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Electronically
FILED
by Superior Court of California, County of San Mateo
ON **2/18/2022**
By /s/ Priscilla Tovar
Deputy Clerk

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 MATTHEW S.
DA VEGA IN SUPPORT OF MOTION**

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

Date: March 29, 2022

Time: 2:00 p.m.

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

I, Matthew S. Da Vega, 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 at Da Vega Fisher Mechtenberg, LLP ("DFM LLP").

4. DFM LLP is lead and only counsel for the Plaintiffs 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 Plaintiffs' Unopposed Motion for Preliminary Approval of Class Settlement.

1 **I. SETTLEMENT AGREEMENT**

2 6. Attached hereto as **Exhibit 1** is a true and correct copy of the Joint Stipulation of
3 Class Action Settlement Agreement and Release (“Settlement Agreement”) executed between the
4 Parties. The Settlement Agreement includes the following draft exhibits for the Court’s
5 consideration:

6 **Exhibit A: Second Amended Complaint** (a Stipulation and Order
7 Requesting Plaintiff Leave to File a Second Amended Complaint, for settlement
8 purposes only, will be simultaneously filed and served with this Motion.

9 **Exhibit B: Preliminary Approval Order;**

10 **Exhibit C: Notice of Class Action Settlement;**

11 **Exhibit D: Final Approval Order and Judgment.**

12 **II. LEAD COUNSEL BACKGROUND**

13 7. I am a graduate of the University of California, Santa Barbara (1993) and the
14 University of San Francisco School of Law (1997). I became a member of the State Bar of
15 California in 1998. After passing the bar I started working in private practice as a Plaintiff’s
16 attorney. During my entire career I have always practiced as a Plaintiff’s lawyer representing
17 individuals or groups of individuals, specializing in employment, personal injury, mass torts, and
18 product defect matters. I have done so now for approximately 22 years. I first worked for
19 Brayton & Purcell in Novato, CA representing individuals injured from exposure to asbestos and
20 other toxins. I then worked for Lieff Cabraser Heimann & Bernstein in San Francisco
21 representing individuals in mass torts, product defect, and employment matters both individually
22 and in class actions, including wage and hour class claims. I then worked for the firm of Cappello
23 & Noel in Santa Barbara, again representing plaintiffs in individual and class actions, including
24 employment race discrimination actions and antitrust matters. A case of particular note that I
25 performed a substantial amount of work on was the Unruh Civil Rights Act class action trial case
26 of *Jones, et. al. v. Wells Fargo Bank* (Los Angeles Superior Court, Case No. BC337821, March
27 23, 2011) in which the jury determined that Wells Fargo discriminated based on race, with respect
28

1 to 880 home loans for a total award to the class of \$3.52M. The Court also awarded nearly \$15M
2 in attorney's fees.

3 8. In 2012 I then started my own Plaintiff's firm, Da Vega Fisher Mechtenberg LLP
4 with partners, Matthew Fisher (UC Berkeley undergrad and USC School of Law) and Ted
5 Mechtenberg (Notre Dame undergrad and Washington University School of Law, St. Louis),
6 whom each have over 15 years of experience practicing law. We are experienced counsel in
7 matters such as this and have recently settled similar matters as lead counsel - *Salvatierra v.*
8 *Intuitive Surgical, Inc.*, Santa Clara County Superior Court, Case No. 2014-1-CV-272069 (2016)
9 (\$4.6M gross settlement for class of 208 misclassified class member employees for unpaid
10 overtime wages); *Gibbins/Leal v. Hismeh Enterprises, Inc.*, Ventura County Superior Court, Case
11 No. 56-2015-00468352 (2017) (\$1M gross settlement for class of 4000+ delivery driver members
12 reimbursements); *Sena v. Facebook, Inc.*, San Mateo County Superior Court, Case No. 16-CIV-
13 00496 (2018) (\$4.25M gross settlement for class of 952 class member employees for unpaid
14 overtime wages); *Fregoso v. Eat Club, Inc.*, Santa Clara County Superior Court, Case No. 18-CV-
15 330433 (2021) (\$900K gross settlement for class of 1815 class member employees for unpaid
16 overtime wages).

