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7 Attorneys for Plaintiff RENEE MAOZ
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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CASE NO. 22STCV33937

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

DECLARATION OF NIKKI TRENNER IN
SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT

[Filed Concurrently with Memorandum of
Points and Authorities; Declarations of
Renee Maoz and Michael Moore;
[Proposed] Order]

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

1 I, NIKKI TRENNER, declare as follows:

2 1. I am an attorney duly licensed to practice in California and before this Court, and I am
3 associated with Crosner Legal, PC, counsel of record for Plaintiff in the above-captioned matter.
4 If called to testify as to the facts within, I would and could competently do so.

5 2. **Settlement Agreement and Notice.** Attached hereto as **Exhibit 1** is a true and correct
6 copy of the Parties' Class Action and PAGA Settlement Agreement and Class Notice. Attached
7 hereto as **Exhibit 2** is a true and correct redline copy of the Agreement showing the modifications
8 made by the Parties the LASC form agreement. Attached hereto as **Exhibit 3** is a true and correct
9 copy of Parties' Class Action Notice of Settlement.

10 3. **LWDA PAGA Notice.** Attached hereto as **Exhibit 4** is a true and correct copy of
11 Plaintiff's October 14, 2022 PAGA letter to the LWDA and proof of submission.

12 4. **Complaint Uploaded to LWDA.** Attached hereto as **Exhibit 5** is a true and correct copy
13 of the proof of submission that operative first amended complaint was uploaded to the LWDA's
14 website.

15 5. **Settlement Agreement Uploaded to LWDA.** Attached hereto as **Exhibit 6** is a true and
16 correct copy of the proof of submission that the Settlement Agreement was uploaded to the
17 LWDA.

18 **CROSNER LEGAL'S EXPERIENCE**

19 6. I graduated from Trinity Law School in 2017 and joined Mara Law Firm, PC
20 (formerly The Turley and Mara Law Firm, APLC) that same year. I later joined Crosner Legal
21 in 2020 and am currently employed as a senior associate in the wage and hour department. I
22 have solely handled wage and hour class actions and PAGA lawsuits for over six years. I
23 routinely write and oppose motions, draft complaints, appear before the Court at law and
24 motion and settlement hearings, engage in the discovery process, including drafting Belaire-
25 West notices and meet and confer letters.

26 7. I have obtained class certification in the following matters: *Hernandez v.*
27 *Aviation Port Services, LLC*, Kern County Superior Court Case No. BCV-18-100141. I have
28 also assisted in obtaining millions of dollars for employees in the following court-approved

1 class action and/or representative PAGA settlements: *Michael Campbell, et al. v. Symons*
2 *Emergency Specialities, Inc.*, San Bernardino County Superior Court Case No. CIVDS1903158;
3 *Amber Collins v. Danbarb, Inc., et al.*, Los Angeles County Superior Court Case No.
4 20STCV44190; *Michael Elridge v. LA Downtown Medical Center, LLC, et al.*, Los Angeles
5 County Superior Court Case No. 20STCV05951; *Anthony Leon, et al. v. Sierra Aluminum*
6 *Company, et al.*, San Bernardino County Superior Court Case No. CIVDS2010856; *Elaine*
7 *Moyal v. Cabinets To Go, LLC*, Los Angeles County Superior Court Case No. 20STCV32477;
8 *Genevieve Rangel v. Bassett Direct NC, LLC*, Orange County Superior Court Case No. 30-
9 2018-01040101-CU-OE-CXC; *Jacob Buys v. Sizewise Rentals, Inc., et al.*, Sacramento County
10 Superior Court Case No. 34-2018-00225848-CU-OE-GDS; *Alejandro Valencia v. VM Tree*
11 *Service, Inc., et al.*, Riverside County Superior Court Case No. RIC1819395; *Joshua Rael v.*
12 *Intercontinental Hotels Group Resources, Inc.*, Los Angeles County Superior Court Case No.
13 19STCV16010; *Angel Cervantez v. Valley Pallet, Inc.*, Sacramento County Superior Court Case
14 No. 34-2018-00234334-CU-OE-GDS; *Tonja Edwards-Bloodsaw v. Sandburst Convalescent*
15 *Group, LTD, et al.*, Los Angeles Superior Court Case No. 19STCV15797; *Moriah Holtegaard,*
16 *et al. v. Howroyd-Wright Employment Agency, Inc. dba AppleOne Corporation Services, et al.*,
17 Central District Court of California, Eastern Division, Case No. 5:20-cv-00509 JGB (KKx);
18 *Jade Findley, et al. v. Avenue5 Residential, LLC, et al.*, Los Angeles County Superior Court
19 Case No. 20STCV34633; *Keivan Keyhanzad v. Ryan Cars, LLC dba Pomona Kia, et al.*,
20 Riverside County Superior Court Case No. RIC1905276; *Luis Bolanos v. FSC Corporation dba*
21 *Il Pastaio Restaurant, et al.*, Los Angeles County Superior Court Case No. BC722758; *Loretta*
22 *Cannon v. Pasadena Hospital Association, LTD dba Huntington Hospital*, Los Angeles County
23 Superior Court Case No. 19STCV14554; *Nathan Kapusta v. Cardinale Motors SLO, Inc., et al.*,
24 Kern County Superior Court Case No. BCV-20-101593; and *Jesse McCauley v. Mullahey Ford,*
25 *Inc., et al.*, San Luis Obispo County Superior Court Case No. 21CV0001.

