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As an individual on behalf of herself and
8 on behalf of all others similarly situated and aggrieved

9
10 **SUPERIOR COURT OF CALIFORNIA**
11 **IN AND FOR THE COUNTY OF LOS ANGELES**

12 RENEE MAOZ, as an individual on behalf of
13 herself and on behalf of all others similarly
14 situated,

15 Plaintiff,

16 v.

17 DLV VISION MANAGEMENT, LLC, a
18 California limited liability company; DLV
VISION ASC, LLC, a California limited
19 liability company; PAUL J. DOUGHERTY,
M.D., INC., a California corporation; ADV
20 VISION, LLC; a Delaware Limited Liability
21 Company; and DOES 1-100, inclusive,

22 Defendants.
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CASE NO. 22STCV33937

Assigned for All Purposes to:
Hon. Carolyn B. Kuhl
Dept. SSC-12

MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR FINAL APPROVAL OF
CLASS ACTION SETTLEMENT AND
REQUEST FOR ATTORNEY'S FEES
AND COSTS

Date: December 4, 2024
Time: 10:00 a.m.
Dept.: SSC-12

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1 **I. INTRODUCTION**

2 Plaintiff and Class Representative Renee Maoz seeks final approval of a non-
3 reversionary class action settlement resolving wage and hour claims on behalf of 270
4 individuals who worked for Defendants DLV Vision Management, LLC, DLV Vision ASC,
5 LLC, Paul J. Dougherty, M.D., Inc., and ADV Vision, LLC (together “Vision” or “Defendants”)
6 as current and former non-exempt employees at any location in California at any time during the
7 Class Period of April 24, 2018 to September 18, 2023. The proposed \$341,000 total settlement
8 provides about \$188,833.33 in cash payments to the Class, with an average award of about
9 \$702, plus additional amounts payable under PAGA. The remaining balance will cover a
10 modest service award to Plaintiff, settlement administration costs, civil penalties to the state,
11 and reasonable attorney’s fees and costs. The parties and their counsel finalized the
12 settlement after extensive and difficult arms-length negotiations overseen by an experienced
13 and highly-regarded mediator. The Court conditionally certified the Class and
14 preliminarily approved the settlement on May 29, 2024. Since then, the Court-approved
15 notice form was mailed to the Class Members on July 12, 2024, and they have reacted very
16 favorably to the settlement. As of the date of this motion, only one class member opted out
17 of the settlement, and there are no objections.

18 Further, Class Counsel secured an excellent settlement with Defendants after
19 some two years of investigation, litigation, and settlement negotiation and
20 administration, all without any compensation for services rendered or costs expended.
21 The class notice duly informs the class members that Class Counsel would request
22 attorney’s fees not to exceed 33.33% of the Gross Settlement Amount, or \$113,666.67,
23 along with reimbursement of no more than \$10,000 for actual costs incurred litigating
24 this matter. As of the filing of this motion, *not one Class Member objected* to the
25 proposed fee award. Consistent with the Settlement and notice, Plaintiff now
26 respectfully requests the Court award Class Counsel's fees in the amount of \$113,666.67
27 and costs in the amount of \$10,000, as described in the Declaration of Nikki Trenner
28 (“Trenner Decl.”) filed herewith. The requested attorney’s fees are well within the range

1 of reasonableness, especially considering the complex and risky nature of this litigation,
2 the contingent risk assumed, and the two year delay in payment and, when subjected to a
3 lodestar crosscheck, result in fee request that is less than the unadorned lodestar.

4 Accordingly, on behalf of herself and the Settlement Class, Plaintiff respectfully
5 requests the Court grant this motion, give full and final approval to the settlement, grant
6 Class Counsel's request for attorney's fees and costs, and enter judgment accordingly.

7 **II. BACKGROUND/LITIGATION HISTORY**

8 Defendants operate optometry offices and vision correction surgery centers throughout
9 Los Angeles and Ventura counties. Defendants employ Plaintiff Maoz as a non-exempt patient
10 counselor at Defendants' Westlake Village location. Plaintiff typically works between 7 and 8
11 hours per day, 3 days per week, and has been employed with Defendants since around April 2022.
12 (Trenner Decl., ¶ 2.)

13 On October 19, 2022, Plaintiff filed a class action complaint against Defendants, alleging
14 claims for (1) recovery of unpaid minimum wages and liquidated damages; (2) failure to provide
15 meal periods or compensation in lieu thereof; (3) failure to provide rest periods or compensation
16 in lieu thereof; (4) failure to furnish accurate, itemized wage statements; (5) failure to reimburse
17 business expenses; and (6) violations of the Unfair Competition Law. Plaintiff also submitted the
18 required notice letter to the LWDA under PAGA and timely exhausted administrative remedies
19 with the LWDA and filed a separate PAGA-only complaint alleging a single cause of action
20 under PAGA based on the same alleged Labor Code violations (LASC Case No. 22STCV39857).
21 (Trenner Decl. ¶ 3.)

22 Once the matters were at issue, and after engaging in meet and confer discussions
23 regarding discovery, potential law and motion, and the merits of the case, the Parties ultimately
24 agreed to attempt mediation. They then engaged in significant informal discovery to facilitate an
25 exchange of information necessary to engage in a meaningful mediation. In December 2023, the
26 Parties participated in mediation with Steve Mehta, Esq., a respected wage and hour class action
27 mediator and, after a full day of mediation, reached the proposed settlement. As part of the
28 Settlement, Plaintiff filed a First Amended Complaint adding Defendant ADV Vision, LLC and

1 additional causes of action against Defendants and the FAC is the Operative Complaint for
2 purposes of settlement (Trenner Decl., ¶¶ 4-5.) This Court preliminarily approved the
3 settlement on May 29, 2024.

4 Class notices were mailed to class members on July 12, 2024, with a 45-day window
5 (to August 26, 2024) for class members to opt out of or object to the proposed settlement.
6 (Declaration of Lluvia Islas (“Islas Decl.”), ¶¶ 5, 8-10.)