17 **III. PROCEDURAL HISTORY**

18 9. **June 3, 2021 (Original Complaint Filed and PAGA Notice Sent):** Plaintiff sent
19 PAGA notice and also filed her class action suit under California Code of Civil Procedure §382 to
20 address Defendant's alleged violations of California wage and hour laws. Plaintiff's complaint
21 alleged 7 causes of action, including: 1. Failure to Pay Overtime Wages, 2. Failure to Pay
22 Minimum Wage, 3. Failure to Provide Meal Breaks, 4. Failure to Provide Rest Breaks, 5. Failure
23 to Furnish Timely/Accurate Wage Statements, 6. Failure to Pay All Wages Due at Discharge in
24 Timely Manner, and 7. Unlawful Business Practices. Plaintiff defined the class as: "All current
25 and former California based Nurse employees who were misclassified as 'Independent
26 Contractors' and worked for Defendant from June 3, 2017 until the entry of judgment."
27
28

1 10. **August 10, 2021 (First Amended Complaint Filed):** Plaintiff filed and served
2 her First Amended Complaint (“FAC”) with the addition of an 8th cause of action for violations of
3 the PAGA.

4 11. **August 25, 2021 (Parties Agree to Early Mediation):** The Parties agreed to an
5 early mediation with experienced JAMS mediator Michael Loeb after Defendant agreed to the
6 production of Class related data for mediation/settlement purpose only.

7 12. **November 4, 2021 (Mediation Proceedings):** The Parties participated in an all
8 day mediation that ran late into the evening. At the mediation the Parties reached a tentative
9 settlement of the class and PAGA claims pending this Court’s approval. The Parties executed an
10 confidential MOU regarding settlement. The Parties then executed the long form settlement in the
11 form of a Joint Stipulation of Class Action Settlement and Release (see Exhibit 1: Settlement
12 Agreement).

13 **IV. CASE INVESTIGATION, DISCOVERY, NEGOTIATIONS and MEDIATION**

14 13. The Parties vigorously investigated and debated the claims asserted against
15 Defendant. Plaintiff’s Counsel began their investigation into the claims long before the case was
16 filed. Plaintiff’s Counsel interviewed and obtained discovery/documents from various current and
17 former Nurses regarding their experiences working for Defendant. After the Lawsuit was initiated,
18 Parties’ Counsel engaged in serving written discovery, informal discovery, discussions and
19 negotiations before reaching this Settlement. Early in the litigation process the Parties’ Counsel
20 began having regular discussions regarding the claims, discovery, production of data, and the
21 possibility of mediation/settlement.

22 **A. The Parties’ Dispute the Merits of the Case**

23 14. Throughout the litigation, Defendant has denied Plaintiff’s allegations, and further
24 have denied the case is appropriate for class certification. Further, in addition to generally
25 denying the allegations, Defendant has contended that the Nurses are not misclassified, that
26 Nurses were and are legally engaged as independent contractors, that Defendant paid Nurses
27 correctly for all hours worked, Nurses as independent contractors are not subject to non-exempt
28 meal and rest break requirements, but in any event, the Nurses regularly received compliant meal

1 and rest breaks and did not work through/during meal/rest breaks, and as properly classified
2 independent contractors were not subject to and/or did not incur reimbursement for business
3 expenses. Defendant also have contended that to the extent any work hours were not paid
4 correctly, which Defendant denies, those errors would have been in violation of Defendant's
5 policies, and made without Defendant's knowledge. On the other hand, Plaintiff alleges that all
6 Nurses, throughout the Class Period, were subject to the same policy and practice promulgated by
7 Defendant. Plaintiff alleges they were misclassified as independent contractors, were paid only
8 their flat regular rate for overtime hours plus small differential as opposed to the correct rate for
9 overtime hours (i.e. 1.5 x - 2x regular rate), that Nurses worked through meal/rest periods and
10 were not paid the one hour premium/regular rate for said violations, and not reimbursed for
11 necessary business related expenses (i.e. mileage for travel and use of cell phones for work). As
12 part of the investigation into the claims, Class Counsel interviewed current and former Nurses and
13 reviewed various documents and handbooks related to Nurses work for Defendant. This
14 investigation was crucial to the Parties' dispute over both the merits of the case, as well as with
15 respect to the appropriate scope of the Class.

