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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
Company; and DOES 1-100, inclusive,

21
22 Defendants.
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28

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 PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT

[Filed Concurrently with Memorandum of
Points and Authorities; Declarations of
Nikki Trenner, Renee Maoz, and Jodey
Lawrence; [Proposed] Order]

Date: May 29, 2024
Time: 10:30 a.m.
Dept.: SSC-12

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1 **I. INTRODUCTION**

2 Plaintiff Renee Maoz respectfully requests that the Court preliminarily approve the Class
3 Action and PAGA Settlement Agreement (“Agreement”) entered into between Plaintiff and
4 Defendants DLV Vision Management, LLC, DLV Vision ASC, LLC, Paul J. Dougherty, M.D.,
5 Inc., and ADV Vision, LLC (together “Vision” or “Defendants”). The proposed settlement seeks
6 to resolve claims in the above captioned matter in exchange for a non-reversionary \$341,000
7 Gross Settlement Amount. The settlement class consists of “all current and former non-exempt
8 employees that worked for Defendants at any location in California at any time during the Class
9 Period of April 24, 2018 to September 18, 2023.”

10 The Agreement and notice distribution plan are the products of adversarial, arm’s-length
11 negotiations by informed counsel and parties, facilitated by an experienced mediator. The
12 settlement is fair, reasonable, and adequate to all. Plaintiff has analyzed the strengths and
13 vulnerabilities of the claims with Defendants’ potential exposure and determined the \$341,000
14 proposed settlement is well within the range of reasonableness and is in the Class Members’ best
15 interests. The length and risks of trial and perils of litigation that affect the values of the claims
16 were all carefully weighed. In addition, the defenses asserted by Defendants, the uncertainty of
17 class certification, the difficulties of complex litigation, the lengthy process of establishing
18 specific damages and various possible delays and appeals, were also considered by Plaintiffs and
19 counsel in negotiating the proposed settlement. The proposed settlement satisfies the criteria for
20 preliminary approval under California Rule of Court 3.769.

21 Accordingly, Plaintiffs seek: (1) preliminary approval of the settlement; (2) provisional
22 certification of the Class; (3) appointment of Plaintiff as the Class Representative; (4)
23 appointment of Crosner Legal, P.C. as Class Counsel; (5) approval of the Parties’ proposed
24 Notice of Class Action Settlement (“Notice”) and method of notifying the Class Members; (6) a
25 hearing date for Plaintiffs’ Motion for Final Approval of Class Action Settlement; and (7) entry of
26 an Order Granting Preliminary Approval of Class Action Settlement.

27 **II. BACKGROUND/LITIGATION HISTORY**

28 Defendants operate optometry offices and vision correction surgery centers throughout

1 Los Angeles and Ventura counties. Defendants employ Plaintiff Maoz as a non-exempt patient
2 counselor at Defendants' Westlake Village location. Plaintiff typically works between 7 and 8
3 hours per day, 3 days per week, and has been employed with Defendants since around April 2022.
4 (Trenner Decl., ¶ 13.)

5 On October 19, 2022, Plaintiff filed a class action complaint against Defendants, alleging
6 claims for (1) recovery of unpaid minimum wages and liquidated damages; (2) failure to provide
7 meal periods or compensation in lieu thereof; (3) failure to provide rest periods or compensation
8 in lieu thereof; (4) failure to furnish accurate, itemized wage statements; (5) failure to reimburse
9 business expenses; and (6) violations of the Unfair Competition Law. (Trenner Decl., ¶ 14.)
10 Plaintiff also submitted the required notice letter to the LWDA under PAGA and timely
11 exhausted administrative remedies with the LWDA. Plaintiff never received notice from the
12 LWDA that it intended to investigate the alleged violations outlined in the PAGA letter. Plaintiff
13 then filed a separate PAGA-only complaint alleging a single cause of action under PAGA based
14 on the same alleged Labor Code violations (LASC Case No. 22STCV39857). (Trenner Decl. ¶
15 15; Exh. 4.)

16 In December 2023, the Parties participated in mediation with Steve Mehta, Esq., a
17 respected wage and hour class action mediator. The mediation lasted a full day and with the
18 mediator's assistance the Parties reached agreement on all major issues and ultimately prepared
19 and executed a Memorandum of Understanding. They then formally reduced the proposed
20 settlement to the Agreement now before the Court for approval. As noted, as part of the
21 Settlement, Plaintiff filed a First Amended Complaint adding Defendant ADV Vision, LLC and
22 additional causes of action against Defendants for (1) failure to provide overtime; (2) failure to
23 pay all wages upon termination of employment; (3) failure to provide and/or properly pay sick
24 leave; and (4) those claims alleged in the PAGA Action. The FAC is the Operative Complaint for
25 purposes of settlement, and Plaintiff uploaded the FAC and the Agreement to the LWDA.
26 (Trenner Decl., ¶ 16; Exhs. 5-6.)

