

1 James Fitzpatrick, Esq. (SBN: 129056)  
 Charles Swanston, Esq. (SBN: 181882)  
 2 **FITZPATRICK & SWANSTON**  
 3 555 South Main Street  
 Salinas, CA 93901  
 4 Telephone: (831) 755-1311  
 Facsimile: (831) 755-1319  
 5

6 Larry W. Lee (SBN 228175)  
 Max W. Gavron (SBN 291697)  
 7 **DIVERSITY LAW GROUP, P.C.**  
 8 515 S. Figueroa Street, Suite 1250  
 Los Angeles, California 90071  
 9 Telephone: (213) 488-6555  
 Facsimile: (213) 488-6554  
 10

11 Attorneys for Plaintiff  
 JAVIER MENDOZA on behalf of himself and all  
 12 other similarly situated employees

13 **UNITED STATES DISTRICT COURT**  
 14 **NORTHERN DISTRICT OF CALIFORNIA**  
 15

16 JAVIER MENDOZA on behalf of himself  
 and all other similarly situated employees,  
 17

18 Plaintiff,

19 v.

20 NATIONAL VISION, INC.; and DOES 1 to  
 21 100, inclusive,

22 Defendants.  
 23

Case No. 19-cv-01485-SVK

~~PROPOSED~~ **ORDER GRANTING  
 PLAINTIFF'S MOTION FOR  
 PRELIMINARY APPROVAL OF CLASS  
 ACTION SETTLEMENT**

Date: May 19, 2020  
 Time: 10:00 A.M.  
 Courtroom: 6, 4<sup>th</sup> Floor  
 Judge: Hon. Susan van Keulen

~~**PROPOSED**~~ **ORDER**

1  
2 Plaintiff Javier Mendoza (“Plaintiff” or “Class Representative”), having made an  
3 application pursuant to Fed. R. Civ. P. Rule 23(e) for entry of an order (a) preliminarily  
4 approving the settlement of the litigation pursuant to the Settlement Agreement and Release of  
5 Claims (the “Agreement”); (b) conditionally certifying the Settlement Class for purposes of  
6 proceedings in connection with the final approval of the Agreement; (c) approving the form of  
7 Notice of Class Action Settlement and directing the manner of delivery thereof; (d) approving  
8 Larry W. Lee and Max W. Gavron of Diversity Law Group, James Fitzpatrick of Fitzpatrick &  
9 Swanston as Class Counsel and Plaintiff as Class Representative.

10 IT IS HEREBY ORDERED THAT:

11 1. All defined terms contained herein shall have the same meaning as set forth in the  
12 Agreement executed by the Parties and filed with this Court.

13 2. The Agreement is hereby PRELIMINARILY APPROVED as appearing on its  
14 face to be fair, reasonable, and adequate and to have been the product of serious, informed, and  
15 extensive arm’s-length negotiations among the Plaintiff and Defendant National Vision, Inc.  
16 (“Defendant” or “NVI”) (Plaintiff and Defendant collectively referred to as the “Parties”). In  
17 making this preliminary finding, the Court considered the nature of the claims, the relative  
18 strength of Plaintiff’s claims, the amounts and kinds of benefits paid in settlement, the allocation  
19 of settlement proceeds among the class members, and the fact that a settlement represents a  
20 compromise of the Parties’ respective positions rather than the result of a finding of liability at  
21 trial. The Court further preliminarily finds that the terms of the Agreement have no obvious  
22 deficiencies and do not improperly grant preferential treatment to any individual class member.

23 3. Pursuant to Federal Rule of Civil Procedure 23(a) and 23(b)(3), the Court  
24 conditionally certifies the Settlement Class defined as the following:

25 All current and former employees who were employed by National  
26 Vision, Inc. within the State of California in a non-exempt, hourly  
27 position at any time from November 13, 2014, through May 31,  
28 2020.

The Court finds preliminarily, and for purposes of proceeding pursuant to Fed. R. Civ. P.

1 Rule 23(e), that the number of class members is sufficiently numerous, the class members are  
2 ascertainable based on the Defendant's records, the Plaintiff's claims are typical of those in the  
3 class, and that there is adequate and fair representation. Accordingly, the Settlement Class is  
4 hereby CONDITIONALLY CERTIFIED pursuant to Fed. R. Civ. P. 23(e).