7 **III. SUMMARY OF THE PROPOSED SETTLEMENT**

8 Under the settlement Defendants will pay \$341,000 into a common fund, the Gross
9 Settlement Amount (GSA”). Attorney’s fees of up to \$113,666.67 (33.33% of the GSA),
10 litigation costs of up to \$10,000, up to \$5,000 for an class representative enhancement to Plaintiff,
11 settlement administration costs of \$8,500, and \$15,000.00 for PAGA civil penalties (of which
12 \$11,250 will go to the California Labor & Workforce Development Agency (“LWDA”) for the
13 State’s share of civil penalties and \$3,750 will go to eligible Aggrieved Employees), all will be
14 paid from the GSA. The remainder of around \$188,833.33 will be allocated pro rata to the Class
15 Members based on their weeks worked during the Class Period. No portion of the GSA will revert
16 to Defendants. (Trenner Decl., ¶ 6.)

17 **A. Certification of the Settlement Class**

18 The Court conditionally certified a settlement class defined to include all current and
19 former non-exempt employees that worked for Defendants at any location in California at any
20 time during the Class Period of April 24, 2018 to September 18, 2023. The Settlement
21 Administrator ultimately mailed class notices to 270 individuals identified as members of the
22 Class. [Islas Decl., ¶ 5.] Nothing has changed to require reconsideration of the Court’s
23 certification of the Settlement Class.

24 **B. The Benefit Conferred on the Settlement Class**

25 As noted, the settlement obligates Defendants to pay \$341,000 to resolve the Settlement
26 Class’s claims, inclusive of attorney’s fees and costs. At least \$188,833.33 from the GSA will be
27 distributed to the Participating Class Members. This is a cash settlement that does not require
28 Participating Class Members to submit a claim form to receive their settlement share.

1 Participating Class Members will receive their settlement checks automatically via First Class
2 U.S. Mail. Twenty percent of each settlement share will be allocated to wages and the remaining
3 eighty percent will be allocated to non-wage premiums, penalties, and interest, which allocation is
4 consistent with Defendants' potential liability as discussed below. Defendants will pay any and
5 all applicable employer-side payroll taxes separately and in addition to the GSA. Subject to the
6 Court's approval, any amounts not claimed (because a class member does not cash their
7 settlement check) will be forwarded to the California State Controller's Unclaimed Property
8 Fund. (Trenner Decl., ¶ 7.)

9 Each Participating Class Member will receive a share of the Net Settlement Amount based
10 on his or her total weeks worked in California as a non-exempt employee during the Class Period.
11 Thus, each Class Member's Individual Settlement Payment will be calculated using criteria
12 typically used in determining appropriate amounts of unpaid wages, unpaid premium wages for
13 missed meal and rest breaks, unreimbursed expenses, and potential statutory penalties under
14 applicable law. These methods are intended to ensure each Class Member receives a settlement
15 award corresponding to the relative value of their potential claims. The proposed allocation
16 provides a reasonable way to compensate Class Members based on the amount of time they
17 worked for Defendants and the amount unpaid wages, etc. (Trenner Decl., ¶ 8.)

18 The average award to the Participating Class Members will be approximately \$702 with a
19 maximum award of over \$2,850, while the average PAGA award will be about \$19.63. (Islas
20 Decl., ¶¶ 13-14.)

21 **C. Settlement Administration**

22 Phoenix Settlement Administrators, as the Court-approved Settlement Administrator,
23 mailed the Notice Packet to the Class members after making all reasonable effort to ascertain
24 the best mailing address, including running each address through the National Change of
25 Address database and "skip-tracing" any Notice Packets returned as undeliverable. (Islas
26 Decl., ¶¶ 3-7.) The Class Notice, previously approved by the Court, duly informed Class
27 Members of the settlement terms, including the estimated relief each Class Member will
28 receive, the amounts to be requested for attorney's fees and the class representative

enhancement awards, and the right to opt out of or object to the settlement. (Islas Decl., ¶ 5, Exh. A.) Phoenix mailed 270 Notice Packets on July 12, 2024. (Islas Decl., ¶ 5.) As of the filing of this motion, 2 Notice Packets were deemed undeliverable, for a 99.3% success rate. (Islas Decl., ¶ 7.) The response window for opting out, objecting to the settlement, or submitting a dispute, expired on August 26, 2024. (Islas Decl., ¶¶ 8-10.) As of the filing of this motion, Phoenix has received only one request for exclusion, zero objections to the settlement, and no disputes have been submitted regarding the information used to calculate class member settlement shares. (Islas Decl., ¶¶ 8-10.)

D. Release of Claims

All Participating Class Members will release Defendants from all claims alleged in the operative complaint, or that could have been brought based on the factual allegations in the operative complaint during the Class Period, including all PAGA claims. The release is limited to the claims that were actually pleaded or could have been pleaded based on the alleged facts in the operative complaint. (Trenner Decl., ¶ 9.)

E. PAGA and Notice to the LWDA

As noted, the Parties allocated \$15,000 from the GSA to resolution of Plaintiff's claims under PAGA, and respectfully request that the Court approve that amount as fair, reasonable and adequate, and consistent with PAGA's underlying purposes. Under PAGA, \$11,250 of this amount will be paid to the LWDA as the state's share of the civil penalties, and the remainder of \$3,750 will be distributed to the 191 Aggrieved Employees eligible to receive a PAGA payment. (Islas Decl., ¶ 14.) As required by Labor Code section 2699(l)(2), Plaintiff notified the LWDA of the settlement and the final approval hearing via its online portal. (Trenner Decl., ¶ 10; Exh. 1.)

