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FILED
SUPERIOR COURT of CALIFORNIA
COUNTY of SANTA BARBARA
05/10/2022
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BY Chavez, Terri
Deputy Clerk

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12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **SANTA BARBARA**
14 **FOR COUNTY OF ~~LOS ANGELES~~**

14 ANA MARIA GUERRERO, an individual,
15 on behalf of the State of California, as a
16 private attorney general, and on behalf of all
17 others similarly situated,

17 Plaintiff,

18 v.

19 ADVANCED VISION SCIENCE, INC., a
20 California Corporation, and DOES 1 to 50,
21 inclusive,

22 Defendant.

Case No: Case No. 18CV05341

**~~PROPOSED~~ ORDER GRANTING
FINAL APPROVAL OF CLASS
ACTION SETTLEMENT**

Date: May 6, 2022
Time: 10:00 a.m.
Dept: SB4
Judge: Hon. Donna Geck

1 On May 6, 2022, the Court held a hearing on Plaintiff Ana Maria Guerrero’s (“Plaintiff”)
2 Motion for Final Approval of Class Action Settlement and Attorneys’ Fees and Costs between
3 Plaintiff and Defendant Advanced Vision Science, Inc., and DOES 1 to 50, inclusive (“Defendant”)
4 (collectively, the “Parties”).

5 Due and adequate notice having been given to Class Members, and the Court having
6 considered the Joint Stipulation of Class Action Settlement and Release (the “Settlement
7 Agreement” or “Settlement”), all of the legal authorities and documents submitted in support
8 thereof, all papers filed and proceedings had herein, all oral and written comments received
9 regarding the proposed settlement, and having reviewed the record in this litigation, and good cause
10 appearing, the Court GRANTS final approval of the Settlement and ORDERS AND MAKES THE
11 FOLLOWING FINDINGS AND DETERMINATIONS:

12 1. All terms used in this Order Granting Final Approval of Class Action Settlement
13 (the “Order”) shall have the same meanings given as those terms are used and/or defined in the
14 Parties’ Settlement Agreement.¹

15 2. The Court has personal jurisdiction over the Parties to this litigation and subject
16 matter jurisdiction to approve this Settlement and all exhibits thereto.

17 3. For settlement purposes only, the Court finally certifies the Class, as defined in the
18 Agreement and as follows:

19 *“...all current and former California non-exempt hourly-paid employees who are or were*
20 *employed by Defendant in the State of California, from October 30, 2014, through July 30,*
21 *2021 (the “Class Period”).”*

22 4. The Court deems this definition sufficient for the purpose of California Rule of Court
23 3.765(a) and for the purpose of effectuating the Settlement.

24 5. The Court finds that an ascertainable class of 132 Class Members exists and a well-
25 defined community of interests exists in the questions of law and fact involved because in the
26 context of the Settlement: (i) all related matters, predominate over any individual questions; (ii) the
27 claims of the Plaintiff are typical of claims of the Class Members; and (iii) in negotiating, entering
28

¹ A copy of the Settlement Agreement is in the Court record as Exhibit 1 to the Declaration of Crag J. Ackermann in Support of Plaintiff’s Motion for Preliminary Approval of Class Action Settlement and is made a part of this Order.

1 into and implementing the Settlement, Plaintiff and Class Counsel have fairly and adequately
2 represented and protected the interest of the Class Members.

3 6. The Court is satisfied that CPT Group, Inc., which functioned as the Settlement
4 Administrator, completed the distribution of Class Notice to the Class in a manner that comports
5 with California Rule of Court 3.766. The Class Notice informed **132** Class Members of the
6 Settlement terms, their rights to do nothing and receive their settlement share, their rights to submit
7 a request for exclusion, their rights to comment on or object to the Settlement, and their rights to
8 appear at the Final Approval Hearing, and be heard regarding approval of the Settlement. Adequate
9 periods of time to respond and to act were provided by each of these procedures.

10 7. Not a single Class Member filed or submitted a written objection to the Settlement
11 as part of this notice process.

12 8. Not a single Class Member opted out of the Settlement.