27 **III. INVESTIGATION**

28 Prior to the mediation, Defendants provided Plaintiff with extensive informal discovery,

1 including Plaintiff's personnel, time, and payroll records, time and payroll records for a randomly
2 selected sampling of about 20% of the Class Members,¹ wage statement exemplars, Defendants'
3 employee handbooks, including Defendants' policies and procedures regarding the payment of
4 wages, the provision of meal and rest breaks, timekeeping policies (including recording hours),
5 issuance of wage statements, and termination wages, expense reimbursement policies, as well as
6 information regarding the number of putative Class Members who are current and former
7 employees, the number of Aggrieved Employees, the number of workweeks throughout the Class
8 Period, and the number of pay periods throughout the PAGA Period. From this information,
9 Plaintiff analyzed Defendants' liability for the claims asserted and, with the assistance of
10 Plaintiff's experts at Berger Consulting Group, the potential exposure and damages. (Trenner
11 Decl., ¶ 17.)

12 Based on this informal discovery, Plaintiff contends the Class Members were not paid all
13 wages due, not provided with legally compliant meal and rest periods, did not receive compliant
14 wage statements, did not receive required expense reimbursement, and did not receive all wages
15 due on separation of employment. In considering the reasonableness of the proposed settlement,
16 Plaintiff considered each of Defendants' counterarguments, which sharply contested Plaintiff's
17 claims. Plaintiff and her counsel weighed the strength of Defendants' arguments, including the
18 risks of prevailing at class certification and on the merits, and determined the proposed settlement
19 is in the best interests of the Class. Although confident in the strength of their claims, these
20 factors led Plaintiff to discount the exposure analysis, as discussed below. (Trenner Decl., ¶ 18.)

21 **IV. TERMS OF THE PROPOSED SETTLEMENT**

22 **A. Deductions from the Settlement**

23 The Parties have agreed (subject to the Court's approval) to resolve this matter for the
24 non-reversionary sum of \$341,000.00 ("Gross Settlement Amount" or "GSA") (Agreement, §
25 3.1.), which includes: (a) reasonable attorney's fees of up to \$113,666.67 (33.33% of the GSA)²

27 ¹ Plaintiff's experts advised this sampling would be statistically reliable and enable them to extrapolate across the
entire class. (Trenner Decl., ¶ 17.)

28 ² The percentage method, with or without a lodestar cross-check, may be used in common fund cases like this one.
Laffitte v. Robert Half Int'l, Inc. (2016) 1 Cal.5th 480, 503. In support of their fee request at Final Approval, Class

1 to compensate Class Counsel for work already performed and all work remaining to be performed
2 (Agreement, § 3.2.2.); (b) actual litigation expenses as documented and not to exceed \$10,000.00³
3 (Agreement, § 3.2.2.); (c) an Enhancement Award to Plaintiff in an amount not to exceed
4 \$5,000.00⁴ (Agreement, § 3.2.1.); (d) Administration Costs to Phoenix Settlement Administration
5 (the proposed settlement administrator) in an amount not to exceed \$8,500.00 (Agreement, §
6 3.2.3.); and (e) PAGA penalties to the LWDA of \$11,250.00 (which is 75% of the \$15,000.00
7 PAGA Payment, with the remaining 25% or \$3,750.00 to Aggrieved Employees) (Agreement, §
8 3.2.5.). Employer-side payroll taxes (including FICA, FUTA, and SDI) will be paid by
9 Defendants separate and apart from the GSA. (Agreement, § 3.1.)

10 **B. Calculation of the Individual Settlement Payments to Class and Aggrieved**
11 **Employees**

12 After all Court-approved deductions from the GSA, it is estimated that at least \$188,833
13 (“Net Settlement Amount” or “NSA”) will be distributed to the estimated 274 Class Members,
14 with an average individual settlement amount of around \$689.⁵ Additionally, it is estimated that
15 the 25% PAGA Payment (\$3,750.00) will be distributed to the estimated 166 Aggrieved
16 Employees, resulting in an average payment of about \$22.59⁶ per Aggrieved Employee. (Trenner
17 Decl., ¶ 20.) Under no circumstances will any portion of the Settlement revert to Defendants.
18 (Agreement, § 3.1.)

19 Phoenix will calculate and issue Individual Class Payments to Participating Class
20 Members by “(a) dividing the Net Settlement Amount by the total number of Workweeks worked
21 by all Participating Class Members during the Class Period and (b) multiplying the result by each
22 Participating Class Member’s Workweeks.” (Agreement, § 3.2.4.) Phoenix also will calculate and
23 issue payments to Aggrieved Employees based (a) dividing the amount of the Aggrieved
24 Employees’ 25% share of PAGA Penalties (\$3,750) by the total number of PAGA Period Pay

25 Counsel will provide the Court with lodestar information to permit the Court to do a lodestar cross-check in
26 connection with Class Counsel’s request for attorney’s fees.

27 ³ At Final Approval, Class Counsel will provide documentation regarding actual expenses incurred to support Class
Counsel’s request for reimbursement of actual expenses.

28 ⁴ Plaintiff is simultaneously resolving her individual claim for pregnancy related discrimination, discussed below.

⁵ \$188,833 estimated NSA/274 Class Members

⁶ \$3,750 (25% PAGA Payment) /166 Aggrieved Employees

1 Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the
2 result by each Aggrieved Employee's PAGA Period Pay Periods." (Agreement, § 3.2.5.1.)