5 4. Pursuant to Fed. R. Civ. P. 23(g), the Court hereby APPOINTS as Class Counsel  
6 for the Settlement Class Larry W. Lee and Max W. Gavron of Diversity Law Group, and James  
7 Fitzpatrick of Fitzpatrick & Swanston. The Court finds that Class Counsel collectively have  
8 extensive experience and expertise in prosecuting wage and hour class actions.

9 5. Plaintiff is approved as the Class Representative for the Settlement Class  
10 Members.

11 6. The Court finds on a preliminary basis that the proposed settlement described in  
12 the Agreement (including the monetary provisions, the plan of allocation, the release of claims,  
13 the proposed award of attorneys' fees and costs and the Class Representative Enhancement  
14 Payment) falls within the "range of reasonableness" and therefore grants preliminary approval of  
15 the Agreement. Based on a review of the papers submitted by the Parties, the Court finds that  
16 the Agreement is the result of extensive arm's-length negotiations conducted after Class Counsel  
17 had adequately investigated the claims and became familiar with the strengths and weaknesses of  
18 those claims. The assistance of the Court during the settlement process supports the Court's  
19 conclusion that the Agreement is non-collusive.

20 7. The Court hereby APPROVES Phoenix Settlement Administrators as the Claims  
21 Administrator for the purposes of this settlement.

22 8. A hearing (the "Final Approval and Fairness Hearing") is hereby SCHEDULED  
23 to be held before the Court on **September 15, 2020 at 10:00 a.m. in Courtroom 6, Fourth**  
24 **Floor of the San Jose Federal Courthouse**, for the following purposes:

- 25 a. to determine finally whether the Settlement Class satisfies the applicable  
26 prerequisites for class action treatment;
- 27 b. to determine whether the proposed Agreement is fair, reasonable, and  
28 adequate and should be granted final approval by the Court;

- 1 c. to determine whether the Order of Final Approval as provided under the  
2 Agreement should be entered, and to determine whether the Releasees  
3 should be released of and from the Released Claims as provided in the  
4 Agreement;
- 5 d. to determine whether the proposed plan of allocation of the Class  
6 Settlement Amount is fair and reasonable and should be approved by the  
7 Court;
- 8 e. to finally consider Plaintiff's application for the Class Representative  
9 enhancement payment;
- 10 f. to finally determine whether Class Counsel's application for an award of  
11 attorneys' fees and costs is fair, reasonable, and adequate and should be  
12 approved by the Court;
- 13 g. to determine that the Claims Administrator's costs should be paid from the  
14 Class Settlement Amount; and
- 15 h. to rule upon such other matters as the Court may deem appropriate.

16 9. The form of Class Notice is hereby APPROVED. No later than fifteen (15)  
17 calendar days after the Court grants preliminary approval of this Settlement Agreement, NVI  
18 shall provide the Settlement Administrator with the following information regarding the  
19 Settlement Class in an electronic format for each person within the Settlement Class: name,  
20 employment identification number, last-known residence mailing address, last-known telephone  
21 number, social security number, and the dates employed by NVI as a non-exempt employee in  
22 California during the Class Period. The Settlement Administrator will keep this data confidential,  
23 will not provide or otherwise share this data with Class Counsel, and will not use the information  
24 for any purpose other than administration of this Settlement Agreement. NVI shall cooperate  
25 with and provide additional reasonably available information to the Settlement Administrator  
26 necessary for the purpose of giving notice to the Class Members, allocating and distributing the  
27 settlement amounts, and otherwise administering this Settlement Agreement.

28 9. The Court finds that the Notice Packet, along with the related notification

1 materials, constitute the best notice practicable under the circumstances and are in full  
2 compliance with the laws of the State of California, the United States Constitution, and the  
3 requirements of due process. The Court further finds that the notifications fully and accurately  
4 inform the Settlement Class Members of all material elements of the proposed settlement, of the  
5 Settlement Class Members' right to dispute their share of the settlement, of the Settlement Class  
6 Members' right to be excluded from the Settlement Class, and of each Settlement Class  
7 Member's right and opportunity to object to the settlement.