13 9. The Court hereby approves the terms set forth in the Settlement Agreement,
14 including the \$240,000.00 gross settlement amount, and finds that the Settlement Agreement is, in
15 all respects, fair, adequate, and reasonable, consistent and compliant with all applicable
16 requirements of the California Code of Civil Procedure, the California and United States
17 Constitutions, including the Due Process clauses, the California Rules of Court, and any other
18 applicable law, and in the best interests of each of the Parties and Class Members. The Court directs
19 the Parties to effectuate the Settlement Agreement according to its terms, and declares this
20 Settlement Agreement to be binding on all Participating Class Members.

21 10. The Court directs the Parties to effectuate the Settlement Agreement according to its
22 terms and declares the Settlement Agreement to be binding on all Participating Class Members.

23 11. The Court finds that the Settlement Agreement has been reached as a result of
24 informed and non-collusive arm's-length negotiations. The Court further finds that the Parties have
25 conducted extensive investigation and research, and their attorneys were able to reasonably evaluate
26 their respective positions.

27 12. The Court also finds that Settlement now will avoid additional and potentially
28 substantial litigation costs, as well as delay and risks if the Parties were to continue to litigate the

1 case. Additionally, after considering the monetary recovery provided as part of the Settlement in
2 light of the challenges posed by continued litigation, and the Court concludes that Class Counsel
3 secured significant relief for Class Members.

4 13. The Settlement Agreement is not an admission by Defendant, nor is this Order a
5 finding of the validity of any allegations or of any wrongdoing by Defendant. Neither this Order,
6 the Settlement Agreement, nor any document referred to herein, nor any action taken to carry out
7 the Settlement Agreement, may be construed as, or may be used as, an admission of any fault,
8 wrongdoing, omission, concession, or liability whatsoever by or against Defendant.

9 14. The Court confirms Ana Maria Guerrero as Class Representative and finds her to be
10 adequate.

11 15. The Court confirms Craig J. Ackermann and Avi Kreitenberg of Ackermann &
12 Tilajef, P.C. and Jonathan Melmed of Melmed Law Group, P.C. as Class Counsel, and finds each
13 of them to be adequate, experienced, and well-versed in similar class action litigation.

14 16. The terms of the Agreement, including the gross settlement amount of **\$240,000.00**,
15 and the individual Settlement Shares, are fair, adequate, and reasonable to the Class and to each
16 Class Member, and the Court grants final approval of the Settlement set forth in the Agreement,
17 subject to this Order. The Court approves the following allocations, which fall within the ranges
18 stipulated by and through the Settlement Agreement:

- 19 a. The **\$7,500.00** designated for payment to CPT Group, Inc., the Settlement
20 Administrator, is fair and reasonable. The Court grants final approval of, and orders
21 the Parties to make, the payment to the Settlement Administrator in accordance with
22 the Agreement.
- 23 b. The **\$80,000.00** requested by Plaintiff and Class Counsel for the Class Counsel's
24 attorneys' fees is fair and reasonable in light of the benefit obtained for the Class.
25 The Court grants final approval of, awards, and orders the Class Counsel Fees
26 Payment to be made in accordance with the Agreement.
- 27 c. The Court awards **\$4,446.93** in litigation costs, an amount which the Court finds to
28 be reflective of the reasonable costs incurred. The Court grants final approval of,

1 and orders the Class Counsel Litigation Expenses Payment in this amount to be
2 made in accordance with the Agreement, and divided between counsel in proportion
3 with their respective costs expenditures.²

4 d. The **\$8,500.00** requested by Plaintiff for her Class Representative Payment is fair
5 and reasonable. The Court grants final approval of, and orders the Class
6 Representative Payment to be made in accordance with the Agreement.

7 e. The Court grants final approval of the **\$10,000.00** PAGA payment, 75% of which
8 shall be paid to the LWDA and orders the payment to be made in accordance with
9 the Agreement.

10 17. The Court orders the Parties to comply with and carry out all terms and provisions
11 of the Settlement, to the extent that the terms thereunder do not contradict or conflict with this
12 Order, in which case the provisions of this Order shall take precedence and supersede the
13 Settlement.

14 18. Nothing in the Settlement or this Order purports to extinguish or waive Defendant's
15 rights to continue to oppose the merits of the claims in this Action or class treatment of these claims
16 in this case if the Settlement fails to become final or effective, or in any other case without
17 limitation. The Settlement is not an admission by Defendant, nor is this Order or the subsequent
18 Judgment that Plaintiff has asked the Court to enter based on this Order a finding of the validity of
19 any allegations against Defendant in the Court proceeding or any wrongdoing by Defendant.
20 Neither the Settlement nor this Order or the subsequent Court Judgment is a finding that
21 certification of the Class is proper for any purpose or proceeding other than for settlement purposes.

