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and all others similarly situated

SUPERIOR COURT OF CALIFORNIA

FOR THE COUNTY OF SANTA CLARA

EVA YANEZ, on behalf of herself and all
others similarly situated,

Plaintiff,

v.

GARDNER FAMILY HEALTH
NETWORK, INC., a California corporation;
and DOES 1 through 10, Inclusive,

Defendants

Case No. 20CV364033

ASSIGNED FOR ALL PURPOSES TO:

The Honorable Peter H. Kirwan
Department 19

CLASS ACTION

**DECLARATION OF JEFF GERACI IN
SUPPORT OF MOTION FOR AN ORDER
GRANTING PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT**

Date: TO BE ASSIGNED

Time: 9:00 a.m.

Dept: 19

Judge: Hon. Peter H. Kirwan

Complaint filed: February 24, 2020

Trial date: Not set

1 I, Jeff Geraci, declare as follows:

2 1. I am a Partner with the law firm of Cohelan Khoury & Singer, co-counsel of
3 record for Plaintiff. I make this Declaration in support of Plaintiff's' Motion for Preliminary
4 Approval of Class Action Settlement and Entering. This Declaration is based on my personal
5 knowledge and if called to testify I could competently testify to the facts in this Declaration.

6 2. I am a 1990 University of San Diego School of Law graduate, admitted to the
7 California State Bar in 1990. I am admitted to all California state and federal courts. I have
8 provided counseling and representation in all areas of employment law, including wrongful
9 termination, discrimination, harassment, and wage and hour law since 1992. I founded Law
10 Office of Jeff Geraci in 1999 and managed that firm through 2009, when I joined Cohelan
11 Khoury & Singer. I have conducted six jury trials of employment law cases to verdict as sole
12 trial counsel, prevailing in four. My practice has focused solely on litigation of class and
13 representative actions, particularly wage and hour class actions, for the past 12 years. I have
14 drafted amicus letters on a range of issues, primarily for the California Employment Lawyers
15 Association (CELA), supporting publication or depublication of Court of Appeal decisions. I
16 have been primarily responsible for dozens of wage and hour class actions, from drafting the
17 complaint, through discovery, dispositive motions, settlement, and settlement approval.

18 3. I have acted as lead appellate counsel in a dozen matters, including the published
19 employment cases, *McAlindin v. County of San Diego* (1999) 192 F.3d 1226 (9th Cir. 1999)
20 [reversing summary judgment in a disability discrimination case]; *Vaquero v. Ashley Furniture*
21 *Indus.*, 824 F.3d 1150 (9th Cir. 2016) [affirming class certification for sales associates].

22 4. Founding Partner Isam C. Khoury, along with Partner Diana M. Khoury have
23 been selected by their peers based on ethics, experience and reputation as Super Lawyers in
24 Civil Litigation by the Southern California Super Lawyers Magazine for the years 2012 through
25 the present. Michael D. Singer, Managing Partner, was named to the Daily Journal 2012, 2013,
26 and 2018 list of Top California Labor and Employment Attorneys and selected to the Southern
27 California Super Lawyers in 2010, 2012-2019. Mr. Singer was admitted as a fellow to the
28 College of Labor and Employment Attorneys in 2020.

1 5. Cohelan Khoury & Singer has been certified by the State Bar of California to
2 provide the Mandatory Continuing Legal Education activity entitled “Litigating California Class
3 Actions” and has conducted MCLE certified seminars on this topic. Senior Partner, Timothy D.
4 Cohelan, is the author of Cohelan on California Class Actions (1997-2022, updated annually),
5 part of Thomson Reuters Expert Series updated annually. Michael D. Singer is a contributing
6 author on the CEB publication California Wage and Hour Law: Compliance and Litigation
7 (2010-2022 updated annually), in which he wrote the opening chapter overview on California
8 Wage and Hour laws, including the public policy underpinnings for those laws, and the Private
9 Attorneys General Act (PAGA) Claim chapter. He is also a contributing author to the CEB
10 Practitioner (2020), including guidelines for oral argument and forms for PAGA litigation. Mr.
11 Singer has served as a columnist for the California State Bar, Litigation Section on wage and
12 hour litigation and has contributed articles on wage and hour and class action issues through the
13 years to numerous California publications.

14 6. Prior to COVID, he typically lectured several times per year for continuing
15 education courses on wage and hour and class action issues at events in San Diego, Orange
16 County, Los Angeles, and San Francisco. For over twelve years, Mr. Singer has served as wage
17 and hour amicus co-chair and liaison for the California Employment Lawyers Association,
18 drafting, reviewing, and coordinating amicus filings on wage and hour issues in the California
19 Supreme Court and Courts of Appeal. He has been engaged in the practice of labor and
20 employment law since 2000, handling well over 300 wage and hour class and PAGA actions
21 and several individual labor cases. He has litigated several types of employment actions,
22 including complex ERISA employee welfare benefit plan cases, as well as wage and hour class
23 actions before Federal and State Courts in California. In 2014, Mr. Singer tried a wage and hour
24 class action involving claims for illegally deducted wages and unreimbursed expenses. *Dilts v*
25 *Penske Logistics LLC, Inc.* Mr. Singer successfully appealed the trial court ruling in *Dilts*
26 finding state laws preempted by the FAAAA for truck drivers.

27 7. As a part of our overall firm philosophy lawyers perform community service and
28 pro bono work. Firm volunteer work includes service through Legal Aid at Work, San Diego

Volunteer Lawyer Program, the San Diego County Bar Foundation and Consumer Attorneys of San Diego. I am a past recipient of the Wiley W. Manuel Award for Pro Bono Service. Mr. Singer has served on the Legal Aid at Work Board of Directors since 2011. Mr. Cohelan served as the Chair of the San Diego Volunteer Lawyers Program from 2015-2018, and currently sits on the Board as past Chair. He completed 24 years of volunteer judicial service as a Judge Pro Tem of the San Diego Superior Court. Since admission to the California Bar, Partner Diana M. Khoury has been a member of the San Diego County Bar Association, Consumer Attorneys of San Diego, Consumer Attorneys of California, and American Association for Justice serving and chairing various committees through the years for these organizations. For six years from 2010 through 2015, Ms. Khoury served on the Board of Directors for Consumer Attorneys of San Diego. Since 2013, Ms. Khoury actively serves on the Board of Directors for the San Diego County Bar Foundation, the 501(c)(3) charitable arm of the San Diego County Bar Association providing access to justice to the underserved and impoverished in the San Diego County region. Our firm's recent pro bono victories include a settlement which prohibits the City of San Diego from targeting homeless people for illegal lodging tickets under Penal Code Section 467(j). (*Spencer v. City of San Diego*, USDC Case No 04CV-2314 BEN (WMC).) The *Spencer* settlement had the effect of increasing the number of available shelter beds in San Diego.

8. Cohelan Khoury & Singer has been certified Class Counsel in the following contested proceedings: *Aguilar v. Atlantic Richfield, et al.*, San Diego County Superior Court Case No. 00700810; *Andino v. Kaiser Foundation Hospitals*, Alameda County Superior Court Case No. RG11580548; *Arellano, et al. v. Container Connection of Southern California, Inc.*, Los Angeles County Superior Court Case No. BC500675; *BANK OF AMERICA WAGE AND HOUR EMPLOYMENT PRACTICES LITIGATION*, United States District Court, District of Kansas MDL Case No. 2138 (FLSA Condition Certification); *Czuchaj v. Conair Corporation*, United States District Court, Southern District of California Case No. 13CV1901; *Dilts, et al. v. Penske Logistics, L.L.C., et al.*, United States District Court, Southern District of California Case No. 08CV0318; *Englert, et al. v. AT&T Wireless Services, Inc., et al.*, Circuit Court of the Second Circuit, State of Hawaii Case No. 02-1-0074; *Evans v. Washington Mutual Bank*,

