Employees, including Plaintiff, fully release and forever discharge any and all of
25 the Released Parties of and from any and all Released Claims. This Agreement solely releases
26 PAGA claims predicated on alleged violations of Labor Code sections 201, 202, 203, 226,
27 226.7, 246, 510 512, 558, 1174, 1194, 1197, and 1197.1 during the PAGA Period.

1 2. No Right to Opt-Out. The Parties agree there is no statutory right for any
2 Aggrieved Employee to opt out or otherwise exclude himself or herself from the Settlement.

3 3. General Release and Waiver of Claims by Plaintiff. As a condition to obtaining
4 the Enhancement Payment provided for herein, Plaintiff (on behalf of himself and his spouse,
5 heirs, executors, administrators, trustees, and/or permitted assigns) also agrees to a general
6 release of any and all claims against Defendant—which shall include without limitation any and
7 all claims which in any way relate to his employment with Defendant or termination thereof,
8 under State or Federal law, in tort, common law, statute, contract, or equity, whether pled in the
9 Complaint or not, including but not limited to any claims under the FLSA, Title VII, ADA,
10 FEHA, ADEA, PAGA, California Labor Code, or any Industrial Welfare Commission Wage
11 Order—now existing or arising in the future, based on any act, omission, event, occurrence, or
12 nonoccurrence from the beginning of time to the date of execution hereof. Plaintiff further
13 expressly waives and relinquishes, to the fullest extent permitted by law, the provisions, rights
14 and benefits of Section 1542 of the California Civil Code, which provides: “**A general release
15 does not extend to claims which the creditor or releasing party does not know or suspect
16 to exist in his or her favor at the time of executing the release, which if known by him or
17 her must have materially affected his or her settlement with the debtor or released party.**”

18 4. No Additional Attorneys’ Fees or Costs. The Parties agree to bear their own
19 attorneys’ fees and costs related to this Action except as specifically provided in Section C of
20 this Agreement with respect to Attorneys’ Fees and Costs; otherwise, Plaintiff’s Counsel
21 waives any and all rights to further attorneys’ fees and costs from Defendant in connection with
22 the Settlement.

23 **F. MISCELLANEOUS**

24 1. LWDA Notice. The LWDA will be given notice of this Settlement pursuant to
25 the amendments to PAGA. *See* CAL. LAB. CODE § 2699(1)(2). Plaintiff will serve a copy of
26 the Settlement to the LWDA on the same day the Settlement is filed with the Court.
27 Additionally, a copy of the Court’s Final Order will be submitted to the LWDA within ten (10)
28

1 business days after entry of the Final Order, pursuant to California Labor Code section
2 2699(1)(3).

3 2. Tax Liability. Defendant, Defendant's counsel, the Settlement Administrator,
4 and Plaintiff's Counsel make no representation as to the tax treatment or legal effect of the
5 payments called for hereunder, and Plaintiff and Aggrieved Employees are not relying on any
6 statement, representation, or calculation by Defendant, Defendant's counsel, Plaintiff's
7 Counsel, or by the Settlement Administrator in this regard. Plaintiff and Aggrieved Employees
8 understand and agree that they will be solely responsible for the payment of any and all taxes
9 and penalties assessed on their respective payments described herein and will defend,
10 indemnify, and hold Defendant, Defendant's counsel, Plaintiff's Counsel and the Settlement
11 Administrator free and harmless from and against any claims resulting from treatment of such
12 payments as non-taxable penalties/damages.

13 3. Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR
14 PURPOSES OF THIS SECTION, THE "ACKNOWLEDGING PARTY" AND EACH PARTY
15 TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN "OTHER
16 PARTY") ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS
17 AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN
18 OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR
19 WAS INTENDED TO BE, NOR SHALL ANY SUCH COMMUNICATION OR
20 DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX
21 ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT
22 CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING
23 PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS OR ITS OWN, INDEPENDENT
24 LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN
25 CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS
26 AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR
27 ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED
28

1 TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR
2 ADVISER TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE
3 IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR
4 ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT
5 PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR ADVISER'S
6 TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY
7 BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX
8 TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING ANY
9 TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

10 4. No Prior Assignments. The Parties and their counsel represent, covenant, and
11 warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported
12 to assign, transfer, or encumber to any person or entity any portion of any liability, claim,
13 demand, action, cause of action or right herein released and discharged. None of the rights,
14 commitments, or obligations recognized under this Agreement may be assigned by any Party,
15 Plaintiff's Counsel, or Defense Counsel without the express written consent of each Party.
16 Plaintiff expressly warrants that Plaintiff has not transferred to any person or entity any right or
17 cause of action, or claim released by this Agreement.