26 8. Zach Crosner is a 2010 graduate of University San Diego School of Law and he
27 has approximately thirteen years of experience as a practicing attorney. For nearly his entire
28 career, his practice has focused on litigation of wage & hour, consumer, and privacy class

1 action and representative action claims. Following graduation he immediately began working
2 for a nationally recognized plaintiff's complex litigation firm, CaseyGerry, where he worked
3 directly with past presidents of the consumer attorneys and recipients of trial attorneys of the
4 year awards. He also worked for other firms that included former CAALA and CLAY trial
5 attorney of the year recipients. While with these firms, he advocated for the rights of consumers
6 and employees in class action litigation, civil rights and employment litigation, catastrophic
7 injuries, insurance bad faith and appellate litigation.

8 9. In 2013, he founded the law firm of Crosner Legal, P.C. which since its inception
9 has focused almost exclusively on plaintiff-side class actions lawsuits representing employees,
10 consumers and other victims. Currently, over ninety percent (95%) of his practice is dedicated
11 exclusively to the prosecution of class actions and representative action lawsuits, and his law
12 firm is currently responsible as lead counsel or co-lead counsel for prosecuting over one
13 hundred (100) active wage and hour class actions and/or PAGA representative actions, as well
14 as a multitude of consumer and privacy class actions, in both federal and state courts throughout
15 California. He has been a direct participant in over one hundred (100) class action and/or
16 representative action settlements where he has been approved as adequate lead counsel.

17 10. Mr. Crosner has been selected by Super Lawyers as a "Southern California
18 Rising Star" for employment and labor law consecutively from 2018 through 2023. Super
19 Lawyers has also named me on their "Up-and-Coming 100" Southern California Rising Stars
20 List for consecutive years from 2021 through 2023. Only 2.5% of lawyers within California are
21 named a Super Lawyer Rising Star and even less are added to their Top Lists. Additionally, he
22 has been selected as a Top 40 Under 40 Civil Plaintiff Attorney by the National Trial Lawyers,
23 invitation-only organization composed of the premier trial lawyers, from 2019 through 2023.
24 He is an active participant in advocacy groups, including as an executive board member of the
25 Wage and Hour Committee and the Legislative Committee for the California Employment
26 Lawyers Association; a member of the Grassroots Advocacy Team for the National
27 Employment Lawyers Association; Wage and Hour Committee member and Class Action
28 Committee member for the National Trial Lawyers; a member of the American Association for

Justice; and a member of the Pound Civil Justice Institute.

11. Jamie Serb is a partner with Crosner Legal and head of the firms' Wage & Hour practice group. She graduated from the University of California, San Diego in 2004, graduated from California Western School of Law in 2013, and has been a member of the California Bar since 2013. She gained extensive experience in wage and hour litigation, beginning work as a class action attorney in 2015 at the Mara Law Firm, PC (previously Turley & Mara Law Firm, APLC; Turley Law Firm, APLC). She joined Crosner Legal on January 4, 2021 as an associate attorney. She has handled wage and hour class actions and PAGA lawsuits for the past several years and has assisted in obtaining millions of dollars for employees during her years of practice.