1 Orange County Superior Court Case No. 02CC15415; *Filion v. Ethan Allen Retail Inc.*, United
2 States District Court, Southern District of California Case No. 05CV2340; *Gerard v. Les*
3 *Schwab Tire Centers of California, Inc.*, Sacramento County Superior Court Case No. 2007-
4 30000003; *Grana, et al. v. PICO Enterprises, Inc. dba Phyle Inventory Control Specialist and*
5 *PICS L.A.S.C.* Case No. BC472891; *Gutierrez v. Save Mart Supermarkets* San Mateo Superior
6 Case No. CIV530955; *Wilcox v Albertsons*, San Diego County Superior Court Case No.
7 GIC833922; *Gonzalez, et al. v. Freedom Communications, Inc. d/b/a The Orange County*
8 *Register*, Orange County Superior Court Case No. 03CC08756; *Graham, et al. v. Overland*
9 *Solutions, Inc.*, United States District Court, Southern District of California Case No.
10 10CV0672 (FLSA Conditional Certification); *Hicks v. Kaufman and Broad Home Corp.*, Los
11 Angeles County Superior Court Case No. B198414; *Hohnbaum, et al. v. Brinker Restaurant*
12 *Corporation, et al.*, San Diego County Superior Court Case No. GIC834348; *KEMP, et al. v.*
13 *CSEA, et al.*, Circuit Court of the First Circuit, State of Hawaii Case No. 98-3815-08; *LIBERTY*
14 *MUTUAL OVERTIME CASES*, Los Angeles County Superior Court Case No. JCCP 4234;
15 *Mitchell, et al. v. Acosta, Inc., dba Acosta Sales and Marketing Company*, United States District
16 Court, Central District of California Case No.11CV07196 (FLSA Conditional Certification);
17 *Santana v. Rady Children's Hospital-San Diego*, San Diego County Superior Court Case No.
18 37-2014-00022411; *Schaffer v. Rady Children's Hospital-San Diego*, San Diego County
19 Superior Court Case No. 337-2015-00022978; *Schneider, et al. v. Catholic Healthcare West*,
20 San Francisco County Superior Court Case No. CGC-10-506243; *Salucci v. Amada Senior*
21 *Care, Inc.*, Orange County Superior Court Case No. 37-2015-00778081; *Smith v. California*
22 *Pizza Kitchen*, San Diego County Superior Court Case No. 37-2008-00083992; *STEROID*
23 *HORMONE PRODUCT CASES*, Los Angeles County Superior Court Case No. JCCP 4363;
24 *Stevenson Aibangbee v. Victoria Apartments, et al.*, Los Angeles County Superior Court Case
25 No. BC299498; *Swift v. Liebert Corp.*, Orange County Superior Court Case No. 00CC04588;
26 *Sylvia, et al. v. Wells Fargo Home Mortgage, Inc.*, Orange County Superior Court Case No.
27 03CC05747; *Vaquero v. Ashley Furniture Industries, Inc., et al.*, United States District Court,
28 Central District of California Case No. 12CV8590; *Vaquero v. Stoneledge Furniture LLC*, Los

1 Angeles County Superior Court Case No. BC522676; *Vazquez v. Kraft Heinz Foods Company*,
2 Unites States District Court, Southern District of California Case No. 16-CV-02749; *Watson v.*
3 *Raytheon Company*, United States District Court, Southern District of California Case No.
4 1OCV0634; and *Weigele v. FedEx Ground Package System, Inc.*, United States District Court,
5 Southern District of California Case No. 06CV1330, among others, as well as being appointed
6 Class Counsel in connection with well over 200 class action settlements.

7 9. As Class and PAGA Representative Counsel, Cohelan Khoury & Singer has
8 actively commenced, prosecuted and concluded numerous state and federal class and
9 representative actions. Since 2016, Cohelan Khoury & Singer has played a central role in the
10 resolution of over 200 such cases, including the following, which have received court approval:

11 (a) *Arellano, et al. v. Container Connection of Southern California, Inc.*, Los Angeles County
12 Superior Court, Case No. BC500675, Hon. Anne I. Jones; (b) *Castro v. Home Depot U.S.A.,*
13 *Inc.*, Los Angeles County Superior Court, Case No. BC577885, Hon. Elihu M. Berle; (c)
14 *Czuchaj v. Conair Corporation*, United States District Court, Southern District of California,
15 Case No. 13-CV-1901 BEN, Hon. Roger T. Benitez; (d) *Gardiner v. TSYs*, United States
16 District Court, Central District of California, Case No. 18-cv-00415, Hon. David O. Carter; (e)
17 *Grana v. PICO Enterprises, Inc.*, Los Angeles County Superior Court, Case No. BC472891,
18 Hon. Stephanie M. Bowick; (f) *Gutierrez v. Save Mart Supermarkets*, San Mateo County
19 Superior Court, Case No. CIV530955, Hon. Marie S. Weiner; (g) *Hernandez v. Workforce*
20 *Enterprises WFE, Inc.*, Los Angeles County Superior Court Case No. BC590913, Hon. Elihu
21 M. Berle; (h) *Hicks v. Poway Academy of Hair Design, Inc.*, San Diego County Superior Court,
22 Case No. 2014-00026517, Hon. Ronald L. Styn; (i) *Hubbard v. Caliber Home Loans, Inc.*,
23 Orange County Superior Court, Case No. 2018-01017838; (j) *Klein v. Loomis Armored US,*
24 *LLC*, San Bernardino County Superior Court, Case No. CIVDS1704547, Hon. David Cohn; (k)
25 *Laureano v. The Art of Shaving*, Los Angeles County Superior Court, Case No. BC550093,
26 Hon. Amy D. Hogue; (l) *Lopez, et al. v. Management & Training Corporation, et al.*, United
27 States District Court, Southern District of California, Case No. 17-CV-010624 JM, Hon. Jeffrey
28 T. Miller; (m) *Magdaleno v. Shelly Automotive, LLC*, Orange County Superior Court Case No.

2013-0043958, Hon. Kim. G. Dunning; (n) *McGrath, et al. v. Wyndham Resort Development Corporation, et al.*, United States District Court, Southern District of California, Case. No. 15-CV-1631 JM, Hon. Jeffrey T. Miller; (o) *Mena v. Wolfgang Puck Catering*, Los Angeles County Superior Court Case No. BC582743, Hon. John Shepard Wiley, Jr.; (p) *Morales v. The Los Angeles Country Club*, Los Angeles County Superior Court, Case No. BC566493, Hon. William F. Highberger; (q) *Nijmeh v. Bon Appetit Management Company, Inc.*, Santa Clara County Superior Court, Case No. 16CV294127, Hon. Thomas E. Kuhnle; (r) *Plascencia v. Aramark Services, Inc.*, Santa Clara County Superior Court, Case No. 2015-1-CV-288310, Hon. Brian C. Walsh; (s) *Plimpton v. Gordon Trucking, Inc.*, San Bernardino County Superior Court, Case No. CIV-DS-1511918, Hon. Donald Alvarez; (t) *Raya v. Amazon*, USDC, Northern District of California, Case No. 15-CV-02005 MMC, Hon. Maxine M. Chesney; (u) *Rivas v. ESA Management*, USDC, Central District of California, Case No. 14-CV-5767, Hon. Dale S. Fischer; (v) *Rodriguez v Healthcare Partner Medical Group, Inc.*, Los Angeles County Superior Court, Case No. BC541313, Hon. Kenneth Freeman; (w) *Ryan v. Dignity Health*, Sacramento County Superior Court Case No. 2013-00147371, Honorable Alan G. Perkins; (x) *Santana v. Rady Children's Hospital-San Diego*, San Diego County Superior Court Case No. 37-2014-00022411, Hon. Joel R. Wohlfeil; (y) *Schaffer v. Rady Children's Hospital-San Diego*, San Diego County Superior Court Case No. 37-2015-00022978; Hon. Joel R. Wohlfeil; (z) *Schneider v. Catholic Healthcare West*, San Francisco County Superior Court, Case No. CGC-10-506243, Hon. Angela Bradstreet; (aa) *Schwartz v Bank of the West*, San Francisco County Superior Court, Case No. CGC-14-538955, Hon. Harold E. Kahn; (bb) *Syed v. M.I. Swaco*, USDC, Eastern District of California, Case No. 12-CV-01718 DAD, Hon. Dale A. Drozd; (cc) *Vaquero, et al. v. Stoneledge Furniture, LLC*, Los Angeles County Superior Court Case No. BC522676, Hon. Elihu M. Berle; (dd) *Vazquez v. Kraft Heinz Foods Company*, USDC, Southern District of California Case No. 16-CV-02749, Hon. William Q. Hayes; (ee) *Walsh v. Cedars-Sinai Medical Center*, Los Angeles County Superior Court Case No. BC487290, Hon. William F. Highberger; *Popal v. Wells Fargo Bank National Association*, San Diego County Superior Court Case No. 37-2020-00038101; Hon. Gregory W. Pollock; among many others.

1 10. Plaintiff seeks preliminary approval of a \$1,125,000 non-reversionary wage and
2 hour class and Private Attorney Generals' Act (PAGA) settlement for an estimated 735 non-
3 exempt employees who worked for Gardner Family Health Network, Inc. ("Defendant" or
4 "Gardner") in the State of California, at any time from February 24, 2016, to March 18, 2022,
5 ("Class Period"). The proposed Settlement is memorialized in the Joint Stipulation of
6 Settlement and Release of Class Action ("Settlement Agreement," "SA"), attached as Exhibit 1.

7 11. Eva Yanez worked as a Medical Assistant in San Jose starting in 2003. She
8 became a Referral Clerk in 2005, and her employment ended in August 2019.

9 12. Gardner Family Health Network, Inc., began in 1967, and after steady growth
10 and a series of mergers and affiliations, now operates facilities in San Jose, Alviso, Atherton,
11 and Gilroy. It provides medical, dental, mental health, optometry, pharmacy and other services.

12 13. The Class is, "All non-exempt employees of Defendant who worked at any time
13 from February 24, 2016, to March 18, 2022, in the State of California." The 735 Class members
14 worked an estimated 96,969 weeks during the Class Period.

15 14. The Class includes an estimated 540 PAGA Aggrieved Employees who worked
16 anytime January 24, 2019 to March 18, 2022 ("PAGA Period").

17 15. The PAGA Aggrieved Employees worked an estimated 26,288 pay periods.