18 5. Nullification of Settlement Agreement. In the event that: (i) the Court does not
19 approve the Settlement as provided herein; or (ii) the Settlement does not become final for any
20 other reason, then this Settlement Agreement, and any documents generated to bring it into
21 effect, will be null and void, and the Parties will be returned to their original respective
22 positions.

23 6. Continued Jurisdiction. After entry of the judgment, the Court will have
24 continuing jurisdiction solely for purposes of addressing: (i) the interpretation and enforcement
25 of the terms of the Settlement, (ii) settlement administration matters, and (iii) such post-Court
26 Approval matters as may be appropriate under court rules or as set forth in this Settlement.

27 7. Entire Agreement. This Settlement Agreement constitutes the entirety of the
28

1 Parties' settlement terms. No other prior or contemporaneous written or oral agreements may
2 be deemed binding on the Parties.

3 8. Amendment or Modification. This Settlement Agreement may be amended or
4 modified only by a written instrument, signed by either the Parties or their successors-in-
5 interest or counsel for all Parties.

6 9. Authorization to Enter Into Settlement Agreement. Counsel for all Parties
7 warrant and represent they are expressly authorized by the Parties whom they represent to
8 negotiate this Agreement and to take all appropriate action required or permitted to be taken by
9 such Parties pursuant to this Agreement to effectuate its terms and to execute any other
10 documents required to effectuate the terms of this Agreement. The Parties and their counsel
11 will cooperate with each other and use their best efforts to effect the implementation of the
12 Settlement. If the Parties are unable to reach agreement on the form or content of any document
13 needed to implement the Settlement, or on any supplemental provisions that may become
14 necessary to effectuate the terms of this Agreement, the Parties may seek the assistance of the
15 Court to resolve such disagreement.

16 10. Binding on Successors and Assigns. This Settlement Agreement will be binding
17 upon, and inure to the benefit of, the successors or assigns of the Parties hereto.

18 11. California Law Governs. All terms of this Settlement Agreement and Exhibit A
19 will be governed by and interpreted according to the laws of the State of California.

20 12. Execution and Counterparts. This Agreement is subject only to the execution of
21 all Parties. However, the Agreement may be executed in one or more counterparts. All executed
22 counterparts and each of them, including facsimile and scanned copies of the signature page,
23 will be deemed to be one and the same instrument provided that counsel for the Parties will
24 exchange among themselves original signed counterparts.

25 13. Acknowledgement that the Settlement is Fair and Reasonable. The Parties
26 believe this Agreement is a fair, adequate, and reasonable settlement of the Action and have
27 arrived at this Settlement after arm's-length negotiations. The Parties further acknowledge that
28

1 they are each represented by competent counsel and that they have had an opportunity to
2 consult with their counsel regarding the fairness and reasonableness of this Settlement.

3 14. Invalidity of Any Provision. Before declaring any provision of this Agreement
4 invalid, the Court will first attempt to construe the provision as valid to the fullest extent
5 possible consistent with applicable precedents so as to define all provisions of this Agreement
6 valid and enforceable. If any provision of this Agreement is or becomes invalid or
7 unenforceable in any respect, the validity and enforceability of the remaining provisions
8 contained herein shall not be affected.

9 15. Captions. The captions and section numbers in this Agreement are inserted for
10 the reader's convenience, and in no way define, limit, construe or describe the scope or intent of
11 the provisions of this Agreement.

12 16. Waiver. No waiver of any condition or covenant contained in this Agreement or
13 failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or
14 constitute a further waiver by such party of the same or any other condition, covenant, right or
15 remedy.

16 17. Enforcement Action. In the event that one or more of the Parties institutes any
17 legal action or other proceeding against any other Party or Parties to enforce the provisions of
18 this Settlement or to declare rights and/or obligations under this Settlement, the successful Party
19 or Parties will be entitled to recover from the unsuccessful Party or Parties reasonable
20 attorneys' fees and costs, including expert witness fees incurred in connection with any
21 enforcement actions.