IV. ARGUMENT

A. Standards For Approval

The law favors settlement, particularly in class actions where substantial resources can be conserved by avoiding the time, cost, and rigors of formal litigation. H. Newberg & A. Conte, 4 *Newberg on Class Actions* (4th ed. 2002), § 11.41; *Class Plaintiffs v. City of*

1 *Seattle* (9th Cir. 1992) 955 F.2d 1268, 1276, *cert. denied*, 506 U.S. 953; Van Bronkhorst v.
2 Safeco Corp. (9th Cir. 1976) 529 F.2d 943,950; *Potter v. Pacific Coast Lumber Co.* (1951)
3 37 Cal.2d 592, 602. Nevertheless, to make certain the rights of absent parties are not
4 unjustly compromised, the settlement of a class action requires court approval. Cal. Rule of
5 Court 3.769; *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801; *Wershba v. Apple*
6 *Computer* (2001) 91 Cal.App.4th 224, 245. The purpose of that judicial review is to protect
7 against fraud or collusion, and to ensure fairness to absent class members. Dunk, 48
8 Cal.App.4th at 1800-01; Newberg, at §§ 11.22, *et seq.* Review is accomplished through a
9 two-step process intended to determine whether, under the totality of circumstances, the
10 settlement is fair, reasonable and adequate. *Dunk*, 48 Cal.App.4th at 1801; *Wershba*, 91
11 Cal.App.4th at 245.

12 On a motion for final approval, the trial court is charged with determining whether, in
13 light of the total circumstances of the action and the response of the class members to the
14 proposed settlement, the settlement is fair, reasonable, and adequate. *Dunk*, 48 Cal.App.4th at
15 1801-02; *Wershba*, 91 Cal.App.4th at 244-45. The court has broad discretion in making that
16 determination and may consider a number of relevant factors, including: the strength of
17 plaintiff's case; the likelihood of potential recovery; the risk, expense and likely duration of
18 further litigation; the amount offered in settlement; the extent of discovery and stage of the
19 proceedings; the experience and opinion of counsel; and the reaction of class members to the
20 settlement. Id. In light of the strong judicial policy favoring the settlement of class actions,
21 courts generally apply a presumption of fairness to a proposed class action settlement when:
22 (1) the settlement is reached through arm's-length bargaining; (2) investigation and
23 discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is
24 experienced in similar litigation; and (4) the percentage of objectors is small. *Dunk*, 48
25 Cal.App.4th at 1802; *Wershba*, 91 Cal.App.4th at 245.

26 **B. The Proposed Settlement Merits Final Approval**

27 The proposed settlement of this action warrants final approval under the standards
28 summarized above. The settlement is fair, reasonable and adequate, and represents a

1 favorable resolution of highly disputed claims. Further, the settlement was overwhelmingly
2 approved by the class members as there are no objections and no class member has requested
3 exclusion.

4 **1. The Settlement Is the Product of Arm's-Length, Informed**
5 **Negotiations**

6 The settlement is not the result of fraud or collusion. Rather, the proposed settlement
7 was reached following arm's-length negotiations presided over by Steve Mehta, Esq., a
8 highly respected and well-known mediator with extensive experience mediating wage and
9 hour class actions. (Trenner Decl., ¶ 5.) Moreover, Plaintiff and her counsel were well-
10 informed about the facts and the law, and counsel Zachary M. Crosner, Jamie K. Serb, and
11 Nikki Trenner have years of litigation experience, including litigating wage and hour class
12 actions. Plaintiff's counsel are well-qualified to evaluate the risks and benefits of pursuing
13 further litigation or settling the matter. (Trenner Decl., ¶¶ 25-29.) Defendants likewise were
14 represented by highly-qualified and experienced defense counsel. Both sides advocated
15 vigorously for their clients and nothing was "left on the table."

16 **2. The Class Reacted Favorably to the Settlement**

17 The settlement was well-received by the class. As of the filing of this motion, no
18 objections have been filed, and only one Class Member has requested exclusion out of 270
19 settlement class members. (Islas Decl., ¶¶ 8-9.) As many courts recognize, class member reaction
20 to the settlement is one of the most important factors to consider in determining if final approval
21 should be granted. *Mandujano v. Basic Vegetable Prods., Inc.*, 541 F.2d 832, 837 (9th Cir. 1976);
22 *see also In re: American Bank Note Holographics*, 127 F.Supp.2d 418, 425 (S.D.N.Y. 2001) ("It
23 is well-settled that the reaction of the class to the settlement is perhaps the most significant factor
24 to be weighed in considering its adequacy") (internal quotation marks omitted).

25 **E. The Settlement is Fair and Reasonable Based on the Strengths of Plaintiff's**
26 **Case and the Risks and Costs of Further Litigation**

27 The proposed settlement involves a substantial sum of money that, when distributed,
28 will confer meaningful monetary benefits on the Class members. As described above, each

1 individual award will be based on an allocation consistent with the nature of the claims
2 asserted and will fairly and equitably allocate the available funds in relation to the degree of
3 damage each Class member incurred. While class members who worked for only a short
4 period of time will receive relatively small sums, those with longer tenures and who worked
5 more hours and shifts throughout the class period will receive appropriately larger awards.

6 Prior to settlement, the parties engaged in formal and informal discovery to facilitate
7 settlement discussions. Thus, Plaintiff reviewed documents and information regarding
8 Defendants' payroll practices, a random sampling of pay stubs and time records from class
9 members, applicable compensation plans, meal and rest break policies, etc., and information from
10 Defendants regarding class size and breakdown, work weeks/pay periods, rates of pay, and other
11 information used to formulate a damages model. Plaintiff then had that information analyzed by a
12 consulting expert to assist in determining potential violation rates and other data used to
13 formulate a damages model. Plaintiff's counsel are confident they obtained sufficient information
14 to understand the law and facts of this case and make an informed decision regarding the
15 proposed settlement and whether it is fair and reasonable. (Trenner Decl., ¶¶ 4, 11.)