16 **B. Document and Data Discovery and Expert Analysis**

17 15. Plaintiff and Defendant informally exchanged extensive documents and multiple
18 data points on the class (i.e. data for all class members of class period including job titles, wages
19 rates, shifts worked, length of shifts, shift dates, start/end dates, shift differential pay, etc.) which
20 at the time of filing includes approximately **1700 Class Members**. Plaintiff retained experts
21 Desmond, Marcello & Amster - Valuation and Litigation Consultants (www.dmavalue.com)
22 ("Plaintiff's Expert"), to examine the data for mediation. Based on analysis of the data, Plaintiff
23 made various assessments of the data, overtime hours/incorrect pay rates, meal/rest breaks
24 violations, misclassification penalties, unpaid business expense reimbursements, estimated
25 employer-side payroll tax, and calculated the potential damages. Further, Plaintiff's Counsel
26 provided Defendant with Plaintiff's position as to a calculation of damages at mediation. Those
27 expert calculations estimate Defendant's potential liability for alleged:

28 (1) Under-paid overtime wages at approximately \$623,000;

- (2) Meal Break Violations at approximately \$372,000;
- (3) Rest Break Violations at approximately \$372,000;
- (4) Misclassification Penalties at approximately \$8.5 million;
- (5) Waiting time Penalties at approximately \$8.8 million;
- (6) Wage Statement Violations at approximately \$1.2 million;
- (7) Minimum Wage Violations at approximately \$844,000,
- (8) Unreimbursed mileage at approximately \$985,000
- (9) Unreimbursed cell phone use at approximately \$210,000; and
- (10) PAGA Penalties at approximately \$2.5M.

The putative Nurse Class Members worked approximately 37,636 shifts. If you take the Estimated Net Settlement Amount of approximately \$998,120 divided by 37,636 shifts it equals \$26.52 per shift. Further, the minimum work days per Class Members was 1 shift, while the maximum was 231 shifts. The overall average was 22 shifts per Class Member, and the overall median was 8 days per Class Member (i.e., approximately half of the Class Members had 8 or fewer shifts.)

C. Mediation and Settlement

16. On November 4, 2021 the Parties engaged in a full day of mediation with the experienced employment and class action mediator Michael Loeb. After exchanging data, documents, and evidence the Parties met for a full-day mediation via Zoom video conference with Plaintiff's counsel in-person with Plaintiff. The mediation was attended by Plaintiff's Counsel and the class representative, Joanna Magpiong, Defense counsel, and Defendant's representative CEO. The Parties ultimately executed a confidential memorandum of understanding ("MOU") at the mediation, which included a term to settle the class claims for the Gross Settlement Amount of **\$1,700,000 (One Million Seven Hundred Thousand Dollars)**, subject to Court approval. The Parties then later finalized the terms of the settlement in a long form Joint Stipulation of Class Action Settlement and Release.

V. CLASS REPRESENTATIVE'S SERVICE TO THE CLASS

1 17. Plaintiff Joanna Magpiong was the driving force behind this class action. Plaintiff
2 played a critical role in retaining Matthew Da Vega and Matthew Fisher of Da Vega Fisher
3 Mechtenberg LLP and providing information regarding her legal claims to make them successful.
4 Plaintiff has experience as a Nurse and knew other putative class members that in turn provided
5 additional information in support of the legal claims. With their help Plaintiff's counsel was able
6 to gather additional evidence, and contact additional putative class members. Together, the
7 Plaintiff worked dozens of hours to help Plaintiff's counsel, sacrificing her personal time and
8 reputation to make the case successful.