22 19. All Participating Class Members shall be bound by the Settlement and this Order,
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28 ² The Settlement Agreement contemplates litigation cost reimbursement in the amount of up to \$5,000.00 which was already preliminarily approved by this Court and noticed to the Class, however, Plaintiff's counsel is only requesting reimbursement of litigation costs in the amount of \$4,446.93, with the balance added to the Net Settlement Amount to be distributed to the Participating Class Members.

1 including the Released Claims³ in favor of Defendant and the other Released Parties⁴ as set forth
2 in the Agreement, and are permanently barred and enjoined from prosecuting against Defendants
3 and the other Released Parties any and all of Class Members' Released Claims as defined in the
4 Agreement.

5 20. Plaintiff and the 132 participating class members are bound to the release of claims
6 against Defendants and the other Released Parties as set forth in the Settlement Agreement and is
7 permanently barred from prosecuting against Defendants and the other Released Parties any and all
8 of Plaintiffs' Released Claims as defined in the Agreement.

9 21. The Parties shall bear their own respective attorneys' fees and costs except as
10 otherwise provided in the Settlement Agreement.

11 22. The Court approves the one hundred eighty (180) day period for cashing of checks.
12 Any funds associated with stale checks that have not been cashed within ninety days (90) days will
13 be deemed void and the Settlement Administrator will provide any funds remaining in the QSF as
14 a result of uncashed checks to the California State Controller in accordance with California
15 Unclaimed Property Law, including the administration of related tax reimbursements; and for such
16 other tasks as the Parties mutually agree.

17 23. The Settlement Administrator, within five (5) days of the date of this Order, shall
18 give notice to the Settlement Class pursuant to Rule 3.771(b) of the California Rules of Court, by
19 posting a copy of this order and judgment on its website for 60 days.

20 24. Pursuant to California Rule of Court 3.769(h), the Court retains jurisdiction solely
21 for purposes of implementing the terms of the settlement, such as requiring the filing of a final
22 report on distributions made to the Class Members, enforcing the Settlement Agreement, addressing

23
24 ³ "Released Claims" means all claims, rights, demands, liabilities, and causes of action, arising from the same set of
25 operative facts as those set forth in Plaintiff's LWDA letter and/or Plaintiff's Class and Representative Action
26 Complaint, arising during the Class Period, including claims for Defendant's alleged violation of California Labor Code
27 sections 201, 202, 203, 226, 226.7, 510, 512, 1194, 1194.2, 1197, 1199, as well as Sections 3, 7, 11 and 12 of IWC
28 Wage Order No. 1, and section 17200 et seq. of the California Business and Professions Code, based on the foregoing,
as well as any civil penalty claims predicated on the claims alleged in Plaintiff's LWDA letter and/or Complaint under
PAGA, Labor Code 2699 et seq., including all underlying Labor Code violations alleged or that reasonably could have
been alleged based on the facts and legal theories contained in the operative Complaint and the LWDA letter. (See S.A.
¶ 25).

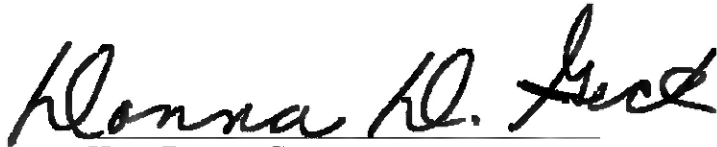
⁴ "Released Parties" means Advanced Vision Science, Inc., its parents, subsidiaries, affiliated entities, past or present
officers, directors, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, insurers and
reinsurers, and their respective successors and predecessors in interest, subsidiaries, affiliates, parents and attorneys, if
any, and any entities that may be considered joint employers. (See S.A. ¶ 26).

1 settlement administration matters, and addressing such post-Judgment matters as may be
2 appropriate under court rules or applicable law.

3 25. Plaintiff or the Settlement Administrator shall file with the Court a report regarding
4 the status of distribution within sixty (60) days after all funds have been distributed.

5
6 **IT IS SO ORDERED.**

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8 DATED: 05/09/2022



HON. DONNA GECK
SANTA BARBARA SUPERIOR COURT

Donna D. Geck