3 Each Class Member's settlement award will be apportioned as follows: twenty percent
4 (20%) wages and eighty percent penalties and interest. (Agreement, § 3.2.4.1.) Phoenix will be
5 responsible for issuing W-2s for amounts deemed wages and 1099s for the portions allocated to
6 penalties and interest. (Agreement, §§ 3.2.4.1. and 3.2.5.2.)

7 **C. Uncashed Funds to Unclaimed Property Fund**

8 Settlement checks must be cashed or deposited within 180 days after issuance.
9 (Agreement, § 4.4.1.) In the event a settlement check remains uncashed, such uncashed funds
10 shall be transmitted to the State Controller's Office Unclaimed Property Fund in the name of the
11 Participating Class Member and/or Aggrieved Employee. (Agreement, § 4.4.3.). Therefore, there
12 will be no unpaid residue or unclaimed or abandoned Class Member funds under California Code
13 of Civil Procedure section 384(a).

14 **D. Notice and Extended Response Deadline for Re-Mailed Notices**

15 Within fifteen business days after entry of the Preliminary Approval Order, Defendants
16 will provide Phoenix with the Class Data, which Phoenix will maintain as private and
17 confidential. (Agreement, § 4.2.)

18 Prior to mailing, Phoenix will perform a search for updated addresses in the National
19 Change of Address database, and will use the NCOA database and skip traces to attempt to find
20 current addresses for any Notice returned as undeliverable. (Agreement, § 7.4.2.) If Phoenix is
21 unable to obtain a better address for a Class Member, it will be under no obligation to make
22 further attempts to locate or notice the Class Member. (Agreement, § 7.4.3.) Within fourteen days
23 after receipt of the Class Data, Phoenix will mail the Notice to all Class Members via First-Class
24 mail. (Agreement, § 7.4.2.)

25 The contents of the Notice are consistent with the terms of the Agreement and California
26 Rule of Court 3.769. The Notice informs Class Members how and when to request exclusion from
27 or object to the settlement, and the estimated payment they will automatically receive if they do
28 nothing. (Trenner Decl., ¶ 33; Exh. 3.)

1 **E. Responses to the Settlement and Deadlines**

2 Class Members can request for exclusion from the settlement by mailing or faxing a
3 written request, including his or her name, address, phone number or email address, last four
4 digits of their Social Security Number or Employment Authorization number, and a statement
5 demonstrating his or her intent to opt out of the settlement. (Agreement, § 7.5.1.)

6 Class Members can object to the settlement in writing by submitting a document with
7 their name, the words “Notice of Objection” or “Formal Objection” and a description of the
8 arguments supporting their objection, or they may be heard at the Final Approval Hearing.
9 (Agreement, § 7.7.)

10 The Notice also informs the Class Members/Aggrieved Employees that they can dispute
11 the number of workweeks/pay periods used to calculate their settlement payments by contacting
12 Phoenix before the Response Deadline and providing documentation to support their dispute.
13 Phoenix will investigate the dispute, request additional information from Defendant, and make a
14 final decision as to the number of eligible work weeks/pay periods. (Agreement, § 7.6.)

15 Class Members will have forty-five (45) days from the initial mailing of the Notice to
16 respond to the settlement and submit an exclusion request, workweek challenge, or objection. The
17 45 day response deadline will be extended for class members whose notice is re-mailed.
18 (Agreement, § 1.44.)

19 **F. Funding and Distribution of the Settlement**

20 Defendant will fund the settlement within fifteen business days after the Effective Date,
21 and Phoenix will disburse all payments required under this Settlement within fourteen calendar
22 days of receipt of the GSA. (Agreement, § 4.3-4.)

23 **G. Release of Claims**

24 Upon final approval, Participating Class Members shall forever release the Released
25 Parties⁷ for the Released Claims for the Class Period, including all claims pleaded in the

26 _____
27 ⁷ “Released Parties” means Defendants and each of their former and present directors, officers, principals,
28 trustees, shareholders, owners, managers, attorneys, consultants, insurers, predecessors, successors,
assigns, parents, subsidiaries, and affiliates, including without limitation, Paul J. Dougherty and Renata
Watts, also known as Renata Stone. (Agreement, § 1.42.)

1 Operative Complaint, and which could reasonably have been alleged, based on the Class Period
2 facts, allegations, and/or claims stated in the Operative Complaint, for work performed during the
3 Class Period, and as specifically detailed in Section 5.2 of the Agreement. Additionally, the
4 Aggrieved Employees will the Released Parties from all claims for PAGA penalties that were
5 alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the
6 Operative Complaint, and PAGA Notice, and as more specifically detailed in Section 5.3 of the
7 Agreement.

8 **H. The Class Representative Service Award Is Justified Given the Risks and**
9 **Should be Preliminarily Approved**

10 The Agreement provides for a service payment not to exceed \$5,000.00 to Plaintiff.
11 (Agreement, § 3.2.1.) Courts routinely approve service payments, or incentive awards, to
12 compensate named plaintiffs for the services they provide and the risks they incur during class
13 litigation. *In re Cellphone Fee Termination Cases* (2010) 186 Cal. App. 4th 1380, 1393 (“These
14 awards are discretionary...and are intended to compensate class representatives for work done on
15 behalf of the class, to make up for financial or reputational risk undertaken in bringing the action,
16 and, sometimes, to recognize their willingness to act as a private attorney general.”); *Bell v.*
17 *Farmers Ins. Exch.* (2004) 115 Cal. App. 4th 715, 725-26 (upholding service payments to class
18 representatives); Manual § 21.62 n. 971 (noting that service payments are warranted).