18 16. Plaintiff alleged employees were underpaid by Gardner's policy of paying based
19 on rounded, rather than actual time. Plaintiff also alleged underpayment caused by rounding
20 violated certain municipal minimum wage ordinances. Gardner stopped rounding in September
21 2020, and contended its policy had a neutral impact during the class period.

22 17. Plaintiff argued Gardner did not provide compliant meal or rest periods and did
23 not adopt fully compliant written meal and rest policies until 2020. Gardner contended it had
24 compliant policies, did not discourage breaks, but employees were free to, and did, choose not
25 to take breaks at times, and few violations occurred throughout the class period.

26 18. Plaintiff alleged Gardner failed to include all compensation when calculating the
27 regular rate and underpaid overtime wages as a result. Gardner contended bonuses were modest
28 and infrequent and overtime was rare.

1 19. The action was filed February 24, 2020, alleging failure to provide: all wages;
2 compliant rest and meal periods; accurate wage statements; and timely final wages. PAGA
3 claims for the same violations were filed April 3, 2020.

4 20. Plaintiff served form and special interrogatories, requests for admission and
5 documents, and noticed Gardner's deposition. After extensions, Gardner responded in
6 December 2020, producing over 1,000 pages of documents.

7 21. The Parties agreed to mediate and exchanged information, including nearly
8 100% of the time data for the period of February 20, 2016 to January 31, 2021 and nearly 100%
9 of the class payroll data from February 27, 2016 to January 23, 2022 (those few employees
10 promoted to exempt positions during the class period were not included, though they remain
11 class members while non-exempt); and, number of members (current and former) and aggregate
12 workweeks and pay period for the Class and PAGA Periods. Plaintiff's consultant analyzed the
13 data and created a damage model.

14 22. With significant investigation, research, formal and informal discovery, and
15 analysis of data by Plaintiff and her consultant, the Parties mediated with Hon. Maria-Elena
16 James (Ret.) on March 18, 2022. After a full day of arms'-length negotiations, the Parties
17 reached an agreement in principle and signed a memorandum of understanding (MOU). The
18 Parties continued to negotiate all necessary terms and entered the Settlement Agreement.

19 23. Gardner will pay the maximum Gross Settlement Amount ("GSA") of
20 \$1,125,000, which includes: (a) attorneys' fees of \$375,000 (one-third of the GSA) to
21 compensate Class Counsel for work performed and remaining to be performed to secure final
22 approval, (b) litigation costs not to exceed \$21,500; (c) Class Representative Service Payment
23 of \$5,000 for Ms. Yanez' work performed, risks undertaken for a cost judgment, potential
24 impairment of future employment opportunities, and benefits conferred on absent Class
25 members; (d) PAGA Payment of \$30,000 [\$22,500 to California Labor and Workplace
26 Development Agency (LWDA) (75%); \$7,500 to Aggrieved Employees (25%)] and (e)
27 Settlement Administration costs of \$10,000. Gardner will pay the employer's share of payroll
28 taxes in addition to the GSA.

1 24. Plaintiff consented in writing to apportion fees 50/50 between Class Counsel.

2 25. After Court-approved deductions, the estimated Net Settlement Amount
3 (“NSA”), \$683,500, will be distributed to Participating Class Members. Individual Settlement
4 Shares will be calculated by dividing the number of weeks each Class Member worked during
5 the Class Period by the number of Work Weeks all Class Members worked during the Class
6 Period and multiplying that number by the Net Settlement Amount.

7 26. The parties estimate Participating Settlement Class Members who worked the
8 entire class period will receive a total of \$2,227 (316 weeks x \$7.05 per week), with an average
9 estimated total payment of \$929 (\$683,500 NSA / 735 Class Members). An estimated 540
10 aggrieved employees will divide the 25% PAGA payment based on pay periods worked during
11 the PAGA period, even if they opt-out of the class settlement.

12 27. Settlement payments are allocated 30% to wages, with normal payroll deductions
13 taken and IRS W-2 Forms issued, and, 70% interest and penalties with IRS 1099 Forms issued.

14 28. Checks uncashed 180 days after issuance will be sent to cy pres recipient, Legal
15 Aid at Work, a non-profit provider of legal services. A redistribution of uncashed checks was
16 not chosen in this case for several reasons. Given the population of employees, and the
17 relatively small class size, a large amount of uncashed checks is not anticipated, meaning there
18 will likely not be a large amount to redistribute. A very modest amount of administration fees
19 was negotiated (a flat rate of \$10,000, discounted from an initial estimate of over \$17,000). If
20 additional distributions were required, additional fees would be required, and the amount of
21 additional work may have prevented the Parties from obtaining a discounted amount for the
22 original distribution. Finally, Legal Aid at Work is an especially appropriate cy pres recipient in
23 this employment class action, as it is based in Northern California and provides education and
24 legal services to employees, including through its wage and hour clinics, for the types of issues
25 resolved in this class action.

26 29. CPT Group, Inc. (“Settlement Administrator”) will update addresses using the
27 National Change of Address database, and mail the Notice of Class Action Settlement (“Class
28 Notice”), with Change of Address Form, to all Class Members.

1 30. The Class Notice explains: how to participate in the Settlement without
2 submitting a claim; dispute the basis of an Individual Settlement Payment; object or opt-out; the
3 release to be given, date of Final Approval hearing, and how to obtain further information.

4 31. In exchange for settlement payments, Class Members will release “all causes of
5 action and factual or legal theories that were alleged in the Complaint or reasonably could have
6 been alleged based on the facts alleged in the Complaint, including: (a) failure to pay minimum
7 wages; (b) failure to pay overtime wages; (c) failure to provide meal periods; (d) failure to
8 provide rest breaks; (e) failure to provide accurate itemized wage statements; (f) failure to
9 timely pay wages due upon separation of employment; (g) Violations of the Unfair Competition
10 Law; (h) civil penalties under PAGA.” The Released Claims include all claims for
11 compensatory, consequential, incidental, liquidated, punitive, and exemplary damages;
12 restitution; interest; costs and fees; injunctive or equitable relief; and any other remedies
13 available at law or equity during the Class Period.

14 32. The Parties mediated with a respected and experienced wage and hour class
15 action mediator and reached a settlement in principle. Counsel continued negotiations and
16 entered a detailed Agreement, while aggressively pursuing their positions at all times.

17 33. Plaintiff’s Counsel investigated all claims and defenses, conducted discovery,
18 and after agreeing to mediation, requested, and received, comprehensive data and documents,
19 which allowed liability to be assessed and Class-wide damages to be calculated.

20 34. Plaintiff’s Counsel have significant experience in wage and hour employment
21 class actions and were able to compare settlement with risks of certification, trial, and appeal.

22 35. Gardner’s counsel, Sharon L. Hightower of Erickson Arbuthnot, is a skilled
23 lawyer, with significant experience, who defended vigorously throughout.

24 36. Plaintiff’s Counsel believes the Settlement is fair, reasonable, and in the Class’
25 best interest in light of the monetary recovery, and risks of: certification, summary adjudication,
26 establishing damages, and uncertainty of appeals.

27 37. Plaintiff’s economist analyzed voluminous data, and calculated Class-wide
28 damages through mediation.

1 38. A review of records showed an equal percentage of pay periods with
2 overpayments as underpayments (28% overpayment, 28.2% underpayment), with overpayments
3 exceeding underpayments by over 2,400 hours. There was a maximum of \$282,022 in damages
4 using underpaid shifts only. (9,531 unpaid hours x average regular rate of \$29.59 per hour =
5 \$282,022).

6 39. Gardner contended there could be no liability because its rounding policy was
7 “fair and neutral on its face” and did “not result, over a period of time, in failure to compensate
8 the employees properly for all the time they have actually worked.” Based on data and legal
9 analysis, Plaintiff was forced to concede this was correct and this claim had no value.

10 40. A review of records ultimately showed few bonuses were paid (an average of
11 \$36,649 per year, excluding additional bonuses for work during the pandemic). The records
12 showed only a small amount of overtime hours worked (average shift length was 7.8 hours) and
13 total underpayment, even including pandemic pay, was only \$117,763.

14 41. Gardner contended at least some of the bonuses were discretionary and were not
15 required to be included in the regular rate and argued the small alleged exposure suggested there
16 was no violation. Plaintiff believed there was a 50% probably of prevailing for a reasonable
17 exposure of \$58,882.

18 42. A total of 79,554 unique meal period violations were found in Gardner’s records
19 and were multiplied by the aggregate average regular rate of \$29.59 per hour, to calculate a
20 maximum exposure of \$2,354,003 (79,554 x \$29.59 regular rate).

21 43. Gardner argued there were relatively few violations overall, and analysis of time
22 records by Plaintiff’s consultant did show only 19.3% unique meal period violations in all
23 shifts. (79,554/412,478 = 19.28%). Plaintiff believed maximum damages would be significantly
24 reduced, if awarded at all, based on the relatively low violation rate, which tends to suggest
25 employees may have chosen to take lunch late, or come back early (the number of missed meals
26 was only 4.5%). Damages were also likely to be reduced based on adoption, during the class
27 period, of compliant written meal period policies. Plaintiff’s counsel concluded realistic
28 exposure was no more than 40% of maximum, or \$941,601.