16 First, Plaintiff contends Defendants failed to pay all wages due by requiring Plaintiff and
17 the Class Members to work off the clock before clocking in for their shifts and after clocking out
18 from their shifts each day. Specifically, Plaintiff alleges employees must boot up their computers
19 and log into Defendants' timekeeping system before clocking in for their shifts, and were
20 frequently required to complete training and certification assignments during off-the-clock hours
21 Per Plaintiff, these tasks could add up to about an hour of unpaid time per week. Plaintiff further
22 contends Defendants failed to pay for certain overtime hours at the correct premium rate for part
23 of the class period, and instead paid for such time and the employee's straight time rate. In
24 response, Defendants contend they accurately tracked employee time and paid class members all
25 wages due as required under applicable law. Defendants further emphasized off the clock work
26 was strictly against company policy, that they were unaware of any such off the clock work.
27 White v. Starbucks Corp. (N.D. Cal. 2007) 497 F.Supp.2d 1080, 1083 (employer must have
28 actual or constructive knowledge of the off the clock work). Without taking into consideration

1 any of Defendants’ defenses to certification or on the merits, Plaintiff’s expert calculated
2 Defendants’ maximum exposure for this claim **\$250,600** in damages for unpaid wages based on a
3 total of about 18,914 uncompensated hours worked (i.e., one hour per work week) due to alleged
4 “off the clock” work, and with a further **\$91,600** in damages based on 736 hours of overtime paid
5 at the incorrect rate. (Trenner Decl., ¶ 12.)

6 Plaintiff next contends Defendants failed to provide legally compliant meal and rest
7 breaks. Specifically, Plaintiff alleges that prior to around October 2022 Defendants did not
8 relinquish control over how Plaintiff and the Class Members utilize their meal and rest period
9 time, as the applicable written policy prohibited “sleeping, loitering, wasting time or interfering
10 with the work of others during regular work hours.” As a result of these policies, Plaintiff and the
11 Class Members were not relieved of employer control during meal periods. (Trenner Decl., ¶ 13.)

12 Defendants deny Plaintiff’s contentions, claiming they made meal and rest breaks
13 available to Class Members in compliance with California law. Vision contends its meal and rest
14 break policies are lawful and it provided employees with completely duty-free meal and rest
15 breaks. Finally, Defendants argued that Plaintiffs’ meal and rest break claims are not susceptible
16 to common proof, as the claims would require individualized inquiries, including whether there
17 was an unlawful companywide policy, whether employees individual breaks were free from all
18 employer control. Accordingly, Vision contends these claims are vulnerable to a ruling that class
19 treatment is not appropriate. Without taking into consideration any of Defendants’ defenses to
20 certification or on the merits and assuming a 100% violation rate, Plaintiff estimates Vision faces
21 around **\$1,658,000** in damages for meal period violations and around **\$1,806,000** in damages on
22 the rest period violation claim. (Trenner Decl., ¶ 14.)

23 In the expense reimbursement claim, Plaintiff claims she and other class members regularly
24 were required to use personal phones to communicate with supervisors while on duty and to check
25 text guest food orders to the kitchen and to receive work-related calls/messages from supervisors to,
26 for example, obtain authorization to work overtime. Class members also had to download an app to
27 their phones to use for clocking in/out for breaks. Plaintiff claims Defendants paid no reimbursement
28 for this, in violation of California law. *Cochran v. Schwan’s Home Service, Inc.* (2014) 228 Cal. App.

1 4th 1137, 1144. Assuming a reimbursement rate of \$5/week for a reasonable proportion of class
2 member cellular plans, Plaintiff estimates Defendants face over **\$94,570** in unpaid reimbursement
3 under Labor Code section 2802. In response, Defendants argued they provided employees with
4 access to all telephones and other electronics need to perform their job duties, that there would no
5 need to use a personal phone to communicate with other employees, and accessing pay records
6 electronically was provided as a convenience and was not strictly necessary. Thus, per Vison, if
7 employees used their personal phones it was purely for their own convenience rather than
8 business necessity and therefore would not be reimbursable. (Trenner Decl., ¶ 15.)

9 As a result of the above alleged violations, Plaintiff alleges Defendants failed to provide
10 accurate wage statements and failed to timely pay all wages that were due and owing upon
11 separation of employment. In response to these derivative claims, Defendants emphasized that,
12 should the primary claims fail, Plaintiff's claim for wage statement violations and waiting time
13 penalties would also fail. Defendants further argued they would not be liable for waiting time
14 penalties because a "good faith dispute" exists over the payment of past wages. *Amaral v. Cintas*
15 *Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1201. Further, Defendants contend Plaintiff would
16 have to prove Defendants "willfully" failed to pay Class Members appropriate wages due upon
17 separation of employment. Without taking into consideration any of Defendants' defenses to
18 certification or on the merits, Plaintiff calculated Defendants' maximum exposure for wage
19 statement violation at about **\$491,650**, and the exposure for waiting time penalties at about
20 **\$847,200** for approximately 166 terminated class members. (Trenner Decl., ¶ 16.)

21 As far as potential PAGA liability, the theoretical civil penalties likely are around \$1.9
22 million should Plaintiff prevails on all claims, establish violations of the multiple Labor Code
23 sections at issue, and secure the maximum available penalty. (Trenner Decl., ¶ 17.) As with the
24 class claims, Plaintiff discounted the potential PAGA penalties based on Defendants' various
25 defenses on the merits and also accounted for the Court's wide discretion to reduce such
26 penalties, or to decline to award penalties at all. Labor Code § 2699(e)(2); *Carrington v.*
27 *Starbucks Corp.* (2018) 30 Cal.App.5th 504 (trial court awarded penalties of \$5 per pay period
28 after a bench trial, which decision was upheld on appeal); *In re Taco Bell Wage and Hour Actions*

1 (E.D. Cal. Apr. 8, 2016) 2016 U.S. Dist. LEXIS 48557 (PAGA penalties denied after trial).
2 Accordingly, the Parties allocated \$50,000 to PAGA penalties. (Agreement, § 3.2.5.)

3 Plaintiff submits this amount is reasonable under the circumstances and in line with
4 comparable settlements in other wage and hour class actions in California. *E.g.*, *Van Kempen v.*
5 *Matheson Tri-Gas, Inc.* (N.D. Cal. Aug. 25, 2017) 2017 U.S. Dist. LEXIS 137182 (granting final
6 approval of \$5,000 PAGA penalty from \$370,000 settlement, or 1.4 percent of total settlement);
7 *Slavkov v. First Water Heater Partners I* (N.D. Cal. July 25, 2017) 2017 U.S. Dist. LEXIS
8 116303 (finding a \$7,500 PAGA payment reasonable when measured against the overall
9 settlement of \$345,000 and the possible weaknesses in plaintiffs' case, or 2.2 percent of total
10 settlement). Additionally, the LWDA has been informed of the terms of the PAGA portion of the
11 settlement, and will be able to weigh in as necessary. *Jennings v. Open Door Mktg. Inc.* (N.D.
12 Cal. Oct. 3, 2018) 2018 U.S. Dist. LEXIS 171356, at *27 (approving settlement with PAGA
13 penalties of 0.6% where "[p]laintiffs [have] submitted the settlement agreement to the LWDA,
14 and the LWDA has not objected to the settlement.