19 The requested service awards are reasonable in light of the benefits Plaintiff conferred
20 upon the entire Class, resulting in a benefit to all Class Members and the State of California, the
21 time spent assisting counsel with the investigation and prosecution of these claims, commitment
22 to responding to discovery, and consenting to the proposed Agreement. Furthermore, by attaching
23 her name to this lawsuit, Plaintiff also took on the reputational risk that future employers would
24 learn of their participation in this case and would unfairly associate them with costly litigation,
25 costing them future employment opportunities. Any future employer could easily perform a
26 simple Google search – an unauthorized simple background check unknown to Plaintiffs that can
27 still provide a plethora of information – and conclude that Plaintiffs are not worth the risk of
28 hiring given their involvement in a lawsuit against a former employer. This is the kind of

1 reputational risk, borne by Plaintiff alone, that the incentive award is meant to compensate.
2 Furthermore, in pursuing this action on behalf of the Class, Plaintiff risked a judgment against
3 them for attorney's fees and costs in the event this matter should Defendants prevail. For these
4 reasons, at final approval, Plaintiff will request the Court award an enhancement payment in an
5 amount that does not exceed \$7,500. (Trenner Decl., ¶ 32; Declaration of Renee Maoz, ¶¶ 2-10.)

6 **IV. ARGUMENT**

7 In deciding whether to approve a proposed class action settlement under Code of Civil
8 Procedure section 382, the Court must find that a proposed settlement is "fair, adequate and
9 reasonable." *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801 [quoting *Officers for*
10 *Justice v. Civil Serv. Comm'n* (9th Cir. 1982) 688 F.2d 615, 625, cert. den. (1983) 459 U.S.
11 1217]. A proposed class action settlement is **presumed** fair under the following circumstances:
12 (1) the parties reached settlement after arms-length negotiations; (2) investigation and discovery
13 were sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in
14 similar litigation; and (4) the percentage of objectors is small. *Id.* at 1802. As the following
15 shows, all of these elements are present here and the Court should grant of preliminary approval.

16 **A. The Settlement was Reached as a Result of Arm's Length Negotiations**

17 The proposed settlement was reached as a result of arm's-length negotiations facilitated
18 by respected mediator, Steve Mehta, Esq. Though cordial and professional, the settlement
19 negotiations have been, at all times, adversarial and non-collusive. Following mediation, counsel
20 for the Parties conducted further extensive and arm's length negotiations on the settlement terms
21 memorialized in the Agreement. (Trenner Decl., ¶ 33.)

22 While Plaintiff believes in the merits of the case, she also recognizes the inherent risks of
23 litigation and understand the benefit of Class Members receiving significant settlement funds
24 immediately as opposed to risking continued litigation in achieving class certification, the merits
25 of the case before and after trial, the damages awarded and/or an appeal that can take several
26 more years to litigate. (Trenner Decl., ¶ 34.)

27 **B. The Settlement is the Result of Thorough Investigation and Discovery**

28 The Parties thoroughly investigated and evaluated the strengths and weaknesses of their

1 factual and legal arguments before reaching the proposed settlement, and engaged in sufficient
2 investigation, research and discovery to support the settlement. The proposed settlement was only
3 possible following significant analysis and evaluation of Defendants' relevant policies and
4 procedures, as well as the data it produced for the putative Class. (Trenner Decl., ¶¶ 17, 35-36.)
5 This litigation has reached the stage where "the Parties certainly have a clear view of the
6 strengths and weaknesses of their cases" sufficient to support the Settlement. *Boyd v. Bechtel*
7 *Corp.* (N.D. Cal. 1979) 485 F. Supp. 610, 617.

8 **C. Counsel for the Parties are Experienced in Similar Litigation**

9 Counsel for the Parties are particularly experienced in wage and hour employment law,
10 class actions and PAGA actions. Plaintiff's Counsel has prosecuted numerous cases on behalf of
11 employees for wage and hour violations and thus are experienced and qualified to evaluate the
12 class and PAGA claims, evaluate settlement versus trial on a fully informed basis, and to evaluate
13 the viability of the defenses. This experience informed Plaintiff's Counsel on the risks and
14 uncertainties of further litigation and guided their determination to endorse the proposed
15 settlement.⁸ (Trenner Decl. ¶¶ 6-12.)

16 **D. The Proposed Settlement is a Reasonable Compromise of Claims**

17 An understanding of the amount in controversy is an important factor into whether the
18 settlement "of the class members' claims is reasonable in light of the strengths and weaknesses of
19 the claims and the risks of the particular litigation." *Kullar v. Foot Locker Retail, Inc.* (2008) 168
20 Cal.App.4th 116, 129; *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186
21 Cal.App.4th 399, 409. The most important factor in this regard is "the strength of the case for
22 plaintiffs on the merits, balanced against the amount offered in settlement." *Kullar*, 168
23 Cal.App.4th at 129.