22 18. Mutual Preparation. The Parties have had a full opportunity to negotiate the
23 terms and conditions of this Agreement. Accordingly, this Agreement will not be construed
24 more strictly against one party than another merely by virtue of the fact that it may have been
25 prepared by counsel for one of the Parties, it being recognized that, because of the arms-length
26 negotiations between the Parties, all Parties have contributed to the preparation of this
27 Agreement.
28

1 19. Representation by Counsel. The Parties acknowledge that they have been
2 represented by counsel throughout all negotiations that preceded the execution of this
3 Agreement, and that this Agreement has been executed with the consent and advice of counsel,
4 and reviewed in full.

5 20. Binding Agreement. The Parties warrant that they understand and have full
6 authority to enter into this Settlement, and further intend that this Agreement will be fully
7 enforceable and binding on all parties and agree that it will be admissible and subject to
8 disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality
9 provisions that otherwise might apply under federal or state law.

10 21. Denial of Liability. The Parties expressly recognize that the making of this
11 Agreement does not in any way constitute an admission or concession of wrongdoing on the
12 part of Defendant. Nothing in this Settlement, nor any action taken in implementation thereof,
13 nor any statements, discussions or communications, nor any materials prepared, exchanged,
14 issued or used during the course of this Action, is intended by the Parties to, nor will any of the
15 foregoing constitute, be introduced, be used or be admissible in any way in any other judicial,
16 arbitral, administrative, investigative or other forum or proceeding, as evidence of any violation
17 of any federal, state, or local law, statute, ordinance, regulation, rule or executive order, or any
18 obligation or duty at law or in equity. Notwithstanding the foregoing, this Agreement may be
19 used in any proceeding in the Court that has as its purpose the interpretation, implementation,
20 or enforcement of the Settlement or any orders or judgments of the Court entered into in
21 connection therewith, including, without limitation, by Defendant should any party seek relief
22 against any of the Released Parties on any Released Claims.

23 **IN WITNESS WHEREOF**, the undersigned Settling Parties and their duly authorized
24 representatives accept and agree to the terms of this Agreement and hereby execute it
25 voluntarily and with a full understanding of its consequences.
26
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1 DATED: 4/18/2022

PLAINTIFF TANIS CLARK

2
3 DocuSigned by:

34F5636A3C1A40B1

4 Plaintiff Tanis Clark

5 DATED: April 18, 2022

DEFENDANT NOW OPTICS, LLC

6
7 By: 
8 Name: Tara S. Pellegrino
9 Title: General Counsel

10 **APPROVED AND ACKNOWLEDGED**

11 DATED: April 18, 2022

DIVERSITY LAW GROUP, P.C.

12
13 
14 Kristen M. Agnew
15 Attorneys for Plaintiff and the Aggrieved
16 Employees

17 DATED: April 18, 2022

POLSINELLI LLP

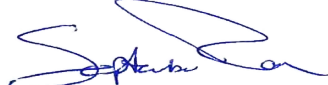
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19 September Rea
20 Attorneys for Defendant Now Optics, LLC
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EXHIBIT A

CALIFORNIA SUPERIOR COURT, COUNTY OF SAN DIEGO

Tanis Clark v. Now Optics, LLC

Case No. 37-2020-00044817-CU-OE-CTL

NOTICE OF SETTLEMENT*This is not a solicitation.**This is not a lawsuit against you and you are not being sued.*

The California Superior Court, County of San Diego has granted approval of a settlement in the above-captioned action. Because your rights are affected by this Settlement, it is important that you read this Notice of Settlement ("Notice") carefully. The purpose of this Notice is to provide a brief description of the claims alleged in the action and the key terms of the settlement.

1. Why Have I Received This Notice?

Now Optic, LLC's ("Defendant") records indicate that you worked for Defendant as a non-exempt, hourly employee in the State of California at some time between January 1, 2020 through March 31, 2022.

A settlement hearing was held in the California Superior Court, County of San Diego, at which the Court granted approval of the settlement. You are receiving this Notice to provide you with a brief description of the settlement and explain why you have received a settlement check.

2. What Is This Case About?

The action entitled *Tanis Clark v. Now Optics, LLC*, was commenced by Plaintiff Tanis Clark ("Plaintiff") in the San Diego County Superior Court (Case Number 37-2020-00044817-CU-OE-CTL).