12. Crosner Legal, P.C. has obtained several multi-million dollar wage and hour class action settlements while serving as lead class counsel in recent years, including but not limited to a \$1.9 million wage and hour class action settlement in 2015 (*Smith v. Lux Retail North America, Inc.*, Case No. 3:13-cv-01579-WHA (N.D. Cal.)); a \$4.1 million wage and hour class action settlement in 2016 (*Aguirre v. Mariani Nut Company, Inc. et al.*, Case No. 34- 2016-00190252 (Sacramento Cty. Super Ct.)); a \$1.35 million wage and hour class action settlement in 2017 (*Montelone v. Ocean Cities Pizza, Inc.*, Case No. 56-2014-00458249 (Ventura Cty. Super. Ct.)), a \$1.8 million wage and hour class action settlement in 2018 (*Latham v. K.W.P.H. Enterprises, Inc. dba American Ambulance*, Case No. 17C-0162 (Kings Cty. Super Ct.)), a \$1.3 million wage and hour class action settlement in 2019 (*Means, et al. v. AirGas USA, LLC*, Case No. 17-CV-2160 JGB (C.D. Cal.)), a \$1.5 million wage and hour settlement in 2020 (*Babouchian, et al. v. Wyndham Vacation Ownership, et al.*, Case No. CV18-14601 (San Diego Cty. Super. Ct.)), a \$1.15 million wage and hour class action settlement in 2020 (*Buford v. Medical Solutions LLC*, Case No. 4:18-CV-04864-YGR (N.D.Cal.)); a \$7.25 million wage and hour class action settlement in 2020 in *Avina, et al. v. First Alarm Security & Patrol, Inc.*, Case No. 18CV323753 (Santa Clara Cty. Super Ct.); a \$2.2 million wage and hour class action settlement in 2021 (*Ghorchian, et al. v. West Hills Hospital, et al.*, Case No. LS029737 (Los Angeles Cty. Super. Ct.)); a \$2.85 million dollar wage and hour settlement in 2021 (*Valencia v. The Original Mowbray's Tree Service, Inc.*, Case No. CIVDS1825518 (San Bernardino Cty. Super. Ct.)); a \$1

1 million wage and hour class action settlement in 2022 (*Duong v. Loan Factory, Inc.*, Case No.
2 21CV382467 (Santa Clara Cty. Super. Ct.)), a \$1.4 million wage and hour class action settlement
3 in 2023 in *Correa, et al. v. FedEx Supply Chain, Inc.*, Case No. CIVDS2023369 (San Bernardino
4 Cty. Super. Ct.), a \$2.38 million wage and hour class action settlement in 2023 in *Michel, et al. v.*
5 *Valley Thrift Store, Inc.*, Case No. 21STCV00925 (Los Angeles Cty. Super. Ct.); a \$2.5 million
6 wage and hour class action settlement in 2023 in *Jajuga v. Pilot Travel Centers*, Case No.
7 CIVDS1931464 (San Bernardino Cty. Super. Ct.); \$1.015 million wage and hour class action
8 settlement in 2023 in *Gotishan v. Kyo Autism Therapy*, Case No. CGC-21-596378 (San Francisco
9 Cty. Super. Ct); and a \$1.15 million wage and hour PAGA settlement in 2023 in *Vaughn v.*
10 *Public Health Foundation Enters., Inc.*, Case No. 21STCV18512 (Los Angeles Cty. Super. Ct.).

11 **BACKGROUND/LITIGATION HISTORY**

12 13. Defendants operate optometry offices and vision correction surgery centers
13 throughout Los Angeles and Ventura counties. Defendants employ Plaintiff Maoz as a non-
14 exempt patient counselor at Defendants' Westlake Village location. Plaintiff typically works
15 between 7 and 8 hours per day, 3 days per week, and has been employed with Defendants since
16 around April 2022.

17 14. On October 19, 2022, Plaintiff filed a class action complaint against Defendants,
18 alleging claims for (1) recovery of unpaid minimum wages and liquidated damages; (2) failure to
19 provide meal periods or compensation in lieu thereof; (3) failure to provide rest periods or
20 compensation in lieu thereof; (4) failure to furnish accurate, itemized wage statements; (5) failure
21 to reimburse business expenses; and (6) violations of the Unfair Competition Law.