24 In weighing the strength of Plaintiff's case, *Kullar* instructs that the court is not to "decide
25 the merits of the case or to substitute its evaluation of the most appropriate settlement for that of
26 the attorneys." 168 Cal.App.4th at 133. Further, this analysis does not require an explicit

27 ⁸ The final factor mentioned in *Dunk* - the number of objectors - is not determinable until the Notice of Class Action
28 Settlement has been provided to the Class and they have had an opportunity to respond. This information will be
provided to the Court in conjunction with the Motion for Final Approval of Class Action Settlement.

1 statement of the maximum amount the plaintiff class could recover if it prevailed on all its claims,
2 provided there is a record which allows “an understanding of the amount that is in controversy
3 and the realistic range of outcomes of the litigation.” *Munoz*, 186 Cal. App. 4th at 409. Put
4 differently, “as the court does when it approves a settlement as in good faith under Code of Civil
5 Procedure section 877.6, the court must at least satisfy itself that the class settlement is within the
6 ‘ballpark’ of reasonableness.” *Kullar*, 168 Cal. App. 4th at 133 citing *Tech-Bilt v. Woodward-*
7 *Clyde & Associates* (1985) 38 Cal. 3d 488, 499-500. As shown below, the Parties’ investigation
8 and discovery revealed several reasons to discount claims and agree to this settlement.

9 **E. The Settlement is Fair and Reasonable Based on the Strengths of Plaintiff’s**
10 **Case and the Risks and Costs of Further Litigation**

11 The proposed settlement was only possible following significant analysis and evaluation
12 of Defendants’ relevant policies and procedures, as well as the data that Defendants produced for
13 the Class. This permitted Plaintiff’s Counsel to engage in a comprehensive analysis of liability
14 and potential damages. The discovery conducted resulted in Plaintiff’s central theories of liability,
15 which are based on Plaintiff’s claims that Defendants failed to provide compliant meal and rest
16 periods, failed to pay all minimum and overtime wages, failed to provide accurate, itemized wage
17 statements and failed to pay all wages due on separation of employment As explained above,
18 Defendants maintain that the discovery produced demonstrates it likely would prevail on both
19 class certification and the merits. (Trenner Decl., ¶¶ 17, 35-36.)

20 Plaintiff believes this case is suitable for certification and contend there are company-wide
21 policies that violate California law and uniformly affect the Class Members. Defendants’
22 counterarguments, however, raise uncertainties with respect to both class certification and success
23 on the merits. As the California Supreme Court emphasized in *Sav-On v. Superior Court* (2004)
24 34 Cal.4th 319, class certification is always a matter of the trial court’s sound discretion, and
25 decisions following *Sav-On* have reached different conclusions with respect to certification of
26 wage and hour claims.⁹ While remaining confident in the strengths of their claims, these factors

27 ⁹ *E.g., Harris v. Superior Court*, 154 Cal.App.4th 164 (2007) (reversing decertification of class claiming
28 misclassification and ordering summary adjudication in favor of employees), *review granted*, 171 P.3d 545 (2007)
(not cited as precedent, but rather for illustrative purposes only); *Walsh v. IKON Solutions, Inc.*, 148 Cal.App.4th

1 led Plaintiff to discount the maximum potential damage claims. (Trenner Decl., ¶ 37.)

2 **1. The Settlement Amount is Reasonable**

3 Defendants provided Plaintiff with class-wide data from which Plaintiffs' Counsel
4 extrapolated a damage analysis in preparation of mediation. For purposes of the mediation, there
5 were a total of 274 Class Members who worked approximately 18,914 work weeks in the
6 limitations period, and 166 aggrieved employees and 5,881 pay periods within the PAGA Period.
7 (Trenner Decl., ¶ 38.)

8 First, Plaintiff contends Defendants failed to pay all wages due by requiring Plaintiff and
9 the Class Members to work off the clock before clocking in for their shifts and after clocking out
10 from their shifts each day. Specifically, Plaintiff alleges employees must boot up their computers
11 and log into Defendants' timekeeping system before clocking in for their shifts, and were
12 frequently required to complete training and certification assignments during off-the-clock hours
13 Per Plaintiff, these tasks could add up to about an hour of unpaid time per week. Plaintiff further
14 contends Defendants failed to pay for certain overtime hours at the correct premium rate for part
15 of the class period, and instead paid for such time and the employee's straight time rate. In
16 response, Defendants contend they accurately tracked employee time and paid class members all
17 wages due as required under applicable law. Defendants further emphasized off the clock work
18 was strictly against company policy, that they were unaware of any such off the clock work.
19 White v. Starbucks Corp. (N.D. Cal. 2007) 497 F.Supp.2d 1080, 1083 (employer must have
20 actual or constructive knowledge of the off the clock work). Without taking into consideration
21 any of Defendants' defenses to certification or on the merits, Plaintiff's expert calculated
22 Defendants' maximum exposure for this claim **\$250,600** in damages for unpaid wages based on a
23 total of about 18,914 uncompensated hours worked (i.e., one hour per work week) due to alleged
24 "off the clock" work, and with a further **\$91,600** in damages based on 736 hours of overtime paid
25 at the incorrect rate. (Trenner Decl., ¶ 39.)