15 Thus, Plaintiff and her counsel discounted the value of the class claims consistent with the
16 risks discussed above, and carefully weighed the likelihood of the class receiving substantially
17 greater benefit if the litigation continued. Plaintiff and counsel concluded – in light of these very
18 real and substantial risks – settlement on the proposed terms and without prolonged and costly
19 litigation was in the best interests of the class. The overall \$341,000 recovery represents a
20 significant percentage of Defendants' potential exposure. Given Defendants' multi-layered
21 defenses and all other potential risks of continued litigation, a total recovery for the class of
22 \$341,000, which will result in average award of around \$702 per class member, plus additional
23 sums under PAGA, is a significant result well within the range of reasonableness considering all
24 potential outcomes, and it will provide direct monetary awards to all Class Members without
25 further delay. (Trenner Decl., ¶¶ 18-20.)

26 Importantly, the mere fact that a settlement does not provide the same recovery as might
27 be achieved at trial is not a proper indicator of whether the settlement is fair, reasonable, and
28 adequate. *Wershba*, 91 Cal.App.4th at 246, 250 ("Compromise is inherent and necessary in the

1 settlement process...even if the relief afforded by the proposed settlement is substantially
2 narrower than it would be if the suits were to be successfully litigated, this is no bar to a class
3 settlement because the public interest may indeed be served by a voluntary settlement in which
4 each side gives ground in the interest of avoiding litigation”); *7-Eleven Owners for Fair*
5 *Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1150 (“The fact that a proposed
6 settlement may amount to only a fraction of the potential recovery does not, in and of itself, mean
7 that the proposed settlement is grossly inadequate and should be disapproved”); *White v.*
8 *Experian Information Solutions, Inc.* (C.D. Cal. 2011) 803 F.Supp.2d 1086, 1098 (rejecting
9 contention settlement was not fair and reasonable even though it represented 99% discount off the
10 maximum value of the claims); *Lane v. Facebook, Inc.* (9th Cir. 2012) 696 F.3d 811, 819 (“[T]he
11 question whether a settlement is fundamentally fair . . . is different from the question whether the
12 settlement is perfect in the estimation of the reviewing court”). Importantly as well, the proposed
13 settlement is non-reversionary and will provide immediate benefits to the Class Members without
14 a claims process. *White*, 803 F.Supp.2d at 1098; c.f., Federal Judicial Center, *Managing Class*
15 *Action Litigation: A Pocket Guide for Judges* (3d ed. 2010) at 20, available at [http://](http://www.fjc.gov/sites/default/files/2012/ClassGd3.pdf)
16 www.fjc.gov/sites/default/files/2012/ClassGd3.pdf. (reversionary provisions and/or cumbersome
17 claims process may indicate lack of fairness). Plaintiff and counsel submit the settlement is within
18 the “range of reasonableness,” and is fair and adequate for the Class.

19 **V. PLAINTIFF’S ENHANCEMENT AWARD**

20 Pursuant to the terms of the settlement, Plaintiff seeks a modest incentive award of
21 \$5,000 for her service in bringing these claims on behalf of the Class. The request is reasonable
22 given the risks she undertook on behalf of the Class Members. By contacting and retaining
23 counsel to pursue these claims, Plaintiff helped make this settlement possible for the absent
24 Class Members, while shouldering the risk of being liable for Defendants’ litigation costs.
25 Plaintiff also exposed herself to unwanted notoriety related to filing a public lawsuit
26 (discoverable even through a simple google search) for the benefit of other employees, placing
27 herself at risk of discrimination by future prospective employers. As set forth in more detail in
28 her declaration submitted at preliminary approval, among taking many other actions assisting in

1 the successful litigation of this case, Plaintiff provided substantial factual information and
2 documents to counsel, attended numerous meetings/phone conferences with counsel to discuss
3 the case, and kept abreast of all significant developments. (Declaration of Renee Maoz, ¶¶ 2-9
4 (filed with the preliminary approval motion); Trenner Decl., ¶ 21.) Finally, there are no class
5 member objections submitted with respect to the amounts Plaintiff proposes to receive. (Islas
6 Decl., ¶ 9.) Accordingly, the requested enhancement payment to Plaintiff is appropriate and
7 justified as part of the settlement. *Staton v. Boeing* (9th Cir. 2003) 327 F.3d 938, 977 (collecting
8 cases awarding class representatives service and incentive payments ranging from \$2,000 to
9 \$25,000).

10 **VI. SETTLEMENT ADMINISTRATION COSTS**

11 The settlement provides for a payment to Phoenix from the GSA for its services as the
12 Settlement Administrator. As set forth in the Declaration of Lluvia Islas, Phoenix has performed
13 and will continue to perform its required duties through final distribution of the settlement funds,
14 and incurred \$8,500.00 in fees and expenses. (Islas Decl., ¶ 15.) Accordingly, Plaintiff
15 respectfully requests the Court approve payment of \$8,500 to Phoenix from the GSA. (Trenner
16 Decl., ¶ 22.)