22 15. Plaintiff also submitted the required notice letter to the LWDA under PAGA and
23 timely exhausted administrative remedies with the LWDA. Plaintiff never received notice from
24 the LWDA that it intended to investigate the alleged violations outlined in the PAGA letter.
25 Plaintiff then filed a separate PAGA-only complaint alleging a single cause of action under
26 PAGA based on the same alleged Labor Code violations (LASC Case No. 22STCV39857).

27 16. In December 2023, the Parties participated in global mediation of both cases with
28 Steve Mehta, Esq., a respected wage and hour class action mediator. The mediation lasted a full

1 day and with the mediator's assistance the Parties reached agreement on all major issues and
2 ultimately prepared and executed a Memorandum of Understanding. They then formally reduced
3 the proposed settlement to the Agreement now before the Court for approval. As noted, as part of
4 the Settlement, Plaintiff filed a First Amended Complaint adding Defendant ADV Vision, LLC
5 and additional causes of action against Defendants for (1) failure to provide overtime; (2) failure
6 to pay all wages upon termination of employment; (3) failure to provide and/or properly pay sick
7 leave; and (4) those claims alleged in the PAGA Action. The FAC is the Operative Complaint for
8 purposes of settlement,

9 **INVESTIGATION**

10 17. Prior to the mediation, Defendants provided Plaintiff with extensive informal
11 discovery, including Plaintiff's personnel, time, and payroll records, time and payroll records for
12 a randomly selected sampling of about 20% of the Class Members (Plaintiff's experts advised
13 this sampling would be statistically reliable and enable them to extrapolate across the
14 entire class), wage statement exemplars, Defendants' employee handbooks, including
15 Defendants' policies and procedures regarding the payment of wages, the provision of meal and
16 rest breaks, timekeeping policies (including recording hours), issuance of wage statements, and
17 termination wages, expense reimbursement policies, as well as information regarding the number
18 of putative Class Members who are current and former employees, the number of Aggrieved
19 Employees, the number of workweeks throughout the Class Period, and the number of pay
20 periods throughout the PAGA Period. From this information, Plaintiff analyzed Defendants'
21 liability for the claims asserted and, with the assistance of Plaintiff's experts at Berger Consulting
22 Group, the potential exposure and damages.

23 18. Based on this informal discovery, Plaintiff contends the Class Members were not
24 paid all wages due, not provided with legally compliant meal and rest periods, did not receive
25 compliant wage statements, did not receive required expense reimbursement, and did not receive
26 all wages due on separation of employment. In considering the reasonableness of the proposed
27 settlement, Plaintiff considered each of Defendants' counterarguments, which sharply contested
28 Plaintiff's claims. Plaintiff and her counsel weighed the strength of Defendants' arguments,

1 including the risks of prevailing at class certification and on the merits, and determined the
2 proposed settlement is in the best interests of the Class. Although confident in the strength of their
3 claims, these factors led Plaintiff to discount the exposure analysis, as discussed below.

4 **TERMS OF THE PROPOSED SETTLEMENT**

5 19. The Parties have agreed (subject to the Court's approval) to resolve this matter for
6 the non-reversionary sum of \$341,000.00 ("Gross Settlement Amount" or "GSA") (Agreement, §
7 3.1.), which includes: (a) reasonable attorney's fees of up to \$113,666.67 (33.33% of the GSA) to
8 compensate Class Counsel for work already performed and all work remaining to be performed
9 (Agreement, § 3.2.2.); (b) actual litigation expenses as documented and not to exceed \$15,000.00
10 (Agreement, § 3.2.2.); (c) an Enhancement Award to Plaintiff in an amount not to exceed
11 \$5,000.00 (Agreement, § 3.2.1.); (d) Administration Costs to Phoenix Settlement Administrators
12 (the proposed settlement administrator) in an amount not to exceed \$8,500.00 (Agreement,
13 § 3.2.3.); and (e) PAGA penalties to the LWDA of \$11,250.00 (which is 75% of the \$15,000.00
14 PAGA Payment, with the remaining 25% or \$3,750.00 to Aggrieved Employees) (Agreement,
15 § 3.2.5.). Employer-side payroll taxes (including FICA, FUTA, and SDI) will be paid by
16 Defendants separate and apart from the GSA. (Agreement, § 3.1.)