26 Plaintiff next contends Defendants failed to provide legally compliant meal and rest

27 1440 (2007) (affirming decertification of class claiming misclassification); *Aguilar v. Cintas Corp. No. 2*, 144
28 Cal.App.4th 121 (2006) (reversing denial of certification); *Dunbar v. Albertson's Inc.*, 141 Cal.App.4th 1422 (2006)
(affirming denial of certification).

1 breaks. Specifically, Plaintiff alleges that prior to around October 2022 Defendants did not
2 relinquish control over how Plaintiff and the Class Members utilize their meal and rest period
3 time, as the applicable written policy prohibited “sleeping, loitering, wasting time or interfering
4 with the work of others during regular work hours.” As a result of these policies, Plaintiff and the
5 Class Members were never relieved of all employer control during meal periods. (Trenner Decl.,
6 ¶ 40.)

7 Defendants deny Plaintiff’s contentions, claiming they made meal and rest breaks
8 available to Class Members in compliance with California law. Vision contends its meal and rest
9 break policies are lawful and it provided employees with completely duty-free meal and rest
10 breaks. Finally, Defendants argued that Plaintiffs’ meal and rest break claims are not susceptible
11 to common proof, as the claims would require individualized inquiries, including whether there
12 was an unlawful companywide policy, whether employees individual breaks were free from all
13 employer control. Accordingly, Vision contends these claims are vulnerable to a ruling that class
14 treatment is not appropriate. Without taking into consideration any of Defendants’ defenses to
15 certification or on the merits and assuming a 100% violation rate, Plaintiff estimates Vision faces
16 around **\$1,658,000** in damages for meal period violations and around **\$1,806,000** in damages on
17 the rest period violation claim. (Trenner Decl., ¶ 41.)

18 In the expense reimbursement claim, Plaintiff claims she and other class members regularly
19 were required to use personal phones to communicate with supervisors while on duty and to check
20 text guest food orders to the kitchen and to receive work-related calls/messages from supervisors to,
21 for example, obtain authorization to work overtime. Class members also had to download an app to
22 their phones to use for clocking in/out for breaks. Plaintiff claims Defendants paid no reimbursement
23 for this, in violation of California law. *Cochran v. Schwan’s Home Service, Inc.* (2014) 228 Cal. App.
24 4th 1137, 1144. Assuming a reimbursement rate of \$5/week for a reasonable proportion of class
25 member cellular plans, Plaintiff estimates Defendants face over **\$94,570** in unpaid reimbursement
26 under Labor Code section 2802. In response, Defendants argued they provided employees with
27 access to all telephones and other electronics need to perform their job duties, that there would no
28 need to use a personal phone to communicate with other employees, and accessing pay records

1 electronically was provided as a convenience and was not strictly necessary. Thus, per Vison, if
2 employees used their personal phones it was purely for their own convenience rather than
3 business necessity and therefore would not be reimbursable. (Trenner Decl., ¶ 42.)

4 As a result of the above alleged violations, Plaintiff alleges Defendants failed to provide
5 accurate wage statements and failed to timely pay all wages that were due and owing upon
6 separation of employment. In response to these derivative claims, Defendants emphasized that,
7 should the primary claims fail, Plaintiff's claim for wage statement violations and waiting time
8 penalties would also fail. Defendants further argued they would not be liable for waiting time
9 penalties because a "good faith dispute" exists over the payment of past wages. *Amaral v. Cintas*
10 *Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1201. Further, Defendants contend Plaintiff would
11 have to prove Defendants "willfully" failed to pay Class Members appropriate wages due upon
12 separation of employment. Without taking into consideration any of Defendants' defenses to
13 certification or on the merits, Plaintiff calculated Defendants' maximum exposure for wage
14 statement violation at about **\$491,650**, and the exposure for waiting time penalties at about
15 **\$847,200** for approximately 166 terminated class members. (Trenner Decl., ¶ 43.)

16 As far as potential PAGA liability, the theoretical civil penalties likely are around \$1.9
17 million should Plaintiff prevails on all claims, establish violations of the multiple Labor Code
18 sections at issue, and secure the maximum available penalty. (Trenner Decl., ¶ 44.) As with the
19 class claims, Plaintiff discounted the potential PAGA penalties based on Defendants' various
20 defenses on the merits and also accounted for the Court's wide discretion to reduce such
21 penalties, or to decline to award penalties at all. Labor Code § 2699(e)(2); *Carrington v.*
22 *Starbucks Corp.* (2018) 30 Cal.App.5th 504 (trial court awarded penalties of \$5 per pay period
23 after a bench trial, which decision was upheld on appeal); *In re Taco Bell Wage and Hour Actions*
24 (E.D. Cal. Apr. 8, 2016) 2016 U.S. Dist. LEXIS 48557 (PAGA penalties denied after trial).
25 Accordingly, the Parties allocated \$50,000 to PAGA penalties. (Agreement, § 3.2.5.)