17 **VII. ATTORNEY'S FEES AND COSTS**

18 **A. The Attorney's Fees Requested Are Fair and Reasonable and Should Be** 19 **Approved**

20 This Court has discretion over the amount of attorneys' fees awarded and court
21 approval is required for Class Counsel's fees. Cal. Rule of Court 3.769; *Levy v. Toyota*
22 *Motor Sales, U.S.A.* (1992) 4 Cal.App.4th 807, 813; *Lealao v. Beneficial Cal., Inc.* (2000) 82
23 Cal.App.4th 19. In defining a reasonable fee, the Court should attempt to mimic the
24 marketplace for cases involving significant contingent risk, such as this one. *Deposit*
25 *Guaranty Nat'l Bank, Jackson, Miss. v. Roper* (1980) 445 U.S. 326, 338, *rehg. den.* 446 U.S.
26 947; *Lealao*, 82 Cal.App.4th at 49-50 (court should attempt "to award the fee that informed
27 private bargaining, if it were truly possible, might have reached" in determining a reasonable
28 fee, and a fee award should approximate a "range of fees freely negotiated in comparable

litigation”). Here, Class Counsel's request for attorney’s fees and costs is reasonable and justified by the work performed, the benefits obtained, and the contingent risk assumed.

As addressed in detail above, at the time the parties reached the tentative settlement success for Plaintiff and the putative class was far from certain. Plaintiff faced a real risk that some or all the claims would not be certified for class treatment, as Defendants had strong arguments that its compensation policies were legal and properly compensated the class members. Even if Plaintiff certified some or all of the claims and ultimately prevailed on the merits, it undoubtedly would have taken several years to realize any recovery while they pursued class certification, trial, and an almost certain appeal. (Trenner Decl., ¶¶ 12-20.)

Nonetheless, Plaintiff succeeded and expeditiously obtained the relief she set out to obtain, and the settlement provides substantial cash payments to Class Members, with an average award of about \$702, and with a maximum award of almost \$2,900. Importantly as well, the Class Members have been overwhelmingly supportive of the Settlement – as of the filing of this motion, there are no objections to the settlement and only one individual opted out. (Islas Decl., ¶¶ 8-9, 13.)

B. The Requested Fee Award Is Reasonable and Appropriate

The United States Supreme Court has ruled the parties to a class action properly may negotiate not only the settlement of the action itself but also the payment of attorney's fees. *Evans v. Jeff D.* (1986) 475 U.S. 717, 734-35, 738, fn. 30.) In *Hensley v. Eckerhart* (1983) 461 U.S. 424, 437, the Supreme Court explained that negotiated, agreed-upon attorney's fee provisions are the ideal towards which the parties should strive: "A request for attorney's fees should not result in a second major litigation. Ideally, of course, litigants will settle the amount of a fee." The United States Supreme Court has reemphasized this policy and further stressed trial courts have “a responsibility to encourage agreement” on fees. *Blum v. Stenson* (1984) 465 U.S. 886, 902 n.19.

As part of the Settlement, Defendants agreed not to object to an award of no more than 33.33% of the GSA for attorney's fees, or \$113,666.67, and up to \$10,000 in reimbursement for litigation costs and expenses. Such a fee is commensurate with what the

1 market would provide for similar services and the Court therefore can most certainly enforce
2 the agreement. As California's Court of Appeal has instructed:

3 Given the unique reliance of our legal system on private litigants to enforce substantive
4 provisions of law through class and derivative actions, attorneys providing the essential
5 enforcement services must be provided incentives roughly comparable to those negotiated
6 in the private bargaining that takes place in the legal marketplace, as it will otherwise be
7 economic for defendants to increase injurious behavior.

8 *Lealao*, 82 Cal.App.4th at 47.

9 Here, the parties did not negotiate the inclusion of attorney's fees until after extensive
10 arms-length bargaining regarding relief to the Class was completed. (Trenner Decl.,
11 ¶ 23.) The requested fee and cost award was a product of these arms-length negotiations and
12 fairly reflects the marketplace value of the services rendered by Class Counsel in this case.
13 As a result, the fee agreed to by the parties should be approved.

14 **C. Class Counsel's Fees are Justified When Calculated as a Percentage of the**
15 **Common Fund**

16 In approving fee applications, courts typically apply either a percentage-of-recovery
17 method or the lodestar method. *Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480, 489;
18 *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 254, *disapproved on other*
19 *grounds, Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th 260. The California
20 Supreme Court recently recognized the advantages and equities of calculating attorney's fees
21 using the percentage-of-the-common-fund method in another wage-and-hour case:

22 The recognized advantages of the percentage method-including relative ease of
23 calculation, alignment of incentives between counsel and the class, a better
24 approximation of market conditions in a contingency case, and the encouragement it
25 provides counsel to seek an early settlement and avoid unnecessarily prolonging the
26 litigation convince us the percentage method is a valuable tool that should not be
27 denied our trial courts.

28 *Laffitte*, 1 Cal.5th at 503 (citations omitted).

 Indeed, both California and federal courts have long recognized an appropriate
method for determining the award of attorney's fees is based on a percentage of the total
value of benefits afforded to class members by the settlement. *Serrano v. Priest* (1977) 20
Cal.3d 25, 34; *Boeing Co. v. Van Gernert* (1980) 444 U.S. 472, 478; *Vincent v. Hughes Air*

1 *West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769. Awarding a fee based on a percentage of the
2 common fund recovered operates to "spread litigation costs proportionately among all the
3 beneficiaries so that the active beneficiary does not bear the entire burden alone." *Vincent*,
4 557 F.2d at 769.

5 In determining a reasonable common fund fee award, courts should also consider the
6 fact that fees serve as an economic incentive for lawyers to bring class action litigation to
7 achieve increased access to the judicial system for meritorious claims and to enhance
8 deterrents to wrongdoing. Conte, *Attorney Fee Awards* (2d ed. 1993) § 104. Without
9 prosecution on a contingent basis and use of the class action mechanism, the courthouse door
10 would effectively be closed to most class members due to the relatively small size of their
11 individual claims in relation to the enormous time and cost associated with class action
12 litigation.