1 44. Assuming a Rest Period violation in 20% of 407,517 shifts over 3.5 hours, yields
2 a maximum exposure of \$2,411,674 (81,503 x \$29.59). Gardner correctly emphasized there was
3 no evidence rest breaks were discouraged.

4 45. Certifying and establishing rest period claims is more difficult for several
5 reasons. No records of rest periods are required and no presumption of violation can be argued.
6 Also, regardless of workload or other impediment, it is easier for employees to take 10-minute,
7 rather than 30-minute breaks. Plaintiff believed maximum damages would be reduced by the
8 introduction, late in the class period, of written rest period policies, and that a court may find
9 employees were not discouraged from taking rest breaks. Plaintiff's counsel concluded realistic
10 exposure was no more than 20% of maximum, or \$482,337.

11 46. Plaintiff contended wage statements were non-compliant because they did not
12 show all hours worked due to rounding, did not contain the legal name of the employer, and did
13 not show all correct hourly rates, because regular rate was not calculated correctly.

14 47. The rounding claim was ultimately determined to have no value; and, arguably,
15 Gardner's legal name was not shown for a small portion of the class period, but was shown as
16 "Gardner Family Health," and "Gardner Family Healt." These theories were abandoned.

17 48. At the time of settlement, the only pay periods which could credibly argued to be
18 non-compliant were those in which an employee received additional compensation, such as a
19 bonus, and worked some overtime, and so was not paid the correct regular rate. This occurred in
20 only 1,619 pay periods, or 6.16% of the 26,288 pay periods in the one year before the complaint
21 was filed. ($26,288 \times .0616\% = 1,619$). Based on Section 226's penalty of \$50 for the initial
22 violation and \$100 for each subsequent violation, maximum exposure was \$161,850 ($1 \times \$50 +$
23 $1,618 \times \$100$). Even this exposure is overstated, as some class members would have reached the
24 statutory maximum penalty per employee of \$4,000.

25 49. Plaintiff discounted this claim to 50% based on the risk they would not prove an
26 underlying violation, and if proven, the violation would not be found to be "knowing and
27 intentional," and penalties would be significantly reduced or not awarded. This resulted in a
28 realistic exposure of approximately \$67,075.

1 50. At the time of settlement, the only former employees eligible for waiting time
2 penalties, were those with claims for unpaid wages. During the statutory period there were an
3 estimated 330 former employees, of those, it was estimated 288 received additional
4 compensation and worked overtime in the same pay period. Absolute maximum exposure was
5 calculated as \$1,994,129 (288 e'ees x 7.8 hr avg. shift x 30 days x \$29.59).

6 51. Even if Plaintiff could prevail on the underlying regular rate overtime claim,
7 several factors made it likely waiting time penalties would be significantly reduced, or fail
8 entirely. The underlying maximum exposure was quite small, at \$117,763. Gardner argued it
9 would not succeed, contending many of the bonuses identified by Plaintiff were discretionary
10 and not required to be included. Perhaps more importantly, was whether the alleged
11 underpayment of overtime could be found willful.

12 52. Considering all factors, waiting time penalties were discounted to 10%, for a
13 reasonable exposure of \$199,413.

14 53. For the 26,288 potential PAGA pay periods starting one year before filing,
15 penalties were calculated at initial violation rates for those pay periods in which one of five
16 violations could have occurred: Sec. 1194 (reg. rate OT) – \$135,100; Sec. 226.7 (meal) –
17 \$1,131,400; Sec. 226.7 (rest) - \$1,31,400; Sec. 226 (wage statements) – \$2,628,800; Sec. 203 –
18 \$20,900 (final pay) (209 former employees). (\$100 per pay period) Total penalties - \$5,389,000.

19 54. Plaintiff believed reasonable exposure was no more than 10% of exposure,
20 \$538,900, based on factors considered in determining reasonable exposure for class claims, the
21 ability of the court to reduce penalties nearly to zero.

22 55. Plaintiff and their Counsel gave serious consideration to all facts and arguments
23 and concluded the Settlement is fair and reasonable. The Maximum Settlement Amount
24 represents 64% of the reasonable value of Class claims. ($\$1,125,000/\$1,763,158 = 0.638$), and
25 16% of maximum exposure ($\$1,125,000/\$7,039,417 = 0.15.98$). The proposed settlement is
26 within the “ballpark” of reasonableness.

27 56. Settlement Payments are characterized as 30% wages and 70% penalties and
28 interest. This is roughly consistent with alleged maximum exposure: $\$12,897,928 = 100\%$

1 \$4,883,452/37.8% (overtime, rest/meal premium wages), \$2,441,726/19% (interest),
2 \$5,572,750/43.2% (wage statement, waiting time, PAGA penalties).

3 57. Plaintiff's attorneys are qualified to conduct the litigation and Plaintiff's interests
4 are not antagonistic to Class interests. Counsel have no conflicts of interest, have vigorously
5 prosecuted this Action on behalf of Plaintiff and the Class, and have significant experience
6 litigating class actions, including those involving similar claims.

7 58. The settlement of Plaintiff's alleged discrimination and retaliation claims for
8 \$25,000 does not implicate her adequacy as a class representative. Plaintiff's individual claim
9 had significant potential settlement value, likely several times the amount she accepted. If
10 litigated, the potential recovery for Ms. Yanez, a 16 year employee, may have been many more
11 times that that

12 59. As is in virtually every class or PAGA action, Gardner was unwilling to settle
13 class claims without a complete release of all Plaintiff's all claims. This included claims for
14 retaliation and wrongful termination which Gardner understood Plaintiff had arguably
15 exhausted administrative remedies for and believed had merit. Rather than jeopardize or delay
16 class settlement, Plaintiff accepted an individual settlement of all claims.

17 60. Plaintiff's counsel is taking no fee on Ms. Yanez' individual settlement and it is
18 being paid by Defendant outside the Class settlement. Plaintiff's conduct in accepting this
19 individual settlement demonstrates her commitment to the interests of the class and supports her
20 adequacy as a Class Representative.

21 61. On the same date this motion and its exhibits are filed with the Court, they will
22 be served upon Defendant and provided to the Labor and Workforce Development Agency
23 ("LWDA") via the LWDA's website, using the appropriate intake form. Attached as Exhibit 2
24 is a true and correct copy of the LWDA confirmation of Receipt.

25 62. Regarding the proposed cy pres recipient, I have no relationship with Legal Aid
26 at Work, and no involvement in, nor any ability to influence, how its funds are used, including
27 any amounts received as cy pres awards. Managing Partner, Michael D. Singer, serves on the
28 Legal Aid at Work Board. Based on my review of Legal Aid at Work's website, it has five

1 Officers, and Mr. Singer is one of an additional sixty-two (62) Directors. He is not involved in,
2 nor does he have any ability to influence, how its funds are used, including amounts received as
3 cy pres awards. Legal Aid at Work has been proposed as a cy pres recipient, and Mr. Singer's
4 Board Membership disclosed, in many cases in which our firm was appointed Class Counsel. It
5 has been approved in each case.

6 I declare under the penalty of perjury under the laws of the State of California the
7 foregoing is true and correct and this declaration is executed November 23, 2022, in San Diego,
8 California.

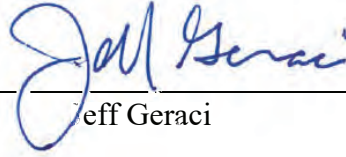
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EXHIBIT 1

JOINT STIPULATION OF SETTLEMENT AND RELEASE OF CLASS ACTION

Subject to final approval by the Court, this Joint Stipulation of Settlement and Release of Class Action (“Settlement Agreement”) is between Plaintiff/Class Representative Eva Yanez (“Plaintiff”), and Defendant Gardner Family Health Network, Inc. (“Defendant”). Plaintiff and Defendant are referred to collectively as the “Parties.”

I. DEFINITIONS

- A. **Administration Costs:** The costs incurred by the Settlement Administrator to administer this Settlement, which are estimated to be no more than \$10,000.
- B. **Agreement, Settlement Agreement, or Joint Stipulation:** This settlement agreement, titled “Joint Stipulation of Settlement and Release of Class Action.”
- C. **Attorney Fee Award:** The amount, not to exceed one-third of the Gross Settlement Amount, \$375,000, finally approved by the Court and awarded to Class Counsel.
- D. **Class:** All non-exempt employees of Defendant who worked at any time from February 24, 2016, to March 18, 2022, in the State of California.
- E. **Class Action:** The putative class action lawsuit filed February 24, 2020, amended April 3, 2020. Santa Clara County Superior Court Case No. 20CV364033.
- F. **Class Counsel:** Michael D. Singer and Jeff Geraci of Cohelan Khoury & Singer, and Sahag Majarian of Law Offices of Sahag Majarian II.
- G. **Class Data:** Class Data means information Defendant will compile from its available, existing, electronic records and provide to the Settlement Administrator. It shall be formatted as a Microsoft Excel spreadsheet and include each Class Member’s: (i) full name; (ii) last-known address; (iii) Social Security and Employee ID number; and (iv) dates of employment.
- H. **Class Member:** Each person eligible to participate in this Settlement who is a member of the Class as defined above.
- I. **Class Notice:** The Notice of Class Action Settlement, substantially similar to the form attached as **Exhibit A**, subject to Court approval.
- J. **Class Period:** The time period from February 24, 2016, to March 18, 2022.
- K. **Class Representative(s) or Plaintiff(s):** Eva Yanez.
- L. **Class Representative Service Payment:** The amount the Court awards to Plaintiff Eva Yanez as a Class Representative, which will not exceed \$5,000.