On November 16, 2020, Plaintiff provided notice to the California Labor and Workforce Development Agency ("LWDA") of the Private Attorneys General Act of 2004 ("PAGA") violations he alleged against Defendant.

On December 7, 2020, Plaintiff filed a Class Action Complaint in the San Diego Superior Court against Defendant. Plaintiff alleges that Defendant violated the California Labor Code by failing to pay all meal period premiums at the correct regular rate of pay that included all non-discretionary remuneration, failing to provide accurate, itemized wage statements, and civil penalties pursuant to Labor Code section 2698 *et seq.*, and violating the California Business and Professions Code Section 17200 *et seq.*

On August 26, 2021, Plaintiff filed a First Amended Complaint alleging a single cause of action under PAGA arising from claims that Defendant (a) failed to pay meal period premiums at the correct regular rate of pay that included all non-discretionary remuneration; (b) failed to pay employees sick pay at the correct regular rate of pay that included all non-discretionary remuneration; (c) failed to pay all wages owed upon separation of employment due to unpaid missed meal premiums; and (d) failed to provide accurate, itemized wage statements.

On March 21, 2022, Plaintiff filed a Second Amended Complaint alleging a single cause of action under PAGA arising from claims that Defendant (a) failed to pay meal period premiums at the correct regulate rate of pay that included all non-discretionary remuneration; (b) failed to pay employees sick pay at the correct regular rate of pay that included all non-discretionary remuneration; (c) failed to pay all wages owed upon separation of employment due to unpaid missed meal premiums; (d) failed to provide paid, duty-free rest periods; (e) failed to pay all wages owed at separation; (f) failed to provide accurate, itemized wage statements; (g) failed to pay employees all earned wages at least twice per month; and (h) failed to maintain accurate time records.

The Court has not made any determination as to whether the claims advanced by Plaintiff have any merit. In other words, the Court has not determined whether any laws have been violated, nor has it decided in favor of Plaintiff or Defendant; instead, both sides agreed to resolve the lawsuit with no decision or admission of who is right or wrong. By agreeing to resolve the lawsuit, all parties avoid the risks and cost of a trial.

Defendant expressly denies that it did anything wrong or that it violated the law and further denies any liability whatsoever.

3. *Who Are the Attorneys Representing the Parties?*

Attorneys for Plaintiff Tanis Clark	Attorneys for Defendant Now Optics, LLC
DIVERSITY LAW GROUP, PC Larry W. Lee Kristen M. Agnew Nicholas Rosenthal 515 S. Figueroa Street, Suite 1250 Los Angeles, CA 90071 Telephone: (213) 488-6555 POLARIS LAW GROUP LLP William L. Marder 501 San Benito Street, Suite 200 Hollister, CA 95023 Telephone: (831) 531-4214	POLSINELLI LLP September Rea Armida Derzakarian 2049 Century Park East, Suite 2900 Los Angeles, CA 90067 Telephone: (310) 556-1801

1 **4. How Does This Settlement Affect My Rights? What are the Released Claims?**

2 All current and former non-exempt, hourly employees of Defendant in the State of California at
3 any time from January 1, 2020 to March 31, 2022 (referred to in this notice as “Aggrieved
4 Employees”) release the Released Parties from the Released Claims, as defined below.

5 Released Parties: Now Optics, LLC, and any and all parents, affiliated companies, subsidiaries,
6 divisions, predecessors, successors, and each of their respective past, present, and future
7 parents, affiliated companies, subsidiaries, divisions, predecessors, successors, partners, joint
8 venturers, shareholders, consultants, advisors, insurers, reinsurers and assigns and each of their
9 past, present and future officers, investors, directors, executives, trustees, agents, employees,
10 attorneys, representatives, benefit plans sponsored or administered by the Released Parties, and
11 any other persons or entities acting on behalf of or in concert with any of the foregoing.