13 Here, Class Counsel seek a fee award for their successful prosecution and resolution
14 of this action of no more than 33.33% of the total amount recovered by the Class via the
15 lawsuit, or \$113,666.67. The percentage requested is justified for the reasons set forth
16 further below, and comports with fee awards calculated on a percentage-of-the-benefit basis.
17 Indeed, review of class action settlements shows that courts have historically awarded fees in
18 the range of 20 to 50 percent, depending upon the circumstances of the case. *In re Warner*
19 *Communications Sec. Litig.* (S.D.N.Y. 1985) 618 F.Supp. 735, 749-50 (concluding that
20 percentage fees in common fund cases range from 20 to 50 percent); Newberg, *Newberg on*
21 *Class Actions* (3d ed.) § 14.03, pp. 13-14 ("Usually 50% of the fund is the upper limit on a
22 reasonable fee award from a common fund in order to assure that the fees do not consume a
23 disproportionate part of the recovery obtained for the class, although somewhat larger
24 percentages are not unprecedented.").

25 **D. A Lodestar Cross-Check Also Supports Class Counsel's Fee Request**

26 To ensure the fairness of an attorney's fee award, courts frequently conduct a lodestar
27 cross check of counsel's fees. "A lodestar cross-check thus provides a mechanism for
28 bringing an objective measure of the work performed into the calculation of a reasonable

1 attorney fee." *Laffitte*, 1 Cal.5th at 504. Here, Class Counsel spent 178.7 hours of time on
2 this matter, resulting in a modest and very reasonable lodestar of \$128,240.

3 As is fully detailed in the Trenner Declaration, Class Counsel's efforts included: (1)
4 extensive pre-lawsuit investigation of the claims of Plaintiff and the putative class, including legal
5 research, research into similar claims and claims against other employers in the same industry,
6 and attempts to locate and contact other Vision employees; (2) drafting a PAGA notice letter; (3)
7 drafting the initial class complaint and related documents, and the initial PAGA complaint and
8 related documents; (4) case management, including communications with defense counsel,
9 meeting and conferring/preparing case management statements, etc.; (5) drafting a first amended
10 complaint; (6) propounding initial written discovery, (7) lengthy discussions with defense counsel
11 regarding settlement/mediation and informal discovery needed for meaningful settlement
12 discussions; (8) engaging in substantial informal discovery, including propounding informal
13 discovery "requests" and reviewing documents and other information produced; (9) drafting a
14 mediation brief and accompanying damages model after review and analysis of Defendants'
15 informal discovery production; (10) attending an all-day mediation; (11) negotiating and drafting
16 the settlement agreement and related documents; (12) drafting an amended complaint to
17 effectuate the settlement; (13) drafting the motion for preliminary approval, and attending the
18 hearing; (14) administration of the settlement, including communications with the Settlement
19 Administrator and settlement class members; (15) drafting the motion for final approval and
20 motion for attorney's fees, and attending the final approval hearing; and (16) extensive
21 communications with the Plaintiff regarding case status, case investigation and document review,
22 mediation, and settlement terms. Additionally, Class Counsel will incur additional time following
23 final approval to, inter alia, respond to class member inquiries, work with the Settlement
24 Administrator on the distribution of settlement funds, and on the compliance hearing. (Trenner
25 Decl., ¶ 24, Exh. 2.)

26 In pursuing this matter, Class Counsel incurred total attorney's fees of \$128,240,
27 based on 178.7 attorney hours. The lodestar is based on an eminently reasonable number of
28 hours worked to litigate this matter to a successful conclusion, and the requested attorney hourly

1 rates are reasonable and comport with hourly rates charged by other attorneys with similar
2 experience in this practice area in California. (Trenner Decl., ¶¶ 24-37.) On a lodestar basis, the
3 fee request of \$113,666.67 results in a base lodestar that is larger than the actual fee request
4 on a percentage of the recovery basis and accordingly there is no request for a lodestar
5 enhancement. (Trenner Decl., ¶¶ 36-37.) Class Counsel submits this fact effectively operates
6 to show that the percentage fee request is reasonable considering it less than the actual value
7 of the services rendered when valued via traditional hourly billing.

8 E. **The Award is Supported By 1) the Results Achieved; 2) the Risk, 3) the Skill**
9 **Required, 4) the Contingent Nature of the Fee and 5) Awards in Similar**
10 **Cases**

11 What has now emerged in most fee award decisions is the recognition that fee
12 determinations in both common fund and statutory fee situations are incapable of
13 mathematical precision because of the intangible factors that must be resolved in the court's
14 discretion based on the circumstances of each particular case. Conte, § 207, p. 44. In
15 determining an appropriate fee in a common fund case, a Court must decide, based on the
16 unique posture of each case, what percentage of the common fund would most reasonably
17 compensate Class Counsel given the nature of the litigation and the performance of counsel.
18 *Paul, Johnson, Alston & Hunt v. Grauly* (9th Cir. 1989 886 F.2d 268, 272) (the benchmark
percentage fee may be adjusted to account for the circumstances involved in a case).

19 Courts apply a five-part test in calculating a reasonable percentage fee in common
20 fund cases: (1) the results achieved; (2) the risk of litigation; (3) the skill required and the
21 quality of work; (4) the contingent nature of the fee and the financial burden carried by the
22 plaintiffs; and (5) awards made in similar cases. *Laffitte*, 1 Cal.5th at 489.

23 1. **The Results Achieved.**

24 Class Counsel obtained an excellent result in this case for the Class Members. The
25 Settlement provides real monetary benefits to the Class Members, and the Settlement is
26 particularly advantageous to the Class Member because the proceeds will be distributed
27 shortly as opposed to waiting additional years for a similar, or possibly, less favorable result.
28 Considering many individual claims would be very modest and would not be cost-effective

1 to pursue successfully, the Settlement provided them with fair compensation for their claims.
2 Moreover, the absence of any objection to either the Settlement or the attorney's fee request
3 bolsters the excellent results. Indeed, the approval of the Class is overwhelming as indicated
4 by the fact that only one class member opted out. Additionally, the settlement amounts to a
5 substantial percentage of the maximum value of the amount the Class might have obtained if
6 it had tried the case and recovered on all theories seeking recovery of wages and penalties.
7 "It is well-settled law that a cash settlement amounting to only a fraction of the potential
8 recovery does not per se render the settlement inadequate or unfair." *In re Omnivision*
9 *Techs., Inc.*, 559 (N.D. Cal. 2008) F.Supp.2d 1036, 1042.