9 18. In fact Plaintiff's counsel spoke to other witnesses who were afraid to participate in
10 litigation for fear that it might result in damage to their careers. Plaintiff and witnesses feared that
11 by initiating or participating a class action lawsuit might risk their future job opportunities.
12 Despite this Plaintiff stepped up and worked diligently in support of the case. Plaintiff have had
13 numerous meetings and telephone conversations with Class Counsel to aid in the initial
14 investigation, factual development, mediation, and resolution of this case. She also reached out to
15 and communicated with other Nurses about their work for Defendant, and encouraged by Plaintiff,
16 other Nurses contacted Class Counsel to provide information about their time at Defendant. In
17 sum, the Settlement could never have been achieved without Plaintiff's service on behalf of the
18 Class.

19 **VI. KEY TERMS OF THE SETTLEMENT**

20 19. The Settlement provides for a significant settlement payment to each Class
21 Member. In exchange, Class Members will release claims, which were asserted or could have
22 been asserted in the Lawsuit based on the facts alleged in support of the class and PAGA claims.

23 **A. Definition of the Settlement Class**

24 20. Under the Settlement Agreement, the "Class" is defined as follows:

25 **The "Class":**

26 "All current and former Nurses who have worked at least one Nursing Shift in California
27 through use of Defendant's Nurse OnDemand platform application at any time during the
28 Class Period." (Settlement Agreement §1.1)

1 “Class Period” refers to the period of time from June 3, 2017 through the date the Court
2 grants preliminary approval of the Settlement. As a practical matter, there were no
Nursing Shifts worked by any Class Member prior to January 1, 2020.” (Settlement
Agreement §1.7)

3 “Nurse” means a licensed healthcare professional who works as a Certified
4 Nursing Assistant (“CNA”), Medical Assistant, Licensed Vocational Nurse (“LVN”),
Licensed Practical Nurse (“LPN”), Registered Nurse (“RN”), and/or Nurse Practitioner
5 (“NP”). (Settlement Agreement §1.23)

6 “Settlement Class” is defined to mean those Class Members who have not opted out of the
Class Settlement by submitting a timely and valid Request for Exclusion

7 **B. \$1,700,000 Gross Settlement Amount Plus Additional Estimated Substitute**
8 **Amount of \$37,620**

9 21. The Settlement provides for Defendant to make a maximum payment of **\$1,700,000**
10 **(One Million and Seven Hundred Thousand Dollars)** in settlement of all class and PAGA
11 claims in the case, including the Class Counsel Award, all Settlement Administration Costs, the
12 PAGA Penalty Amount, all settlement payments to Settlement Class Members, and the Class
13 Representative Enhancement Payment. (the “Gross Settlement Amount”) (Settlement Agreement
14 §§1.16. 2.1).

15 22. The Settlement Class Members will also receive an “Additional Estimated
16 Substitute Amount” of **\$37,620 (Thirty Seven Thousand Six Hundred Twenty Dollars)** which
17 is the amount estimated by Class Counsel to be an approximate equivalent of the amount of
18 employer-side payroll tax that could have been attributed to an employer based on the settlement
19 payment amounts anticipated to result from the Estimated Net Settlement Fund if the Class
20 Members were classified as employees and if such settlement payment amounts were allocated as
21 being comprised of one-third compensation and two-thirds penalties and interest. (Settlement
22 Agreement §1.17) The \$37,620 estimated amount (rounded up from \$37,619.59) was calculated
23 by assuming an Estimated Net Settlement Fund Amount of \$960,500 (Settlement Agreement
24 §1.13) and 1/3 of the Net Settlement Fund Amount paid as wages (\$320,166.67) and the other 2/3
25 as penalties/interest. See Calculations below

26 **Additional Estimated Substitute Amount Calculations and Basis For Calculations**