26 Plaintiff submits this amount is reasonable under the circumstances and in line with
27 comparable settlements in other wage and hour class actions in California. *E.g., Van Kempen v.*
28 *Matheson Tri-Gas, Inc.* (N.D. Cal. Aug. 25, 2017) 2017 U.S. Dist. LEXIS 137182 (granting final

1 approval of \$5,000 PAGA penalty from \$370,000 settlement, or 1.4 percent of total settlement);
2 *Slavkov v. First Water Heater Partners I* (N.D. Cal. July 25, 2017) 2017 U.S. Dist. LEXIS
3 116303 (finding a \$7,500 PAGA payment reasonable when measured against the overall
4 settlement of \$345,000 and the possible weaknesses in plaintiffs' case, or 2.2 percent of total
5 settlement). Additionally, the LWDA has been informed of the terms of the PAGA portion of the
6 settlement, and will be able to weigh in as necessary. *Jennings v. Open Door Mktg. Inc.* (N.D.
7 Cal. Oct. 3, 2018) 2018 U.S. Dist. LEXIS 171356, at *27 (approving settlement with PAGA
8 penalties of 0.6% where "[p]laintiffs [have] submitted the settlement agreement to the LWDA,
9 and the LWDA has not objected to the settlement.

10 Thus, Plaintiff and her counsel discounted the value of the class claims consistent with the
11 risks discussed above, and carefully weighed the likelihood of the class receiving substantially
12 greater benefit if the litigation continued. Plaintiff and counsel concluded – in light of these very
13 real and substantial risks – settlement on the proposed terms and without prolonged and costly
14 litigation was in the best interests of the class. The overall \$341,000 recovery represents a
15 significant percentage of Defendants' potential exposure. Given Defendants' multi-layered
16 defenses and all other potential risks of continued litigation, a total recovery for the class of
17 \$341,000, which will result in average award of around \$679 per class member, plus additional
18 sums under PAGA, is a significant result well within the range of reasonableness considering all
19 potential outcomes, and it will provide direct monetary awards to all Class Members without
20 further delay. [Trenner Decl., ¶¶ 45-46.]

21 Importantly, the mere fact that a settlement does not provide the same recovery as might
22 be achieved at trial is not a proper indicator of whether the settlement is fair, reasonable, and
23 adequate. *Wershba*, 91 Cal.App.4th at 246, 250 ("Compromise is inherent and necessary in the
24 settlement process...even if the relief afforded by the proposed settlement is substantially
25 narrower than it would be if the suits were to be successfully litigated, this is no bar to a class
26 settlement because the public interest may indeed be served by a voluntary settlement in which
27 each side gives ground in the interest of avoiding litigation"); *7-Eleven Owners for Fair*
28 *Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1150 ("The fact that a proposed

1 settlement may amount to only a fraction of the potential recovery does not, in and of itself, mean
2 that the proposed settlement is grossly inadequate and should be disapproved”); *White v.*
3 *Experian Information Solutions, Inc.* (C.D. Cal. 2011) 803 F.Supp.2d 1086, 1098 (rejecting
4 contention settlement was not fair and reasonable even though it represented 99% discount off the
5 maximum value of the claims); *Lane v. Facebook, Inc.* (9th Cir. 2012) 696 F.3d 811, 819 (“[T]he
6 question whether a settlement is fundamentally fair . . . is different from the question whether the
7 settlement is perfect in the estimation of the reviewing court”). Importantly as well, the proposed
8 settlement is non-reversionary and will provide immediate benefits to the Class Members without
9 a claims process. *White*, 803 F.Supp.2d at 1098; *c.f.*, Federal Judicial Center, Managing Class
10 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)
11 www.fjc.gov/sites/default/files/2012/ClassGd3.pdf. (reversionary provisions and/or cumbersome
12 claims process may indicate lack of fairness). Plaintiff and counsel submit the settlement is within
13 the “range of reasonableness,” and is fair and adequate for the Class.

14 **V. PROVISIONAL CLASS CERTIFICATION SHOULD BE GRANTED**

15 A class action is appropriate when the class is ascertainable and there is “a well-defined
16 community of interest in the questions of law and fact involved affecting the parties to be
17 represented.” Code Civ. Proc. § 382. Class certification requirements under Section 382 follow
18 Rule 23 of the Federal Rules of Civil Procedure, and require: numerosity, typicality of the class
19 representatives’ claims, adequacy of representation, predominance of common issues, and
20 superiority. Fed.R.Civ.Pro. 23(b)(3); *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011,
21 1019. While a court must certify a class for settlement purposes if a class has not already been
22 certified, “it is well established that trial courts should use different standards to determine the
23 propriety of a settlement class, as opposed to a litigation class certification. Specifically, a lesser
24 standard of scrutiny is used for settlement cases.” *Glob. Minerals & Metals Corp. v. Superior*
25 *Court* (2013) 113 Cal.App.4th 836, 859 *citing Dunk*, Cal.App.4th 1794, 1807, n.19; *Wershba v.*
26 *Apple Computer* (2001) 91 Cal.App.4th 224, 237-38.

27 **A. The Proposed Class is Sufficiently Numerous and Ascertainable**

28 First, the class is both sufficiently numerous, consisting of approximately 274 individuals,

1 and ascertainable by reference to Defendants' personnel and payroll records. (Trenner Decl.,
2 ¶ 47.) "There is no set number required to maintain a class action, and the statutory test is whether
3 a class is so numerous that 'it is impracticable to bring them all before the court.'" *Hebbard v.*
4 *Colgrove* (1972) 28 Cal. App. 3d 1017, 1030 (noting that there is no set minimum to meet the
5 numerosity prerequisite, but that a class of as few as 28 is acceptable); *Bowles v. Superior Court*
6 (1995) 44 Cal. 2d 574 (upholding a class of ten members); *Rose v. City of Hayward* (1981) 126
7 Cal. App. 3d 926, 932 (finding that "Class Members are 'ascertainable' where they may be
8 readily identified without unreasonable expense or time by reference to official records."). Thus,
9 the ascertainability requirement is met.