8 10. The Court hereby APPROVES the proposed Response Deadline of forty-five (45)  
9 calendar days from the initial mailing of the Notice Packet.

10 11. The Court hereby APPROVES the proposed procedure for opting out of the  
11 Settlement Class. The Class Notice shall state that Class Members who wish to exclude  
12 themselves from the Settlement Class shall send a communication in writing to the Settlement  
13 Administrator that clearly states the name of the Mendoza action and that the Class Member  
14 wishes to be excluded from the Settlement (such requests for exclusion are also referred to as  
15 "Opt Outs"). The communication shall state the Class Member's name, current address, phone  
16 number, last four digits of his or her social security number, and should be signed by the Class  
17 Member or a lawful representative. The communication must be postmarked no later than the  
18 Response Deadline. In order to validly request exclusion, Opt Outs must be completed in their  
19 entirety in accordance with all instructions set forth herein and in the Class Notice. Any Class  
20 Member who does not affirmatively opt out of the Settlement by submitting a timely and  
21 complete Opt Out shall be bound by all of the Settlement's terms, including those pertaining to  
22 the release of Released Class Settlement Claims and, if an Aggrieved Employee, the release of  
23 Released PAGA Claims, as well as any final judgment that may be entered by the Court, if the  
24 Court grants final approval of the Settlement Agreement. The Settlement Administrator shall  
25 send all Opt Outs to counsel for Defendant and Class Counsel. Notwithstanding the foregoing, if  
26 a Class Member who is also an Aggrieved Employee opts out of the settlement, the Class  
27 Member will still receive their share of the PAGA Settlement Amount, and will still be deemed  
28 to have released all Released PAGA Claims, as defined in Paragraph 20.

1           12. All reasonable costs of settlement and claims administration, including the  
2 mailing of Class Notice, shall be paid for as provided in the Agreement. Member who wishes to  
3 present an objection must submit it in writing to the Settlement Administrator within forty-five  
4 (45) calendar days from the date that the Class Notice is mailed to the Class Member, and submit  
5 it to the Court either by mailing to: Clerk of the Court, United States District Court, Northern  
6 District of California, San Jose Courthouse, 280 South 1st Street, San Jose, California 95113, or  
7 by filing in person at any location of the United States District Court, Northern District of  
8 California that includes a facility for civil filings, within forty-five (45) calendar days from the  
9 date that the Class Notice is mailed to the Class Member. The Objection must contain the full  
10 name, current home (or mailing) address, and last four digits of the Social Security number of the  
11 objector. The Objection must also state the name of the Mendoza action, that the Class Member  
12 wishes to object to the Settlement, and clearly state the grounds for the objection. If an objector  
13 wishes to be heard at the time of the hearing on final approval, their objection must also clearly  
14 state the intention to appear at the final approval hearing. Within three (3) business days of  
15 receipt of an Objection, the Settlement Administrator shall promptly provide a copy of the  
16 Objection to all Parties' counsel. The Settlement Administrator shall also present and submit any  
17 timely Objections that it receives, to the Court, by way of declaration to be filed in advance of  
18 the final approval hearing. The Parties' counsel may file, at least five (5) court days before the  
19 final approval hearing (or some other date as set by the Court), responses to any Objections.

20           13. It is further ordered that pending further order of this Court, all proceedings in this  
21 matter except those contemplated herein and as part of the settlement are stayed.

22           14. All Parties are otherwise ordered to comply with the terms of the Agreement.

23           15. The Agreement resolves all of the class and individual claims, as well as the  
24 representative claim asserted under the Private Attorney Generals Act (the "PAGA"), California  
25 Labor Code § 2698, et seq., contained in the operative Complaint and as set forth in Plaintiff's  
26 PAGA notices submitted to the California Labor and Workforce Development Agency.

27           16. Jurisdiction is hereby retained over this Litigation and the Parties to the  
28 Litigation, and each of the Settlement Class Members for all matters relating to this Litigation,

1 the Agreement, including (without limitation) all matters relating to the administration,  
2 interpretation, effectuation, and/or enforcement of the Agreement and this Order.

3 IT IS SO ORDERED.

4  
5  
6 DATED: April 29, 2020

  
7 HON. SUSAN VAN KEULEN  
8 UNITED STATES MAGISTRATE COURT  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28