12 Released Claims: “Released Claims” means all claims for penalties under the California Private
13 Attorneys’ General Act, including costs and attorneys’ fees that: (1) arose or may be alleged to
14 have arisen or occurred at any time during the PAGA Period, and (2) are based on or arise from
15 alleged violations of the following California Labor Code sections: 201, 202, 203, 226, 226.7,
16 246, 510 512, 558, 1174, 1194, 1197, and 1197.1 and all applicable IWC Wage Orders,, which
17 arise from the facts alleged in the Complaint or Plaintiff’s letters to the LWDA, or otherwise
18 asserted by Plaintiff in the Action; or any other claims that are reasonably related to Plaintiff’s
19 allegations in the Complaint or the letters to the LWDA. It is understood and agreed that this
20 Agreement neither releases the Released Parties from liability, if any, to Aggrieved Employees
21 for violations of any predicate statutes other than PAGA, nor effects a waiver of claims by
22 Aggrieved Employees against the Released Parties for any individual wage and hour claims.
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5. *How Much Can I Expect to Receive From This Settlement?*

The total maximum amount that Defendant is required to pay under the settlement is \$174,000 ("Maximum Settlement Amount"). The "PAGA Penalties Fund means the portion of the Gross Settlement Amount after the deduction of (1) the Enhancement to Plaintiff in an amount of \$7,500, for prosecution of the Action and a general release of all claims; (2) the Settlement Administration Costs to the Settlement Administrator in the amount of \$4,000.00; and (3) payment to Plaintiff's Counsel in the amount of \$58,333.33 for attorneys' fees and an amount of \$5,000.00 for litigation costs.

After deducting the above-referenced items, the remaining PAGA Penalties Fund, will be divided 75% to the LWDA, pursuant to California Labor Code § 2699, subdivision (i), for enforcement of labor laws, including the administration of this part, and for education of employers and employees about their rights and responsibilities under this code, to be continuously appropriated to supplement and not supplant the funding to the agency for those purposes; and 25% to the Aggrieved Employees. Therefore, the LWDA will receive \$_____ and \$_____ will be left for distribution to persons who worked as a current and former non-exempt, hourly employee of Defendant in the State of California at any time from January 1, 2020 to March 31, 2022.

Each Aggrieved Employee will receive a proportionate share of the PAGA Penalties Fund that is equal to the number of Pay Periods worked from January 1, 2020 to March 31, 2022. A "Pay Period" shall be defined as any full or partial two-week pay period in which an Aggrieved Employee performed services for Defendant as a non-exempt, hourly employee between January 1, 2020 to March 31, 2022, based on Defendant's records. Therefore, the value of each Aggrieved Employee's Individual Settlement Payment ties directly to the amount of pay periods that he or she worked.

The check included with this notice represents your settlement share based on this formula. For purposes of computing taxes, one hundred percent (100%) of the amount of money you received is considered to be a civil penalty and has not been subjected to tax withholding.

It is strongly recommended that upon receipt of your Individual Settlement Share check, you immediately cash it or cash it before the **180-day** void date shown on each check. Funds represented by settlement checks returned as undeliverable and those settlement checks remaining un-cashed for more than 180 days after issuance will be transmitted to California State Controller's Office Unclaimed Property Fund.

6. *How Can I Obtain Additional Information or Court Documents?*

IF YOU NEED MORE INFORMATION OR HAVE ANY QUESTIONS, you may contact Plaintiff's Counsel listed above, or the Settlement Administrator at the telephone number listed below, toll free. Please refer to the Now Optics, LLC Settlement.

**PLEASE DO NOT CALL THE COURT OR COURT'S CLERK FOR
INFORMATION ABOUT THIS SETTLEMENT.**

EXHIBIT B

5/4/2022
4:08 PM

DIVERSITY LAW GROUP
Slip Listing

Page 1

Selection Criteria

Slip.Classification Open
Client (hand select) Include: Clark, Tanis v. Now Optics
Slip.Transaction Ty 2 - 2

Rate Info - identifies rate source and level

Slip ID		Timekeeper	Units	Rate	Slip Value
Dates and Time		Activity	DNB Time	Rate Info	
Posting Status		Client	Est. Time	Bill Status	
Description		Reference	Variance		
65048	EXP	Olympia	1	75.00	75.00
11/18/2020		Court fees			
WIP		Clark, Tanis v. Now Optics			
LWDA					
65397	EXP	Olympia	1	6.90	6.90
11/30/2020		Postage			
WIP		Clark, Tanis v. Now Optics			
Postage					
65180	EXP	Olympia	1	1492.31	1492.31
12/8/2020		Court fees			
WIP		Clark, Tanis v. Now Optics			
OneLegal - Complaint					
65634	EXP	Olympia	1	63.25	63.25
12/22/2020		Atty Service			
WIP		Clark, Tanis v. Now Optics			
Attorney Service - Complaint Service					
65550	EXP	Olympia	1	12.00	12.00
1/7/2021		Court fees			
WIP		Clark, Tanis v. Now Optics			
OneLegal - POS of Summons					
68187	EXP	Erika Mejia	1	16.47	16.47
7/22/2021		Court fees			
WIP		Clark, Tanis v. Now Optics			
One Legal - CMS					
69901	EXP	Olympia	1	30.95	30.95
7/26/2021		Delivery serv			
WIP		Clark, Tanis v. Now Optics			
Federal Express					
68208	EXP	Erika Mejia	1	12.35	12.35
7/26/2021		Court fees			
WIP		Clark, Tanis v. Now Optics			
One Legal - Opposition					