10 **2. Class Counsel Bore Considerable Risk.**

11 At the time of filing the complaint, Class Counsel recognized that they would have to
12 expend a substantial amount of time and advance significant costs to prosecute a statewide
13 class action suit with no guarantee of compensation or reimbursement, in the hope of
14 prevailing against a sophisticated company represented by first-rate attorneys. Despite
15 their belief in the validity of Plaintiff's claims, they also knew they faced substantial risks
16 of class certification and the ability to prove class-wide and individual damages. In light of
17 the highly uncertain nature of this suit, Class Counsel also bore the risk that Defendants
18 would dig in and attempt to bury their small firms in work. Given the small size of Class
19 Counsel's firm, not receiving any compensation for several years while simultaneously
20 advancing litigation costs posed considerable risk and difficulty. (Trenner Decl., ¶¶ 38-39.)

21 **3. The Skill Required and the Quality of Work.**

22 Practice in the narrow area of wage and hour litigation requires skill, knowledge and
23 experience. The issues presented in this case required more than just a general appreciation
24 of wage and hour law and class action procedure. This Settlement was possible only
25 because counsel persuaded Defendants that Plaintiff and the putative class had a realistic
26 chance of prevailing on their claims despite Defendants' contrary arguments, and that
27 the case would be pursued through class certification and trial if necessary. In
28 successfully navigating these hurdles, Class Counsel displayed appropriate skill while

1 pursuing a risky and difficult case.

2 4. **The Contingent Nature of the Fee and Risk Assumed**

3 There is a substantial difference between the risk assumed by attorneys being paid
4 by the hour and attorneys working on a contingent fee basis. The attorney being paid by
5 the hour can go to the bank with his fee. *Powers v. Eichen* (9th Cir. 2000) 229 F.3d
6 1249, 1256. The attorney working on a contingent basis can only log hours while
7 working without pay towards a result that will hopefully entitle him to a market fee
8 considering the risk and other factors of the undertaking. *Id.* at 1257. Otherwise, the
9 contingent fee attorney receives nothing. *Id.* In this case, Class Counsel subjected
10 themselves to this risk in this all or nothing contingent fee case wherein the necessity
11 and financial burden of private enforcement makes the requested award appropriate.

12 Counsel retained on a contingency fee basis, whether in private matters or in class
13 action litigation, is entitled to a premium beyond their standard, hourly, non-contingent
14 fee schedule to compensate for both the contingent risk assumed and the delay in
15 payment. The simple fact is that despite the most vigorous and competent of efforts,
16 success is never guaranteed. *McKittrick v. Gardner* (4th Cir. 1967) 378 F.2d 872, 875.
17 Indeed, if counsel is not adequately compensated for the risks inherent in difficult class
18 actions, competent attorneys will be discouraged from prosecuting similar cases.
19 *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132-33; *Cazares v. Saenz* (1989) 208
20 Cal.App.3d 279, 287.

21 Here, the contingent fee practices of Plaintiff's counsel simply do not accommodate
22 the investment of unnecessary time in a case, and the adverse resolution of any one of several
23 difficult issues present in this matter could have doomed the entire effort. As discussed, the
24 attorney's fees in this case were not only contingent but fairly risky, and there was always a
25 palpable chance Plaintiff's counsel would receive nothing for any number of reasons.
26 (Trenner Decl., ¶¶ 38-39.) Accordingly, the contingent nature of the fee and the financial
27 burdens on Class Counsel and Plaintiff also support the fee requested.

28 /////

1 **5. Awards in Other Cases**

2 As discussed, the attorney's fees requested by Class Counsel are within the range of
3 fees awarded in comparable cases, as cross-checked against the lodestar method in light of
4 the contingent risk assumed, the delay in payment, the result achieved, and the overall
5 quality of the representation.

6 **F. Class Counsel's Costs and Expenses are Reasonable**

7 Plaintiff's counsel also request reimbursement of actual out-of-pocket expenses incurred
8 to prosecute this action. These expenses were incidental and necessary to the effective
9 representation of the employees, and Plaintiff's counsel is permitted to recover litigation costs
10 and expenses under the common fund doctrine and the Settlement Agreement. *Serrano*, 20 Cal.3d
11 at 35 (common fund doctrine permits recovery of fees and costs from the fund); *Rider v. County*
12 *of San Diego* (1992) 11 Cal.App.4th 1410, 1424 n.6 (costs are recoverable from the common fund
13 "[o]f necessity, and for precisely the same reasons discussed above with respect to the recovery of
14 attorneys' fees by ... [Plaintiffs'] attorneys"). Plaintiffs' counsel also is entitled to recover "those
15 out-of-pocket expenses that would normally be charged to a fee-paying client." *Harris v.*
16 *Marhoefer* (9th Cir. 1994) 24 F.3d 16, 19.

17 As explained in the Trenner Declaration, Class Counsel incurred a total of
18 \$23,699.91 in expenses incurred in connection with this litigation. These expenses
19 include the amounts paid for court filing fees, Case Anywhere charges, service of
20 process, expert fees, postage, and mediation fees, all of which are costs normally billed
21 to and paid by the client. These costs were reasonably incurred in the prosecution of this
22 matter and it is respectfully requested that the Court authorize they be reimbursed up to
23 the \$10,000 cap imposed under the Settlement Agreement. (Trenner Decl., ¶¶ 40-41.)

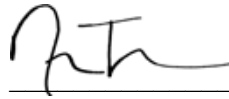
24 **VIII. CONCLUSION**

25 For all the foregoing reasons, Plaintiff Renee Maoz respectfully requests that the Court
26 grant this motion and grant final approval of the proposed class action settlement and approve the
27 payment of PAGA penalties to the State. Plaintiff further requests the Court approve payment of
28 the Settlement Administrator's fees and expenses, approve the requested class representative

1 enhancement payment, approve the award of attorney's fees and costs as requested, and enter
2 judgment in this action. Finally, Plaintiff requests the Court set a non-appearance case review
3 regarding settlement compliance for December 3, 2025, or a later date convenient for the Court.
4

5 Dated: October 31, 2024

CROSNER LEGAL, P.C.

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