17 20. After all Court-approved deductions from the GSA, it is estimated that at least
18 \$188,833 ("Net Settlement Amount" or "NSA"), less all applicable employee-side taxes, will be
19 distributed to the estimated 274 Class Members, with an average individual settlement amount of
20 around \$689. Additionally, it is estimated that the 25% PAGA Payment (\$3,750.00) will be
21 distributed to the estimated 166 Aggrieved Employees, resulting in an average payment of \$22.59
22 per Aggrieved Employee. Under no circumstances will any portion of the Settlement revert to
23 Defendants. (Agreement, § 3.1.)

24 21. Phoenix will calculate and issue Individual Class Payments to Participating Class
25 Members by "(a) dividing the Net Settlement Amount by the total number of Workweeks worked
26 by all Participating Class Members during the Class Period and (b) multiplying the result by each
27 Participating Class Member's Workweeks." (Agreement, § 3.2.4.) Phoenix also will calculate and
28 issue payments to Aggrieved Employees based (a) dividing the amount of the Aggrieved

1 Employees' 25% share of PAGA Penalties (\$3,750) by the total number of PAGA Period Pay
2 Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the
3 result by each Aggrieved Employee's PAGA Period Pay Periods." (Agreement, § 3.2.5.1.)

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

8 23. 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 24. Within fifteen business days after entry of the Preliminary Approval Order,
15 Defendants will provide Phoenix with the Class Data, which Phoenix will maintain as private and
16 confidential. (Agreement, § 4.2.)

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

24 26. The contents of the Notice are consistent with the terms of the Agreement and
25 California Rule of Court 3.769. The Notice informs Class Members how and when to request
26 exclusion from or object to the settlement, and the estimated payment they will automatically
27 receive if they do nothing.

28 27. Class Members can also request for exclusion from the settlement by mailing or

1 faxing a written request, including his or her name, address, phone number or email address, last
2 four digits of their Social Security Number or Employment Authorization number, and a
3 statement demonstrating his or her intent to opt out of the settlement. (Agreement, § 7.5.1.)

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

9 29. Class Members will have forty-five (45) days from the initial mailing of the Notice
10 to respond to the settlement by submitting a challenge to the number of weeks or pay periods
11 attributed to them, objecting, or requesting exclusion. Class Members can object to the settlement
12 in writing by submitting a document with their name, the words “Notice of Objection” or “Formal
13 Objection” and a description of the arguments supporting their objection, or they may be heard at
14 the Final Approval Hearing. (Agreement, § 7.7.)

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

18 31. Upon final approval, Participating Class Members shall forever release the
19 Released Parties for the Released Claims for the Class Period, including all claims pleaded in the
20 Operative Complaint, and which could reasonably have been alleged, based on the Class Period
21 facts, allegations, and/or claims stated in the Operative Complaint, for work performed during the
22 Class Period, and as specifically detailed in Section 5.2 of the Agreement. Additionally, the
23 Aggrieved Employees will the Released Parties from all claims for PAGA penalties that were
24 alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the
25 Operative Complaint, and PAGA Notice, and as more specifically detailed in Section 5.3 of the
26 Agreement.

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1 **Plaintiff's Service Award**

2 32. The Agreement provides for a service payment not to exceed \$5,000.00 to
3 Plaintiff. (Agreement, § 3.2.1.) Courts routinely approve service payments, or incentive awards,
4 to compensate named plaintiffs for the services they provide and the risks they incur during class
5 litigation. The requested service award is reasonable in light of the benefits Plaintiff conferred
6 upon the entire Class, resulting in a benefit to all Class Members and the State of California, the
7 time spent assisting counsel with the investigation and prosecution of these claims, commitment
8 to responding to discovery, and consenting to the proposed Agreement. Furthermore, by attaching
9 her name to this lawsuit, Plaintiff also took on the reputational risk that future employers would
10 learn of their participation in this case and would unfairly associate them with costly litigation,
11 costing them future employment opportunities. Any future employer could easily perform a
12 simple Google search – an unauthorized simple background check unknown to Plaintiffs that can
13 still provide a plethora of information – and conclude that Plaintiffs are not worth the risk of
14 hiring given their involvement in a lawsuit against a former employer. This is the kind of
15 reputational risk, borne by Plaintiff alone, that the incentive award is meant to compensate.
16 Furthermore, in pursuing this action on behalf of the Class, Plaintiff risked a judgment against
17 them for attorney's fees and costs in the event this matter should Defendants prevail. For these
18 reasons, at final approval, Plaintiff will request the Court award an enhancement payment in an
19 amount that does not exceed \$7,500.

