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Attorneys for Plaintiff and Proposed Plaintiffs Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN MATEO

JOANNA MAGPIONG, on behalf of herself
and all others similarly situated,

Plaintiff,

vs.

CARELINX, INC., and DOES 1-100,
inclusive,
Defendants.

Case No.: 21-CIV-03038

CLASS and REPRESENTATIVE ACTION

**DECLARATION OF TED D.
MECHTENBERG IN SUPPORT OF
MOTION FOR FINAL APPROVAL OF
CLASS SETTLEMENT and ATTORNEY
FEES and COSTS**

Assigned For All Purposes to the Honorable
Marie S. Weiner (Dept. 2)

Date: August 23, 2022

Time: 2:00 p.m.

Location: Dept. 2 (Hon. Marie S. Weiner)

I, Ted D. Mechtenberg, hereby declare as follows:

1. I make this Declaration based on personal knowledge. If called and sworn as a witness, I would testify competently as to the facts in this Declaration.

2. I am an attorney admitted to practice law in the State of California.

3. I am a named Partner of Da Vega Fisher Mechtenberg, LLP ("DFM LLP").

4. DFM LLP is lead and only counsel for the Plaintiff in this Lawsuit. ("Class Counsel.")

5. I have been intimately involved in all aspects of this dispute and the resulting settlement. I make this declaration in support of Plaintiff's Motion for Final Approval of Class Settlement and Attorney Fees and Costs.

1 **I. LEAD COUNSEL BACKGROUND and COMPETENCY**

2 6. **DA VEGA | FISHER | MECHTENBERG LLP (“DFM LLP”)** is a small
3 plaintiff-side predominantly contingency fee based law firm representing individuals who could
4 not otherwise afford legal counsel. Each case the firm takes, including this one, runs the risk of an
5 uncertain outcome and possibility of little or no recovery for the client or the firm. Many cases
6 the firm takes can require years of litigation and thousands of hours of attorney time and costs.
7 To represent our clients in this case on a contingent fee basis, our firm had to forego compensable
8 hourly work on other cases to devote the necessary time and resources to this case. In so doing,
9 our firm gave up work that a firm receives more immediate payment for in exchange for risky
10 contingent fee work in this case. This firm has previously invested in similar cases which resulted
11 in little or no recovery due to various issues, including but not limited to bankruptcy, change in
12 prevailing law, and/or lengthy appeals.

13 7. **Plaintiff’s Counsel Ted D. Mechtenberg:** I am an equity partner at the firm. I am
14 a graduate of the University of Notre Dame, B.A. Anthropology, Cum Laude (1996) and
15 Washington University School of Law, J.D. (2001). I became a member of the California State
16 Bar in 2002. I have worked with firms both in Washington State and California. From 2011 to
17 2013 I worked with the Ventura, California firm of Anderson Kill. In 2013, I was designated as a
18 Rising Star by Southern California Super Lawyers. I joined DFM LLP in 2014 as a partner. DFM
19 LLP has always been a Plaintiff-side contingency based law firm representing clients
20 predominantly in employment and personal injury matters in both individual and class actions.
21 DFM LLP is experienced counsel in matters such as this and has worked on significant
22 employment cases such as *Salvatierra v. Intuitive Surgical, Inc.*, Santa Clara County Superior
23 Court, Case No. 2014-1-CV-272069 (2016) (\$4.6M gross settlement for class of 208 misclassified
24 class member employees); *Gibbins/Leal v. Hismeh Enterprises, Inc.*, Ventura County Superior
25 Court, Case No. 56-2015-00468352 (2017) (\$1M gross settlement for class of 4000+ delivery
26 driver members reimbursements); *Sena v. Facebook, Inc.*, San Mateo County Superior Court,
27 Case No. 16CIV00496 (2018) (\$4.25M gross settlement for class of 900+ class member
28 employees for unpaid overtime wage); and *Magpiong v. CareLinx*, San Mateo County Superior

1 Court, Case No. 21-CIV-03038 (2022) (\$1.8 M gross settlement for class of 2000+ class member
2 employees for IC misclassification /unpaid overtime wage), to name but a few.

3 **II. CLASS COUNSEL AWARD OF ATTORNEY FEES and COSTS**

4 8. **Common Fund Settlement:** In this matter DFM LLP negotiated a Class action
5 settlement providing a common fund settlement with a payout of **\$1,925,620.00** which includes
6 the Gross Settlement Amount (\$1,888,000) plus the Additional Estimated Substitute Amount
7 (\$37,620) (which is the amount estimated equivalent of employer-side payroll tax). Class Counsel
8 is seeking as a Class Counsel Award a percentage (33%) of this common fund.

9 9. **Attorney Fees of 33% Percent of Common Fund is Reasonable:** Class Counsel
10 requests the Court grant its application for an award of attorneys' fees in the amount of \$623,000
11 (33%) of the Gross Settlement Amount (\$1,888,000) created on behalf of the Class. The requested
12 award is fair, reasonable, and well within the common range for attorney fees of 20% to 50% in a
13 common fund settlement. The requested award also compares favorably to the overall lodestar
14 incurred to date. Therefore, the attorneys respectfully requests approval of the agreed fee award.