10 B. **The Typicality and Adequacy Requirements Are Met**

11 The typicality requirement is met if the claims of the named representative are typical of
12 those of the Class, though, "they need not be substantially identical." *Classen v. Weller* (1983)
13 145 Cal.App.3d 27, 46-47. Here, Plaintiff's claims are typical of the Class Members' claims
14 because they arise from the same factual basis and are based on the same legal theories applicable
15 to the Class Members. Plaintiff further contend Defendants' policies applied to all Class Members
16 and each Class Member is challenging the same policies and practices. As such, the typicality
17 requirement is satisfied for purposes of settlement. (Maoz Decl., ¶¶ 2-3; Trenner Decl. ¶ 48.)

18 Adequacy requires that the Plaintiff have no interests adverse to the interests of the
19 proposed Class Members and be committed to vigorously prosecuting the case on behalf of the
20 Class. *McGhee v. Bank of America* (1976) 70 Cal.App.3d 442, 450-51. Plaintiff has been and will
21 continue to be committed to vigorously prosecuting this case, and has no conflicts of interest with
22 the Class. In this regard, the settlement of her individual pregnancy discrimination claim is not an
23 obstacle to her ability to serve as class representative for several reasons. First, her independent
24 claim in no way impacted negotiation of the final class settlement which, as noted, was achieved
25 following an adversarial mediation with a professional neutral that took into account Plaintiff's
26 individual claims – in other words, the settlement amount represents a professional neutral's
27 independent evaluation of the value of the case. Further, Plaintiff is seeking a modest
28 enhancement award in recognition of the fact she is receiving additional monies for her individual

1 non-wage and hour claims. Thus, Plaintiff has in no way “sold out” the class members for her
2 own personal benefit but instead has simply received fair value for her separate claims in addition
3 to securing a positive result for the absent class members. For these reasons, Plaintiff contends
4 she is an adequate class representative. (Maoz Decl., ¶¶ 3-7; Trenner Decl., ¶ 49.)

5 **C. The Commonality Requirement is Met**

6 Next, common questions of law and fact predominate – particularly for purposes of a
7 settlement class – as the Class Members all were subject to the same time rounding policies, the
8 same staffing inadequacies that led to alleged “de facto” meal and rest period violations. Since
9 the focus of the claims against Defendants concerns the legality of common policies applied
10 uniformly to the entire class, common issues predominate over individualized inquiries
11 concerning liability. For instance, Defendants’ “off the clock” policy for booting up computers is
12 a company-wide policy applied equally and consistently to all class members, and this policy is
13 either compliant with California law or it is not. Similarly, whether Defendants’ obtained the
14 necessary consent for employees to work overtime and maintained the required records under the
15 Long Beach Municipal Code is another issue common to the entire class. [Trenner Decl., ¶ 50.]

16 By now it is well-settled a theory of recovery asserting the existence of a uniform policy
17 violating California law is sufficient to satisfy the requirements for class certification. *Jones v.*
18 *Farmers Ins. Exch.* (2013) 221 Cal.App.4th 986, 996 (“Claims alleging that a uniform policy
19 consistently applied to a group of employees is in violation of the wage and hour laws are of the
20 sort routinely, and properly, found suitable for class treatment”); *Williams v. Superior Court*
21 (2013) 221 Cal.App.4th 1353 (“A company-wide practice can sustain a common question of fact
22 or law that supports commonality for class certification”). Lastly, a class action is superior to
23 other means for the fair and efficient adjudication of this controversy. (Trenner Decl., ¶ 51.)

24 **D. Phoenix Should be Appointed as the Settlement Administrator**

25 The Parties agreed to use Phoenix Settlement Administrators as the Settlement
26 Administrator in this matter. (Agreement, § 7.1.) Phoenix is highly qualified and experienced as a
27 settlement administrator, committed to the security of data, carries insurance for the theft of
28 money or data, and has no relationship with Counsel. (Declaration of Jodey Lawrence, ¶¶ 2-18;

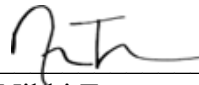
1 Exhs. A, B; Trenner Decl., ¶ 52.)

2 **VI. CONCLUSION**

3 Plaintiff respectfully submits the proposed settlement is in the best interests of the Class
4 Members, as it is fair, adequate, and reasonable. Plaintiff accordingly requests the Court certify
5 the class for settlement purposes, appoint Plaintiff Maoz as the Class Representative, appoint
6 Plaintiff's Counsel as Class Counsel, appoint Phoenix Settlement Administrators as Settlement
7 Administrator, approve the method of notice and the Notice to be sent to the Class, preliminarily
8 approve the Settlement Agreement, enter the proposed order filed herewith, and set a Final
9 Approval hearing date.

10
11 Dated: April 3, 2024

CROSNER LEGAL, P.C.

12
13 

14 _____
Nikki Trenner
Attorneys for Plaintiff RENEE MAOZ