20 **The Settlement Satisfies the Dunk/Kullar Factors**

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

26 34. While Plaintiff believes in the merits of the case, she also recognizes the inherent
27 risks of litigation and understand the benefit of Class Members receiving significant settlement
28 funds immediately as opposed to risking continued litigation in achieving class certification, the

1 merits of the case before and after trial, the damages awarded and/or an appeal that can take
2 several more years to litigate.

3 35. The Parties thoroughly investigated and evaluated the strengths and weaknesses of
4 their factual and legal arguments before reaching the proposed settlement, and engaged in
5 sufficient investigation, research and discovery to support the settlement. The proposed settlement
6 was only possible following significant analysis and evaluation of Defendants' relevant policies
7 and procedures, as well as the data it produced for the putative Class.

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

17 37. Plaintiff believes this case is suitable for certification and contend there are
18 company-wide policies that violate California law and uniformly affect the Class Members.
19 Defendants' counterarguments, however, raise uncertainties with respect to both class
20 certification and success on the merits. While remaining confident in the strengths of the claims,
21 these factors led Plaintiff to discount the maximum potential damage claims.

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

26 39. First, Plaintiff contends Defendants failed to pay all wages due by requiring
27 Plaintiff and the Class Members to work off the clock before clocking in for their shifts and after
28 clocking out from their shifts each day. Specifically, Plaintiff alleges employees must boot up

1 their computers and log into Defendants' timekeeping system before clocking in for their shifts,
2 and were frequently required to complete training and certification assignments during off-the-
3 clock hours. Per Plaintiff, these tasks could add up to about an hour of unpaid time per week.
4 Plaintiff further contends Defendants failed to pay for certain overtime hours at the correct
5 premium rate for part of the class period, and instead paid for such time at the employee's
6 straight time rate. In response, Defendants contend they accurately tracked employee time and
7 paid class members all wages due as required under applicable law. Defendants further
8 emphasized off the clock work was strictly against company policy, and it was unaware of any
9 such work. Without taking into consideration any of Defendants' defenses to certification or on
10 the merits, Plaintiff's expert calculated Defendants' maximum exposure for this claim **\$250,600**
11 in damages for unpaid wages based on a total of about 18,914 uncompensated hours worked (i.e.,
12 one hour per work week) due to alleged "off the clock" work (18,914 hours * \$13.25/hour
13 weighted avg. minimum wage), and with a further **\$9,500** in damages based on 736 hours of
14 overtime paid at the incorrect rate (736 OT hours * \$12.84/hour underpaid).

15 40. Plaintiff next contends Defendants failed to provide legally compliant meal and
16 rest breaks. Specifically, Plaintiff alleges that prior to around October 2022 Defendants did not
17 relinquish control over how Plaintiff and the Class Members utilize their meal and rest period
18 time, as the applicable written policy prohibited "sleeping, loitering, wasting time or interfering
19 with the work of others during regular work hours." As a result of these policies, Plaintiff and the
20 Class Members were never relieved of all employer control during meal periods.

21 41. Defendants deny Plaintiff's contentions, claiming they made meal and rest breaks
22 available to Class Members in compliance with California law. Vision contends its meal and rest
23 break policies are lawful and it provided employees with completely duty-free meal and rest
24 breaks. Finally, Defendants argued that Plaintiffs' meal and rest break claims are not susceptible
25 to common proof, as the claims would require individualized inquiries, including whether there
26 was an unlawful companywide policy, whether employees individual breaks were free from all
27 employer control. Accordingly, Vision contends these claims are vulnerable to a ruling that class
28 treatment is not appropriate. Without taking into consideration any of Defendants' defenses to

1 certification or on the merits and assuming a 100% violation rate, Plaintiff estimates Vision faces
2 around **\$1,658,000** in damages for meal period violations (64,572 eligible shifts * \$25.68/hour
3 avg. wage) and around **\$1,806,000** in damages on the rest period violation claim (70,347 eligible
4 shifts * \$25.68/hour avg. wage).