15 10. **Contingency Fee Matter:** As this is a contingency matter, Class Counsel litigated
16 this action without receiving any payment for their services or reimbursement of their costs
17 incurred for the benefit of the Class. To represent the Class on a contingent fee basis, Class
18 Counsel had to forego compensable hourly work on other cases to devote the necessary time and
19 resources to this contingent case. In so doing, Class Counsel gave up work that a firm receives
20 more immediate payment for in exchange for risky class action contingent fee work in this case
21 which could have paid the Class and its Counsel nothing. A number of difficult issues, the
22 adverse resolution of any one of which could have barred the successful prosecution of the action,
23 were present here. Attorneys' fees in this case were not only contingent but risky, with a very real
24 chance that Class Counsel would receive nothing at all for their efforts, having devoted time and
25 advanced costs. Class Counsel has previously invested in similar cases which resulted in little or
26 no recovery due to various issues, including but not limited to bankruptcy, failed
27 certification/decertification, other overlapping class matters, and/or lengthy appeals.

1 **11. Contingency Fee Market:** I am familiar with the contingent fee market
2 throughout California and in particular as it pertains to complex employer, wage and hour, and
3 class action litigation. On behalf of my firm, I have negotiated hundreds of contingency fee
4 agreements with Plaintiffs, both as individuals and as representatives in class action suits. Many of
5 those agreements provide that counsel will receive between 33% to 40%+ of any recovery that is
6 obtained, and, in addition that counsel be reimbursed for the costs they incurred out of the
7 recovery amount. These are typical and standard percentages in employment-related contingency
8 fee agreements throughout California. The Class Members in this complex wage and hour case
9 would not be likely to obtain competent counsel in California, for any amount less than these
10 standard fee percentages. Class Counsel has also advanced all costs in this matter and not been
11 paid any attorney's fees to date.

12 **12. Class Counsel's Hours and Hourly Rates:** I will have worked on this matter for
13 33 hours at the time of this motion and my current billable rate as of 2022 is \$625/hr. for class
14 action work (\$625/hr. x 33 hours = \$20,625 in lodestar).

15 **13. Class Counsel Lodestar Cross-Check:** I have reviewed my firm's lodestar in this
16 matter and believe the charges are reasonable and were reasonably necessary to the conduct of the
17 case. These rates are in line with the prevailing rates of attorneys in the California legal
18 community for similar work. In this case, the reasonableness of the requested for \$623,000 in
19 attorneys' fees is further supported by a crosscheck using attorney's lodestar in this matter. Class
20 Counsel has spent a significant amount of hours investigating, researching, and litigating this
21 matter, including but not limited to the following: interviewing Plaintiffs and flushing out facts
22 and issues; researching employer and causes of action; developing facts and investigating
23 Defendant's ownership structure (Secretary of State, etc.); investigating and discussing job
24 functions, duties, compensation, policies and procedures, etc.; regularly meeting and/or
25 communicating with our clients who are the Class Representatives; drafting pleadings (Complaint,
26 case management statements, mediation briefs); drafting and responding to informal discovery;
27 reviewing information produced in formal and informal discovery (payroll data, etc.); researching
28 private right of action for employee misclassification and various impact on class actions;

1 participating in Court-ordered hearings and conferences; attending mediation; retention of expert
2 witnesses; discussion with expert witnesses issues related to damage model calculations;
3 preparing and analyzing damage models; negotiating the terms of the Settlement; reviewing and
4 making changes to Settlement Agreement; and coordinating and overseeing all the administration
5 of the Settlement. The contemporaneous billing records evidence that the attorneys' lodestar is
6 \$177,425 with additional fees still to be incurred for preparation and attending the final approval
7 hearing, managing post approval settlement distribution with the claims administrator, responding
8 to class member inquiries, and handling any potential appeal of the matter. As a result, the current
9 lodestar amount understates the total attorneys' fees ultimately incurred in this action. Class
10 Counsel lodestar crosscheck of attorney fees is as follows:

Attorney Name	Hours	Hourly Rate	Totals
Matthew S. Da Vega	151	\$750	\$113,250
Matthew H. Fisher	67	\$650	\$43,550
Ted Mechtenberg	33	\$625	\$20,625
TOTAL	251		\$177,425

15 The requested fee award of \$623,000 represents a **positive multiplier of 3.5** which is well
16 within the range warranted under California law of a 1 to 4 multiplier. ““Multipliers of 1 to 4 are
17 commonly found to be appropriate in complex class action cases.”” *Destefano v. Zynga, Inc.*, 2016
18 WL 537946, at *21 (N.D. Cal. Feb. 11, 2016) (quoting *Hopkins v. Stryker Sales Corp.*, 2013 WL
19 496358, at *4 (N.D. Cal. Feb. 6, 2013)); see *Vizcaino v. Microsoft Corp.*, 290 F.3d United States
20 District Court Northern District 1043, 1051 n.6 (9th Cir. 2002)(citing survey finding most
21 multipliers range from 1.0 to 4.0). As a result, this Court should have no trouble concluding that
22 an award is supported by the lodestar cross-check is fair and reasonable and is justified under
23 California law. “[T]he lodestar method better accounts for the amount of work done, while the
24 percentage of the fund method more accurately reflects the results achieved.” *Rawlings v.*
25 *Prudential-Bache Properties, Inc.* (6th Cir. 1993) 9 F.3d 513, 516.

26 14. I am presently unaware of any opposition to the final approval of this settlement.

27 I declare under penalty of perjury under the laws of the State of California that the
28 foregoing is true and correct.

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DATED: August 1, 2022

DA VEGA | FISHER | MECHTENBERG LLP



By: _____
Ted D. Mechtenberg
Attorneys for Plaintiff and Class