- M. Complaint:** The class action complaint filed by Plaintiff, February 24, 2020, and the first amended complaint filed on April 3, 2020.
- N. Cost Award:** The amount the Court awards Class Counsel for payment of actual litigation costs subject to proof, which shall not exceed \$21,500.
- O. Counsel for Defendant:** Attorney Sharon L. Hightower of Ericksen Arbuthnot.
- P. Court:** The State of California, Santa Clara County Superior Court.
- Q. Defendant:** Gardner Family Health Network, Inc.
- R. Effective Final Settlement Date:** The date when Final Approval of the Settlement can no longer be appealed or, if there are no objectors and no Plaintiff(s) in intervention at the time the Court grants Final Approval, the date the court enters judgment granting Final Approval of the Settlement.
- S. Gross Settlement Amount or GSA:** The total value of the Settlement is a non-reversionary One Million One Hundred Twenty Five Thousand Dollars and Zero Cents (\$1,125,000). This is the gross amount Defendant can be required to pay under this Settlement Agreement, which includes, subject to Court approval: (1) the Net Settlement Amount to be paid to Participating Class Members; (2) Attorney Fee Award and Cost Award to Class Counsel; (3) the Class Representative Service payment paid to the Class Representative; (4) Administration Costs, and (5) the PAGA Payment. Defendant's portion of payroll taxes is not included in the GSA and will be a separate obligation of Defendant. No portion of the GSA will revert to Defendant for any reason.
- T. Individual Settlement Share:** The amount payable to a Participating Class Member under the terms of this Agreement.
- U. LWDA:** California Labor and Workforce Development Agency.
- V. Net Settlement Amount or NSA:** The total amount available for distribution to Participating Class Members, which is the GSA less Attorney Fee and Cost Award, Class Representative Enhancement, the PAGA Payment, Administration Costs.
- W. PAGA:** The California Labor Code Private Attorneys General Act of 2004 (Cal. Labor Code §§ 2698 *et seq.*).
- X. PAGA Notice:** The notice of Labor Code violations filed with the LWDA on January 24, 2020, by Plaintiff, and attached to the First Amended Complaint.

- Y. PAGA Payment:** The PAGA Payment is \$30,000 of the GSA to satisfy the PAGA penalties claim. Seventy-five percent (75%) (\$22,500) shall be paid to the LWDA, and twenty-five percent (25%) (\$7,500) shall be distributed to Aggrieved Employees, on a pro rata basis, as set forth below.
- Z. PAGA Aggrieved Employees:** Class Members who worked anytime from January 24, 2019 to March 18, 2022 (“PAGA Period”).
- AA. Participating Class Members:** All Class Members who do not submit a valid and timely request to exclude themselves from the class action Settlement.
- BB. Parties:** Plaintiff Eva Yanez, individually and as Class Representative, and Defendant Gardner Family Health Network, Inc.
- CC. Preliminary Approval or Preliminary Approval Order:** The Court’s order preliminarily approving the proposed Settlement.
- DD. Released Claims:** The released claims means all causes of action and factual or legal theories that were alleged in the Complaint or reasonably could have been alleged based on the facts alleged in the Complaint, including: (a) failure to pay minimum wages; (b) failure to pay overtime wages; (c) failure to provide meal periods; (d) failure to provide rest breaks; (e) failure to provide accurate itemized wage statements; (f) failure to timely pay wages due upon separation of employment; (g) Violations of the Unfair Competition Law; (h) civil penalties under PAGA. (collectively, the “Released Claims”). The Released Claims include all claims for compensatory, consequential, incidental, liquidated, punitive, and exemplary damages; restitution; interest; costs and fees; injunctive or equitable relief; and any other remedies available at law or equity during the Class Period.
- EE. Released Parties:** Defendant and all of Defendant’s current or former parent companies, subsidiary or related companies, partnerships, joint ventures, representatives, attorneys, agents, insurers, employee benefit programs (and the trustees, administrators, fiduciaries, and insurers of such programs), and any other persons acting by or through any of those persons or entities, or their successors.
- FF. Request for Exclusion.** A Class Member’s written request to exclude himself or herself from the Settlement, submitted as described in the Class Notice.
- GG. Response Deadline:** The deadline by which Class Members must postmark to the Settlement Administrator a valid Request for Exclusion or submit written objections to the Settlement. The Response Deadline will be 45 calendar days from the initial mailing of the Class Notice. The Response Deadline will be extended 15 calendar days for any Class Member who is re-mailed a Class Notice by the Settlement Administrator as described in this Settlement. Agreement.
- HH. Settlement Administrator:** CPT Group, Inc.

II. RECITALS

- A. On February 24, 2020, a class action complaint against Defendant was filed in the Superior Court of the State of California for the County of Santa Clara. On April 3, 2020, a first amended class action and representative action complaint was filed, alleging Defendant failed to: (a) pay minimum wages; (b) pay overtime wages; (c) provide meal periods; (d) provide rest breaks; (e) provide accurate itemized wage statements; (f) timely pay wages due during employment; (g) timely pay wages due upon separation of employment; and was liable for (h) violations of the Unfair Competition Law; and (i) PAGA civil penalties.
- B. On March 18, 2022, after exchanging discovery and mediation data, the Parties attended a full-day private mediation with Hon. Maria Elena-James (Ret.), a respected and experienced mediator of wage-and-hour class actions, which resulted in a resolution of the Class Action in its entirety.
- C. Plaintiff believes the alleged claims are meritorious, and that the prerequisites for class certification can be satisfied in this Class Action.
- D. Defendant denies any liability or wrongdoing of any kind associated with the claims alleged in the Class Action, disputes the damages and penalties claimed by Plaintiff, and further contends that, for any purpose other than settlement, the Class Action is not appropriate for class or representative action treatment.
- E. The Parties believe the Settlement is fair, reasonable, and adequate. The Settlement was reached through arm's-length negotiations, taking into account all relevant factors. The Parties recognize the uncertainty, risk, expense, and delay of further litigation, including trial and appeal. Accordingly, the Parties desire to fully, finally, and forever settle, compromise, and discharge all Released Claims.

III. SETTLEMENT TERMS AND CONDITIONS

- A. **Gross Settlement Amount.** Subject to the terms and conditions of this Agreement, the maximum Gross Settlement Amount ("GSA"), excluding payroll taxes, that Defendant is obligated to pay under this Settlement Agreement is One Million Dollars and No Cents (\$1,125,000.00). All of the GSA will be disbursed pursuant to this Settlement Agreement without the need of any Class Member to submit a claim form and none of the GSA will revert to Defendant.
- B. **Class Certification.** Solely for the purposes of this Settlement, the Parties stipulate to certification of the claims asserted on behalf of Class Members.

- C. Conditional Nature of Stipulation for Certification.** The Parties stipulate and agree to the certification of the claims asserted on behalf of Plaintiff and Class Members for purposes of this Settlement only. If the Settlement does not become effective, the fact that the Parties were willing to stipulate to certification as part of the Settlement shall not be admissible or used in any way in connection with the question of whether the Court should certify any claims in a non-settlement context in this Class Action or in any other lawsuit or venue. If the Settlement does not become effective, Defendant reserves the right to contest any issues relating to class certification, liability and damages.
- D. Appointment of Class Representative.** Solely for the purposes of this Settlement, the Parties stipulate Plaintiff shall be appointed as the representatives for the Class.
- E. Appointment of Class Counsel.** Solely for the purpose of this Settlement, the Parties stipulate and agree the Court appoint Class Counsel to represent the Class.
- F. Settlement Disbursement.** Subject to, and Court Approval, the Settlement Administrator will disburse the Gross Settlement Amount as follows:
- 1. To Plaintiff.** In addition to her Individual Settlement Share, Plaintiff will receive up to Five Thousand Dollars (\$5,000) as a Class Representative Service Payment, subject to Court approval, without payroll tax deductions, and an IRS Form 1099 issued. Plaintiff will be solely responsible for taxes on the Service Payment and hold Defendant and Released Parties harmless from any liability for taxes or penalties arising from the payment. If the amount awarded is less than requested, the difference will become part of the NSA.
 - 2. To Class Counsel.** Class Counsel will apply to the Court for a total Attorney Fee Award not to exceed one-third or \$375,000 of the GSA and a Cost Award not to exceed \$21,500. IRS Forms 1099 will be issued to Class Counsel for these payments. Class Counsel shall be solely responsible for all taxes on the Fee and Cost Awards. If the amount awarded is less than the amount requested by Class Counsel for the Attorney Fee Award or Cost Award, the difference shall become part of the NSA.
 - 3. To the Appropriate Taxing Authorities.** The Settlement Administrator will calculate the amount of the Participating Class Members' and Defendant's portion of payroll taxes. The Settlement Administrator will withhold the amount of the Participating Class Members' portion of normal payroll taxes from each Individual Settlement Share. The Administrator will forward all amounts to the appropriate taxing authorities.
 - 4. To the Settlement Administrator.** The Settlement Administrator will pay to itself Administration Costs approved by the Court not to exceed \$10,000. If the actual Administration Costs are less than the amount requested, the difference will become part of the NSA.