5/4/2022
4:08 PM

DIVERSITY LAW GROUP
Slip Listing

Page 2

Slip ID Dates and Time Posting Status Description	Timekeeper Activity Client Reference	Units DNB Time Est. Time Variance	Rate Rate Info Bill Status	Slip Value
68276 EXP 8/6/2021 WIP Courtcalls	Kristen Agnew Court fees Clark, Tanis v. Now Optics	1	94.00	94.00
68612 EXP 8/24/2021 WIP One Legal - Stipulation and Proposed Order	Erika Mejia Court fees Clark, Tanis v. Now Optics	1	38.09	38.09
68647 EXP 8/27/2021 WIP One Legal - FAC	Erika Mejia Court fees Clark, Tanis v. Now Optics	1	17.50	17.50
68763 EXP 8/31/2021 WIP Photocopies	Olympia Photocopies Clark, Tanis v. Now Optics	2	0.25	0.50
68764 EXP 8/31/2021 WIP Postage	Olympia Postage Clark, Tanis v. Now Optics	1	6.96	6.96
71243 EXP 3/18/2022 WIP One Legal - Stip	Erika Mejia Court fees Clark, Tanis v. Now Optics	1	37.58	37.58
71256 EXP 3/22/2022 WIP OneLegal - NOE	Olympia Court fees Clark, Tanis v. Now Optics	1	19.05	19.05
71635 EXP 5/4/2022 WIP Filing Fees re PAGA Approval Motion	Olympia Court fees Clark, Tanis v. Now Optics	1	100.00	100.00
Grand Total	Billable Unbillable Total	0.00 0.00 0.00		2022.91 0.00 2022.91

EXHIBIT C

Clark v. Now Optics
Time and Task Chart for Kristen M. Agnew

Hours	Description of Work
2.10	Initial research and review of background facts in preparation for filing of complaint; confer with co-counsel re theories of liability.
1.70	Draft PAGA letter and Complaint.
4.30	Review and respond to correspondence from defense counsel re motion to compel arbitration; review Defendant's arbitration agreement and research re same; confer with co-counsel re same.
.80	Conference call with defense counsel re August 6, 2021 case management conference; draft Plaintiff's case management conference statement.
13.60	Review Defendant's motion to compel arbitration and research re same; prepare opposition to motion to compel arbitration; review Defendant's reply in support of motion to compel arbitration; prepare for and appear at hearing re motion to compel arbitration; confer with co-counsel re order to compel arbitration
2.20	Draft supplemental PAGA letter; draft First Amended Complaint; draft stipulation to file First Amended Complaint; review and respond to correspondence from defense counsel re same.
3.40	Conference calls with defense counsel re <i>Mayreli Martinez v. Vision Precision Holdings, LLC</i> and limitations on scope of aggrieved employees; review <i>Martinez</i> complaint and PAGA notice; review and respond to email re same; confer with co-counsel re same; confer with plaintiff's counsel in <i>Martinez</i> re same.
1.00	Meet and confer with defense counsel re October 15, 2021 case management conference; review and revise joint report.
1.60	Analysis and research re information required from Defendant to engage in settlement negotiations; draft and revise data requests for defense counsel.
3.90	Meet and confer with defense counsel re settlement; review and respond to correspondence re settlement; confer with co-counsel regarding settlement.
2.20	Draft second supplemental PAGA letter; draft Second Amended Complaint; draft stipulation to file Second Amended Complaint; review and respond to correspondence from defense counsel re same.
9.40	Draft Joint Stipulation of Settlement and Release Under the Private Attorneys General Act; conference calls with defense counsel re revisions to settlement agreement.
7.90	Prepare Motion for Approval of PAGA Settlement and supporting declarations.
54.10	TOTAL HOURS