27	SS	\$ 320,166.67	x	6.20%	=	\$ 19,850.33
28	MED	\$ 320,166.67	x	1.45%	=	\$ 4,642.42

FUTA	\$ 320,166.67	x	0.60%	=	\$ 1,921.00
SUI	\$ 320,166.67	x	3.40%	=	\$ 10,885.67
ETT	\$ 320,166.67	x	0.10%	=	\$ 320.17
					11.75% \$ 37,619.59

- Social Security (SS) – 6.2% of wages (up to \$147,000 of wages per employee)
- Medicare (MED) – 1.45% of wages (no wage limit)
- Federal Unemployment (FUTA) – 6.00% of wages (up to \$7,000 of wages per employee). Traditionally, if an employer resides in a state with a state unemployment plan, this rate gets reduced by a 5.40% credit, which results in a net 0.60% FUTA rate.
- State Unemployment (SUI) – This rate is employer specific, but can range between 1.5% and 6.2% of the first \$7,000 of wages per employee. For new employers, like CareLinx, the rate is set at 3.4%.
- Employment Training Tax (ETT) – This gets paid along with the SUI and is equal to 0.1% of wages (up to \$7,000 per employee).

Assuming no employee has reached the wage limit for each tax, and using the default SUI rate, the employer payroll taxes on \$320,167 of wages would be \$114,151.25:

23. In this Action, Plaintiff alleges that Class Members are misclassified, but Defendant maintains that Class Members are properly classified and paid as independent contractors. As a compromise to this dispute, the Parties negotiated and agreed that Defendant would pay this Additional Estimated Substitute Amount, in addition to the Gross Settlement Amount. This Additional Estimated Substitute Amount is intended as a settlement amount that will be paid out to Settlement Class Members as part of their Individual Settlement Payment. This Additional Estimated Substitute Amount will be included in the Net Settlement Fund and distributed to Settlement Class Members pursuant to Section 7.1, but it shall not be taken into consideration for any other purpose, including that it shall not be taken into consideration for purposes of determining the Class Counsel Award, Class Representative Enhancement Payment, or PAGA Penalty Amount. (Settlement Agreement §§1.17; 7.1)

1 24. The “Individual Settlement Amount Calculations” payment to the Class Members
2 will be based on the approximate number of Nursing Shifts each Settlement Class Member
3 worked during the Class Period. The Settlement Administrator will determine the total number of
4 Nursing Shifts worked by all Class Members during the Class Period and then divide that Net
5 Settlement Fund (which will include the addition of the “Additional Estimated Substitute
6 Amount”) by the number of Total Shifts to derive the “Shift Point Value”. Then for each
7 Settlement Class Member the Settlement Administrator shall multiply the number of their Nursing
8 Shifts worked during the Class Period by the Shift Point Value to determine each Settlement Class
9 Members Individual Settlement Amount and that amount shall be reported on an IRS Form 1099.
10 (Settlement Agreement § 7.1).

11 25. The portion of the Net Settlement Amount allocated to the Class shall be all-in and
12 settlement checks will be sent to all Settlement Class Members. Any settlement checks not cashed
13 after 180 days from the date of the class-wide distribution shall be void, and the Settlement
14 Administrator shall, as soon as practicable, forward the sums correlating to those checks and any
15 residual amounts returned to the Settlement Administrator to be paid out per guidelines in CCP
16 §384 to Cy Pres recipient the Legal Aid Society of San Mateo County (Settlement Agreement
17 §7.4).