5. To Participating Class Members.

- a. Individual Settlement Share Calculation.** The Settlement Administrator will calculate Individual Settlement Shares by dividing the number of weeks each Class Member worked during the Class Period by the number of Work Weeks all Class Members worked during the Class Period and multiplying that number by the Net Settlement Amount.
- b. Tax Treatment for Individual Settlement Shares.** Individual Settlement Shares will be apportioned 30% wages and 70% interest and penalties. The wage portion shall be subject to customary tax withholdings and reported by IRS W-2 forms. Payment of all wage amounts will be made subject to a Class Member's current or last W-4 form, unless an updated form is provided. Amounts paid as penalties and interest shall be reported by IRS 1099 forms.

G. Appointment of Settlement Administrator. The Settlement Administrator shall be responsible for preparing, printing, and mailing the Class Notice; tracking objections and requests for exclusion; mailing Individual Settlement Shares; mailing 75% of the PAGA Payment to the LWDA; performing skip traces and re-mailing Class Notices and Individual Settlement Shares; calculating payroll tax deductions; calculating Individual Settlement Shares; providing weekly status reports to Defendant's and Class Counsel; providing a due diligence declaration for submission to the Court before the Final Approval hearing; distributing the Attorney Fee Award and Cost Award to Class Counsel; printing and providing Class Members, Aggrieved Employees and Plaintiff with W-2s and 1099 forms as required by this Agreement and applicable law; providing a due diligence declaration for submission to the Superior Court upon completion of Settlement distribution; providing funds remaining as a result of uncashed checks to the approved cy pres recipient. The Parties represent they do not have any financial interest in the Settlement Administrator, or otherwise have a relationship with it that could create a conflict of interest.

H. Procedure for Approving Settlement.

1. Motion for Preliminary Approval and Conditional Certification.

- a.** Plaintiff will move for an order certifying the Class for settlement purposes only, Preliminary Approving the Settlement, approving the Class Notice, and setting a date for the Final Approval hearing.
- b.** If the Court declines to conditionally certify the Class or Preliminarily Approve all material aspects of the Settlement, the Parties will work together in good faith to address concerns raised by the Court and propose a revised settlement for approval.

2. Notice to Class Members.

- a.** Within thirty (30) calendar days after entry of the Preliminary Approval Order, Defendant will deliver to the Settlement Administrator the Class Data and the information needed to calculate its share of payroll taxes.
- b.** Upon receipt of Class Data, the Settlement Administrator will search the National Change of Address Database and make address changes. The Class Data shall be confidential and all reasonable precautions taken to maintain confidentiality. Class Data shall not be used for any purpose other than to administer this Settlement.
- c.** Within fourteen (14) days calendar days after Defendant's deadline to provide the Class Data to the Settlement Administrator, the Settlement Administrator will mail the Class Notice to all identified Class Members via first-class U.S. Mail.
- d.** The Settlement Administrator will take reasonable steps to trace the mailing address of any Class Member for whom a Class Notice is returned by U.S. Postal Service as undeliverable, within ten (10) days from receipt of the returned Notice including, tracking all undelivered mail; performing prompt address searches; and promptly re-mailing Notices. If the Settlement Administrator is unable to locate a better address, a Class Notice shall be re-mailed to the original address. Class Members who receive a re-mailed Class Notice, will have fifteen (15) days from re-mailing to postmark a request for exclusion, or written objection to the Settlement.
- e.** Class Members may dispute the information provided in their Class Notice, but must do so in writing, via first class mail, postmarked by the Response Deadline. To the extent Class Members dispute the number of weeks they have been credited with, Class Members may provide evidence to the Settlement Administrator showing why they believe the information is inaccurate. Absent evidence rebutting Defendant's records, Defendant's records will be presumed accurate. If a Class Member produces evidence to the contrary, the Parties will evaluate the evidence, and make a final decision as to the number of eligible weeks, subject to review by the Court.
- f.** The Settlement Administrator shall provide a weekly status report informing Class and Defendant's Counsel of the number of Notice Packets mailed, number returned as undeliverable, number re-mailed, and number of requests for exclusion, and objections, received.

- g. No later than fourteen (14) calendar days after the Response Deadline, the Settlement Administrator will provide the Parties a declaration setting forth compliance with its obligations under this Agreement. The declaration shall be filed with the Court by Class Counsel. Before the Final Approval hearing, the Settlement Administrator will supplement its declaration if any material changes occur from the date of its prior declaration.

3. Objections to Settlement.

- a. **Written Objection.** Class Members may object to the Settlement in writing, signed, dated, and mailed to the Settlement Administrator postmarked no later than the Response Deadline.
- b. **Format.** Written objections shall state: (a) the objecting person's full name, address, and telephone number; (b) describe any legal and factual arguments supporting the objection; and (c) provide copies of any documents on which the objection is based. The postmark date will be deemed the exclusive means for determining the timeliness of the written objection.
- c. **Appearance at Final Approval.** Participating Class Members may appear at the Final Approval hearing, in person or through the objector's own counsel, without submitting a written objection.

4. Request for Exclusion from the Settlement ("Opt-Out").

- a. **Opting Out.** Class Members who wish to exclude themselves from the Settlement must mail a request to be excluded to the Settlement Administrator. The written request must: (a) include the Class Member's name, address, and last four digits of the social security number; (b) be addressed to the Settlement Administrator; (c) be signed by the Class Member; (d) be postmarked no later than the Response Deadline; and (e) state in substance: "I want to opt out of the Settlement of the case against Gardner Family Health Network, Inc., Santa Clara County Superior Court Case No. 20CV364033. I understand I will not receive a Settlement Payment described in the Notice of Class Action Settlement."
- b. **Defective Submissions.** If a request for exclusion is defective, the Settlement Administrator will mail the Class Member a cure letter within three (3) calendar days of receiving the defective submission to advise the Class Member the defect must be cured to render the request for exclusion valid. The Class Member will have fifteen (15) calendar days from the date of the cure letter to fax or postmark a revised request for exclusion.

- c. **Validity and Effect.** Any Class Member who returns a timely, valid, request for exclusion will not be bound by the Settlement and Judgment and will not receive an Individual Settlement Share. A Class Member who does not mail a timely request for exclusion will receive an Individual Settlement Share, and be bound by the Settlement. If a valid objection and request for exclusion are received, the exclusion will control. A PAGA Aggrieved Employee, will receive a share of the 25% of PAGA penalties, based on weeks worked, whether or not they opt-out of the Class Settlement.
 - d. **Report.** No later than seven (7) calendar days after the Response Deadline, the Settlement Administrator will provide the Parties with the number of: Notices mailed; returned as undeliverable; re-mailed, re-mailed and returned undeliverable; objections, with copies of the objections; the number of valid (and invalid) requests for exclusion.
- 5. **No Solicitation of Objection or Requests for Exclusion.** Neither the Parties nor their counsel or agents will encourage any Class Member to object to the Settlement, request exclusion, or appeal from the Judgment.
- 6. **Motion for Final Approval.** Upon Final Approval of the Settlement, Class Counsel shall present to the Court a proposed Final Approval Order, approving the Settlement and entering Judgment. After entry of Judgment, the Court shall have continuing jurisdiction for purposes of: (1) enforcing this Settlement Agreement; (2) addressing settlement administration, and (3) addressing post-Judgment matters as appropriate under applicable law.
- 7. **Waiver of Right to Appeal.** If the Judgment is consistent with the terms and conditions of this Agreement, and Class Members do not timely object to the Settlement, then the Parties and their counsel waive all rights to appeal from the Judgment. This is not a waiver of the right to oppose appeals.
- 8. **Disbursement of Settlement Shares and Payments.** No person shall have any claim against the Parties, their Counsel, or the Settlement Administrator based on distributions and payments made in accordance with this Agreement.
 - a. **Funding the Settlement:** No later than twenty-one (21) calendar days after the Effective Final Settlement Date, Defendant will wire the Gross Settlement Amount to the Settlement Administrator.
 - b. **Disbursement:** Within fourteen (14) calendar days after the deadline to Fund the Settlement, the Settlement Administrator will calculate and disburse Individual Settlement Shares, Attorneys Fees and Costs Award, Class Representative Service Payment, PAGA Payment, and Administration Costs.

9. Uncashed Checks. Participating Class Members and Aggrieved Employees must cash or deposit Individual Settlement Shares and PAGA Payments within one hundred eighty (180) calendar days after the checks are mailed. For checks uncashed or not deposited, the Settlement Administrator will, within two hundred (200) calendar days after the checks are mailed, pay the amount of the Individual Settlement Shares or Individual PAGA Payments to cy pres recipient, Legal Aid at Work, a non-profit provider of legal services.

10. Final Report by Settlement Administrator. Within ten (10) calendar days after disbursement of all funds, the Settlement Administrator will provide the Parties with a final report of the distribution of the Settlement.