5 42. In the expense reimbursement claim, Plaintiff claims she and other class members
6 regularly were required to use personal phones to communicate with supervisors while on duty and to
7 check text guest food orders to the kitchen and to receive work-related calls/messages from
8 supervisors to, for example, obtain authorization to work overtime. Class members also had to
9 download an app to their phones to use for clocking in/out for breaks. Plaintiff claims Defendants paid
10 no reimbursement for this, in violation of California law. *Cochran v. Schwan's Home Service, Inc.*
11 (2014) 228 Cal. App. 4th 1137, 1144. Assuming a reimbursement rate of \$5/week for a reasonable
12 proportion of class member cellular plans, Plaintiff estimates Defendants face over **\$94,570** in
13 unpaid reimbursement under Labor Code section 2802 (18,914 weeks * \$5/week). In response,
14 Defendants argued they provided employees with access to all telephones and other electronics
15 need to perform their job duties, that there would no need to use a personal phone to
16 communicate with other employees, and accessing pay records electronically was provided as a
17 convenience and was not strictly necessary. Thus, per *Vison*, if employees used their personal
18 phones it was purely for their own convenience rather than business necessity and therefore
19 would not be reimbursable.

20 43. As a result of the above alleged violations, Plaintiff alleges Defendants failed to
21 provide accurate wage statements and failed to timely pay all wages that were due and owing
22 upon separation of employment. In response to these derivative claims, Defendants emphasized
23 that, should the primary claims fail, Plaintiff's claim for wage statement violations and waiting
24 time penalties would also fail. Defendants further argued they would not be liable for waiting
25 time penalties because a "good faith dispute" exists over the payment of past wages. *Amaral v.*
26 *Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1201. Further, Defendants contend Plaintiff
27 would have to prove Defendants "willfully" failed to pay Class Members appropriate wages due
28 upon separation of employment. Without taking into consideration any of Defendants' defenses to

1 certification or on the merits, Plaintiff calculated Defendants' maximum exposure for wage
2 statement violation at about **\$491,650**, and the exposure for waiting time penalties at about
3 **\$847,200** for approximately 166 terminated class members.

4 44. As far as potential PAGA liability, the theoretical civil penalties likely are around
5 \$1.9 million should Plaintiff prevails on all claims, establish violations of the multiple Labor
6 Code sections at issue, and secure the maximum available penalty. As with the class claims,
7 Plaintiff discounted the potential PAGA penalties based on Defendants' various defenses on the
8 merits and also accounted for the Court's wide discretion to reduce such penalties, or to decline to
9 award penalties at all. Accordingly, the Parties allocated \$50,000 to PAGA penalties.
10 (Agreement, § 3.2.5.) Plaintiff submits this amount is reasonable under the circumstances and in
11 line with comparable settlements in other wage and hour class actions in California.
12 Additionally, the LWDA has been informed of the terms of the PAGA portion of the settlement,
13 and will be able to weigh in as necessary.

14 45. The settlement obviates the significant risk that this Court may find any kind of
15 class or representative resolution unachievable or deny certification of all or some of Plaintiff's
16 claims. Furthermore, even if Plaintiff obtained certification of all or some of the claims,
17 continued litigation would be lengthy and expensive as the parties pursued merits discovery, a
18 probable motion to decertify, as well as trial and possible appeals, and would substantially delay
19 any recovery by the class with no assurance of recovering significantly more than the proposed
20 settlement. While Plaintiff is confident in the merits of these claims, legitimate controversies exist
21 regarding each one of them. Plaintiff also recognizes proving the amount of wages and penalties
22 due each Class Member would be an expensive, time-consuming, and uncertain proposition.