I. Release of Claims. As of the Effective Final Settlement Date, in exchange for the consideration set forth in this Agreement, Plaintiff and Participating Class Members fully, finally, and forever release, relinquish and discharge Released Parties from any and all Released Claims during the Class Period.

J. Miscellaneous Terms

1. No Admission of Liability. Defendant makes no admission of liability or wrongdoing by entering this Agreement, and does so solely for the purpose of compromising highly disputed claims. Nothing in this Agreement is intended to or will be construed as an admission by Defendant of liability or wrongdoing, and it will be inadmissible in any proceeding (other than those solely in connection with this Settlement).

2. No Effect on Employee Benefits. No payments made pursuant to this Agreement shall have any effect on the eligibility for, or calculation of, any employee benefits (*e.g.*, vacation, holiday pay, retirement plans, etc.) of Plaintiff, Participating Class Members or Aggrieved Employees.

3. Publicity. Class Counsel and Plaintiff agree to discuss the terms of this Settlement only in declarations submitted to a court to establish Class Counsel's adequacy to serve as class counsel, in declarations submitted to a court in support of motions for Preliminary and Final Approval, for attorneys' fees and costs, and any other pleading filed in relation to the Settlement, until the Preliminary Approval Order is issued. Class Counsel and Plaintiff agree to decline to respond to any media inquiries concerning the Settlement.

4. Integrated Agreement. This Agreement will constitute the entire Agreement between the Parties relating to the Settlement, and it will be deemed that no oral or written, representations have been made to any party concerning the Settlement, other than the representations expressly stated in this Agreement.

- 5. Authorization to Enter Into Settlement Agreement.** Class Counsel and Defendant's Counsel warrant and represent they are authorized by Plaintiff and Defendant, respectively, to take all appropriate action required or permitted to be taken by such Parties under this Agreement to effectuate its terms, and to execute any documents required to effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to implement the Settlement. If the Parties are unable to agree on the form or content of any document needed to implement this Agreement, the Parties will seek the assistance of the mediator and, if agreement is not reached, the Court.
- 6. Interim Stay of Proceedings.** The Parties agree to stay and hold all proceedings in the Class Action in abeyance, except those necessary to implement and complete the Settlement, pending the Final Approval hearing.
- 7. Amendment or Modification of Agreement.** This Agreement, and any part of it, may be amended, modified, changed, or waived only by a writing signed by counsel for all Parties or their successors-in-interest.
- 8. Agreement Binding on Successors and Assigns.** This Agreement is binding upon, and inures to the benefit of, the successors and assigns of the Parties.
- 9. No Prior Assignment.** The Parties represent they have not directly or indirectly, assigned or transferred, any responsibility, obligation, liability, or claim, created or released by this Agreement.
- 10. Applicable Law.** All terms and conditions of this Agreement will be governed by the laws of the State of California.
- 11. Fair, Adequate, and Reasonable Settlement.** The Parties and their respective counsel believe and warrant that this Agreement reflects a fair, reasonable, and adequate settlement of the Class Action and have arrived at this Agreement through arms-length negotiations, taking into account all relevant factors, current and potential.
- 12. Invalidity of Any Provision; Severability.** Should any provision of this Agreement be found unenforceable, the validity and enforceability of the remaining provisions shall not be affected.
- 13. Cooperation in Drafting.** The Parties cooperated in drafting this Agreement and it will not be construed against any Party based on participation in drafting.
- 14. Execution in Counterparts.** This Agreement may be executed in one or more counterparts, which together will be deemed to be one Agreement. Facsimile or PDF signatures will be accepted.

IV. EXECUTION BY PARTIES AND COUNSEL

Dated: June 29, 2022

EVA YANEZ

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Dated: 7/13, 2022

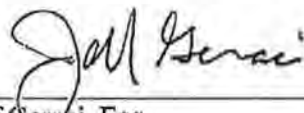
GARDNER FAMILY HEALTH NETWORK, INC.

By: Michael McCarthy
Its: Director of Human Resources

Approved as to Form:

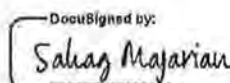
Dated: June 30, 2022

COHELAN KHOURY & SINGER


Jeff Geraci, Esq.
Attorneys for Plaintiff Eva Yanez and the Class

Dated: 6/30, 2022

LAW OFFICES OF SAHAG MAJARIAN II

DocuSigned by:

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Sahag Majarian, Esq.
Attorneys for Plaintiff Eva Yanez and the Class

Dated: 7/13, 2022

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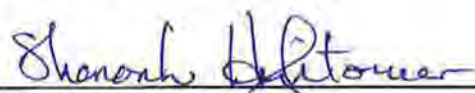

Sharon L. Hightower, Esq.
Attorneys for Gardner Family Health Network, Inc.

EXHIBIT A

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

**TO: All non-exempt, hourly employees who worked in California for
Gardner Family Health Network, Inc. (“Gardner”),
any time from February 24, 2016, to March 18, 2022**

A court authorized this notice. This is not a solicitation.

*This is not a lawsuit against you and you are not being sued. However, your legal rights are affected
whether you act or don’t act. Your rights are explained in this Notice.*

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS	
Do Nothing and Receive a Payment	You do not have to do anything to receive a cash Settlement payment. Your Settlement Share, will be mailed to you automatically after the Court grants final approval of the Settlement. (See, Section 5 below). [The Administrator <u>must</u> have your current address to mail your payment]
Exclude Yourself (“Opt Out”)	If you do not want to participate in the Settlement, you may exclude yourself, or “opt out” of the Settlement. If you opt out, you will not receive a Settlement payment, and you will keep all rights you may have against Gardner. (See, Section 7 below). If you exclude yourself from the Settlement, you will still receive your share of the PAGA Payment and release your PAGA claims.
Object	You can object to the Settlement if you think is is not fair by sending a written objection to the Settlement Administrator or by appearing in person at the time of the Final Approval Hearing. (See, Section 8 below).
Change Your Address	If your address is different than the address this Notice was mailed to, you must notify the Administrator of your correct address. A Change of Address Form and pre-printed return envelope are included with this Notice. Your Settlement Share payment will be mailed to the address on file with the Administrator.

**THIS NOTICE EXPLAINS YOUR RIGHTS AND THE DEADLINES TO EXERCISE THEM
DEFENDANT SUPPORTS THE SETTLEMENT AND WILL NOT RETALIATE AGAINST
ANY CLASS MEMBER FOR EXERCISING THE RIGHTS DESCRIBED IN THIS NOTICE**

1. Why did I get this Notice?

A proposed settlement of a class action lawsuit was reached between Plaintiff Eva Yanez (“Plaintiff”) and Defendant Gardner Family Health Network, Inc. (“Defendant” or “Gardner”). The Court in charge of this

case has granted preliminary approval of the Settlement. You received this Notice because you may be a member of the Class, defined as: “All non-exempt employees of Defendant who worked at any time from February 24, 2016, to March 18, 2022, in the State of California.” (“Class Period”).

2. What is this class action lawsuit about?

Plaintiff filed a Complaint alleging Defendant failed to provide all: minimum and overtime wages; rest and meal periods; accurate wage statements; final wages due upon separation of employment; all of which violated Unfair Competition Laws; and Private Attorneys General Act (PAGA).

Gardner denies all allegations and contends it complied with all laws at all times and it is not liable for any damages or penalties claimed by Plaintiff and the Class Members.

The Court granted preliminary approval of the Settlement on <<INSERT PRELIMINARY APPROVAL DATE>> and approved this Notice. The Court also preliminarily approved Plaintiff Eva Yanez as Class Representative, Cohelan Khoury & Singer and Law Offices of Sahag Majarian II, as Class Counsel, and CPT Group, Inc., as Settlement Administrator.

3. What are the terms of the Settlement?

Gross Settlement Amount. Defendant agreed to pay \$1,125,000 (the “Gross Settlement Amount”). The Gross Settlement Amount includes all Settlement payments to Class Members and, subject to Court approval: (a) Settlement Administration Expenses not to exceed \$10,000, (b) Class Representative Service Payment up to \$5,000, to compensate Plaintiff for services undertaken on behalf of the Class, (c) Class Counsel Fees up to \$375,000, (d) Class Counsel Litigation Expenses up to \$21,500, (e) up to \$30,000 for PAGA civil penalties - \$22,500 (75%) paid to California’s Labor Workforce and Development Agency (“LWDA Payment”); and, \$7,500 (25%) paid to Class Members based on the number of pay periods each worked from January 24, 2019, to March 18, 2022 (the “PAGA Period”), compared to the number of pay periods all worked during the PAGA Period.

Settlement Share Payments to Participating Class Members. After deducting Court-approved amounts for the payments above, the remaining portion is the “Net Settlement Amount” (“NSA”) estimated at \$683,500. Individual Settlement Payments shall be distributed from the NSA to all Class Members who do not request to be excluded (“Participating Class Members”). The Settlement Administrator will calculate Individual Settlement Shares by dividing the number of weeks each Class Member worked during the Class Period by the number of Work Weeks all Class Members worked during the Class Period and multiplying that number by the Net Settlement Amount. Each Settlement payment will be allocated as: 30% wages, with payroll withholdings deducted, and IRS W-2 Forms issued; and, 70% interest and penalties with IRS 1099 Forms issued. Nothing in this Notice is advice about taxes. Class Members may want to consult a tax advisor about the tax consequence of Settlement payments. If the Court approves the Settlement, and you have not requested to be excluded, a check for your Settlement Share will be automatically mailed to you at the same address this Class Notice was mailed.

You do not have to do anything to receive a payment, except make sure the Administrator has your current address. A Change of Address Form and pre-printed return envelope are enclosed.

4. What Do I Release Under the Settlement?

Released Claims. As of the date the Judgment becomes Final, all Participating Class Members will fully and finally release Defendant and the Released Parties from all causes of action and factual or legal theories that were alleged in the Complaint or reasonably could have been alleged based on the facts alleged in the Complaint, including: (a) failure to pay minimum wages; (b) failure to pay overtime wages; (c) failure to provide meal periods; (d) failure to provide rest breaks; (e) failure to provide accurate itemized wage statements; (f) failure to timely pay wages due upon separation of employment; and (g) Violations of the Unfair Competition Law. The release of these claims shall be effective for the Class Period (“Released Claims”). Claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers’ compensation, and class claims outside of the Class Period, are not released.

If you do not timely exclude yourself from the Settlement, you cannot sue, continue to sue, or be part of any other lawsuit filed against Defendant or any Released Party based on the claims covered by this Settlement. It also means all of the Court’s orders in this case are legally binding on you.

5. How much will my Settlement Share payment be?

Gardner’s records show you worked <<____>> weeks during the Class Period (February 24, 2016, to March 18, 2022) [and <<____>> weeks during the PAGA Period (January 24, 2019, to March 18, 2022).]

Based on this information, you are estimated to receive a payment of <<____>>, less withholdings.

If you dispute the information your Settlement Payment is based on, you must return a written statement of the reasons you believe it is not correct, with any supporting documents you have, to the Settlement Administrator at the address in Paragraph 7 no later than _____, 2023 [forty-five (45) days after the mailing of the Class Notice]. Your written dispute should be signed by you, and include the case name and number, *Yanez v. Gardner*, Case No. 20CV364033.

6. How can I get a Settlement Share payment?

To get your Settlement Share payment, you do not have to do anything. A check for your Settlement Share will be mailed automatically to the same address as this Class Notice. If your address is not correct or has changed since you received this notice, you must notify the Settlement Administrator. A Change of Address Form and pre-printed return envelope are enclosed for your use.

The Court will hold a Final Approval Hearing on _____, 2023 at _____ m. to decide whether to approve the Settlement. If the Court approves the Settlement and there are no objections or appeals, payments will be mailed to Participating Class Members about six weeks after the Court enters its order finally approving the Settlement. If there are objections or appeals, resolving them will take time, usually more than a year before Settlement Share payments can be distributed. Please be patient.

7. What if I do not want to participate in the Settlement?

If you do not want to participate in the Settlement for any reason, you may request to be excluded from the Settlement (“to opt out”). **If you opt out, you will not receive a Settlement Share payment**, and you will not be bound by the terms of the Settlement.

To opt out, you must return a written, signed and dated request, postmarked no later than _____, 2023 [forty-five (45) days after the date of the Notice] to the Settlement Administrator:

Gardner Class Action Settlement Administrator
c/o XXX, Inc.
P.O. BOX _____
Irvine, California 9 _____

The opt-out request must state in substance: “I want to opt out of the Settlement of the case *Yanez v. Gardner*, Case No. 20CV364033. I understand I will not receive a Settlement Payment described in the Notice of Class Action Settlement.” The request must state your full name, address, telephone number, last four digits of your social security number, the approximate dates you worked for Defendant in California, and must be signed by you.

Opt out requests postmarked after _____, 2023, or that are incomplete or unsigned, will be rejected, and you will be bound by the Settlement and will receive your Settlement payment. Even if you return a valid and timely opt-out request, you will still receive a share of the PAGA Penalties and will release PAGA claims.

8. How do I tell the Court that I do not agree with the Settlement?

If you have not returned an opt out request and believe the Settlement should not be finally approved by the Court, you may object to any Settlement term either in writing or in person. All written objections must state your name, the reasons for the objection, and the name and number of the case, *Yanez v. Gardner*, Case No. 20CV364033. Please also state whether you intend to appear at the final approval hearing.

All written objections must be returned to the Administrator at the address in Paragraph 7, no later than _____, 2023, [forty-five (45) days after the date of the Notice]. You may also appear at the Final Approval Hearing on _____, 2023 at _____ m. and tell the Court your objection.

If the Court approves the Settlement you will be bound by all Settlement terms, even if you objected, in the same way as Class Members who do not object.

9. Who are the Attorneys for Plaintiff and the Class?

Michael D. Singer
Jeff Geraci
Cohelan Khoury & Singer
605 C Street, Suite 200
San Diego, CA 92101
Tel: (619) 595-3001
Email: matlas@ckslaw.com

Sahag Majarian II
Law Offices of Sahag Majarian II
18250 Ventura Blvd.
Tarzana, CA, CA 91356
Tel: (818) 609-0807
Email: jeankoper@majarianlaw.com

10. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Final Approval Hearing at _____ on _____, 2023, in Department 19 of the Superior Court of California, County of Santa Clara, 191 North First Street San Jose, CA 95113, before the Hon. Judge Peter H. Kirwan. The Court will consider whether the Settlement is fair, reasonable, and adequate. If objections to the Settlement are made, the Court will consider them at the

time of this hearing. This hearing may be rescheduled by the Court without further notice. If you submit a written objection, however, you will be provided notice of the rescheduled date. **You are not required to attend** the Final Approval Hearing, although any Class Member is welcome to attend. When the Final Approval Order and Judgment has been signed and entered, it will be posted on the Administrator's website at www._____.com.

Class members may appear at the final approval hearing either in person in the courtroom or by telephone via CourtCall. Class members who wish to appear by CourtCall should contact Class Counsel at least three days before the hearing if possible, to arrange a telephonic appearance. Any CourtCall fees for an class member who wants to appear at the hearing will be paid by class counsel.

11. How do I get more information about the Settlement?

You may call the Settlement Administrator at 800-_____ or write to *Gardner Class Action* Settlement Administrator, c/o XXXXs, Inc., P. O. Box _____, California 9___; or contact Class Counsel at (800) xxx-xxxx for more information.

This Class Notice summarizes the proposed Settlement. More details are in the Settlement Agreement. You may review a copy of the Settlement Agreement, the Final Judgment or other Settlement documents by looking at the Register of Actions for the California Superior Court for the County of Santa Clara. (Enter Case No. 20CV364033. <https://portal.scscourt.org/>). You may also review the case files in person at Records, Superior Court of California, County of Santa Clara, 191 N. 1st Street, San Jose, California 95113, between the hours of 8:30 a.m. and 1:30 p.m., Monday through Thursday, and Friday between the hours of 8:30 a.m. to 12:00 p.m., excluding Court holidays and closures. Once the Court grants final approval of the Settlement, you may also view the Final Approval Order and Judgment on the administrator's website, www._____.com.

PLEASE DO NOT CALL THE COURT, THE JUDGE, DEFENDANT'S SUPERVISORS, MANAGERS, OR ATTORNEYS ABOUT THIS SETTLEMENT

- Class members may appear at the final approval hearing either in person in the courtroom or by telephone via CourtCall. Class members who wish to appear by CourtCall should contact Class Counsel at least three days before the hearing if possible, to arrange a telephonic appearance. Any CourtCall fees for an objecting class member will be paid by Class Counsel.
- To receive your Settlement Share payment as a Participating Class Member, you must not return an opt out request, and your current mailing address must be on file with the Administrator. All Class Members who worked any time during the PAGA Period, will receive a share of the PAGA Payment and release all PAGA claims.
- Settlement Share and PAGA Payment checks will be void 180 days after issued if not deposited or cashed. After 180 days, the Settlement Administrator will forward the unclaimed amount to Legal Aid at Work, legalaidthatwork.org, a non-profit organization providing legal services to California workers. If your check is lost or misplaced, contact the Settlement Administrator immediately to request a replacement.

Superior Court of California, County of Santa Clara
Yanez v. Gardner Family Health Network, Inc.,
Case No. 20CV364033

CHANGE OF ADDRESS FORM

I wish to change my name or mailing address or other contact information to the following:

Name: _____

Former Name (if applicable): _____

Street and Apt. No., if any: _____

City, State and Zip Code: _____

Telephone(s): (Home): _____; (Cell): _____

I understand all future correspondence in this Action, including but not necessarily limited to important notices or Settlement Payments, will be sent to the address listed above and not to the address previously used. I request and consent to the use of the address listed above for these purposes.

Submitted by:

Dated: _____

Print Name: _____

Signature: _____

**PLEASE RETURN THIS FORM IN THE ENVELOPE PROVIDED
OR VIA UNITED STATES FIRST-CLASS MAIL TO:**

Gardner Class Action Settlement Administrator
c/o CPT Group, Inc.
P.O. BOX _____
Irvine, California 9 _____

CHANGE OF ADDRESS FORM

Questions? Call Toll Free – 877- _____

EXHIBIT 2