23 46. Thus, Plaintiff and her counsel discounted the value of the class claims consistent
24 with the risks discussed above, and carefully weighed the likelihood of the class receiving
25 substantially greater benefit if the litigation continued. Plaintiff and counsel concluded – in light
26 of these very real and substantial risks – settlement on the proposed terms and without prolonged
27 and costly litigation was in the best interests of the class. The overall \$341,000 recovery
28 represents a significant percentage of Defendants' potential exposure. Given Defendants' multi-

1 layered defenses and all other potential risks of continued litigation, a total recovery for the class
2 of \$341,000, which will result in average award of around \$679 per class member, plus additional
3 sums under PAGA, is a significant result well within the range of reasonableness considering all
4 potential outcomes, and it will provide direct monetary awards to all Class Members without
5 further delay.

6 **PROVISIONAL CLASS CERTIFICATION SHOULD BE GRANTED**

7 47. First, the class is both sufficiently numerous, consisting of approximately 274
8 individuals, and ascertainable by reference to Defendants' personnel and payroll records.

9 48. Plaintiff's claims are typical of the Class Members' claims because they arise from
10 the same factual basis and are based on the same legal theories applicable to the Class Members.
11 Plaintiff further contend Defendants' policies applied to all Class Members and each Class
12 Member is challenging the same policies and practices. As such, the typicality requirement is
13 satisfied for purposes of settlement.

14 49. Plaintiff has been and will continue to be committed to vigorously prosecuting this
15 case, and has no conflicts of interest with the Class. In this regard, the settlement of her individual
16 pregnancy discrimination claim is not an obstacle to her ability to serve as class representative for
17 several reasons. First, her independent claim in no way impacted negotiation of the final class
18 settlement which, as noted, was achieved following an adversarial mediation with a professional
19 neutral that took into account Plaintiff's individual claims – in other words, the settlement amount
20 represents a professional neutral's independent evaluation of the value of the case. Further,
21 Plaintiff is seeking a modest enhancement award in recognition of the fact she is receiving
22 additional monies for her individual non-wage and hour claims. Thus, Plaintiff has in no way
23 “sold out” the class members for her own personal benefit but instead has simply received fair
24 value for her separate claims in addition to securing a positive result for the absent class
25 members. For these reasons, Plaintiff contends she is an adequate class representative.

26 50. Common questions of law and fact predominate – particularly for purposes of a
27 settlement class – as the Class Members all were subject to the same time “off the clock” and
28 overtime policies, the same meal and rest break policies that led to alleged meal and rest period

1 violations, etc. Since the focus of the claims against Defendants concerns the legality of common
2 policies applied uniformly to the entire class, common issues predominate over individualized
3 inquiries concerning liability. For instance, Defendants' "off the clock" policy for booting up
4 computers is a company-wide policy applied equally and consistently to all class members, and
5 this policy is either compliant with California law or it is not. Similarly, whether Defendants'
6 policies made the class members subject to employer control during breaks is another common
7 issue for all class members.

8 51. Resolving this matter as a class action is superior to other available means for the
9 fair and efficient adjudication of this controversy for multiple reasons, including inter alia: (a)
10 individual joinder of all members of the class is impractical, (b) class action treatment will permit
11 a large number of similarly situated persons to resolve their common claims in a single forum
12 simultaneously, efficiently, and without unnecessary duplication of effort and expense; and (c)
13 the damages suffered by many of the individual class members are relatively small and the
14 expenses and burden of individual litigation would make it difficult or impossible for them to
15 seek redress on their own.

16 **Phoenix Should be Appointed as the Settlement Administrator**

17 52. The Parties agreed to use Phoenix Settlement Administrators as the Settlement
18 Administrator in this matter. (Agreement, § 7.1.) Phoenix is highly qualified and experienced as a
19 settlement administrator, committed to the security of data, carries insurance for the theft of
20 money or data, and has no relationship with Counsel.

21 53. After inquiry to all other attorneys at Crosner Legal, I am unaware of any other
22 pending matter that alleges claims against any defendant that would overlap with the claims or
23 class alleged in this matter.

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1 54. For the foregoing reasons, it is respectfully requested that the Court approve the
2 settlement.

3 I declare under penalty of perjury under the laws of the State of California that the
4 foregoing is true and correct. Executed this 3rd day of April 2024, at San Diego, California.

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8 Declarant
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