18 **C. Released Claims**

19 26. *Released Claims:* Under the terms of the Settlement Agreement, upon Final
20 Approval by the Court, and subject to Defendant’s deposit of the Gross Settlement Amount and
21 Additional Estimated Substitute Amount with the Settlement Administrator, Plaintiff and each
22 Settlement Class Member shall be bound by the Settlement, and, at the same time, will have
23 released the Released Parties from the Released Claims. The “Released Claims” with respect to
24 the “Released Parties” (defined below) are any manner of action, cause of action, claim, demand,
25 right, suit, obligation, debt, contract, agreement, promise, liability, or remedy of any nature
26 whatsoever (including without limitation any damages, charges, penalties, losses, costs, expenses,
27 and attorneys’ fees), whether in law or in equity, under contract, tort or any other subject area, or
28 under any statute, rule, regulation, order, or law, whether federal, state, or local, on any grounds

1 whatsoever, including without limitation any and all alleged violations of the California Labor
2 Code, the California Code of Regulations, the California Business & Professions Code, and the
3 Fair Labor Standards Act, that were pled or that could have been pled, and claims sought or that
4 could have been sought, based on or arising out of the factual allegations in the Complaint,
5 whether foreseen or unforeseen, fixed or contingent. (Settlement Agreement §1.31)

6 27. The “Released Parties” means CareLinx and any of its current and former directors,
7 officers, members, administrators, agents, insurers, beneficiaries, trustees, employee benefit plans,
8 representatives, partners, accountants, servants, employees, attorneys, parents, subsidiaries,
9 affiliates, divisions, branches, units, shareholders, investors, contractors, successors, joint
10 venturers, predecessors, related entities, and assigns, and all other individuals and entities acting
11 by, through, under and/or on behalf of CareLinx. (Settlement Agreement §1.32) The Settlement
12 Agreement also provides Defendant with a general release from named Plaintiff, including a Civil
13 Code § 1542 waiver. (Settlement Agreement §2.6).

14 **D. Attorneys’ Fees and Incurred Expenses**

15 28. Under the terms of the Settlement Agreement, Class Counsel will move for
16 reasonable attorney’s fees, not exceeding one-third, **\$561,000 (Five Hundred Sixty One**
17 **Thousand)**, of the Gross Settlement Amount (\$1,700,000). (Settlement Agreement § 2.2). Class
18 Counsel will also seek reimbursement of reasonable expenses incurred by Class Counsel in
19 connection with the Lawsuit, not exceeding **\$20,000 (Twenty Thousand)**. (*Id.*) The Court need
20 not rule on Class Counsel’s fees and expenses now; a formal application will be filed prior to and
21 to be heard at the same date and time as the Final Approval Hearing. As will be explained in
22 detail in the application, the requested fees and costs are eminently reasonable considering the
23 amount of time and expenses incurred by Class Counsel in this case. In that application for fees
24 and costs Class Counsel will provide a lodestar cross check and itemization of costs so that the
25 court can see the requests are reasonable.

26 **E. PAGA Penalty Amount, LWDA Payment, and Settlement Administrator**

27 29. **\$170,000 (One Hundred and Seventy Thousand Dollars)** of the Gross
28 Settlement Fund is allocated to be paid for the resolution of potential PAGA claims (the “PAGA

Penalty Amount”). (Settlement Agreement §1.28). Pursuant to PAGA, 75% of that amount, **\$127,500 (One Hundred Twenty Seven Thousand Five Hundred Dollars)**, is to be paid to the California Labor and Workforce Development Agency (the “LWDA Payment”) and 25% to the Class Members, **\$42,500 (Forty-Two Thousand Five Hundred Dollars)**, (the “PAGA Group Amount”). (Settlement Agreement §§1.20, 1.27). Prior to the Final Approval/Fairness Hearing, Class Counsel will apply to the Court for payment from the Gross Settlement Fund to compensate the Settlement Administrator – CPT Group, Inc. - for fees and costs associated with the administration of the settlement (not exceeding **\$21,000**)(the “Settlement Administration Costs”). (Settlement Agreement §§ 1.2, 1.3).

F. Class Representative Enhancement Payment

30. Pursuant to the terms of the Settlement, Class Counsel will seek an Enhancement Payment of **\$10,000 (“Ten Thousand Dollars”)** for the Class Representative. (Settlement Agreement §§1.8, 2.3). The Court need not rule on the Class Representative Enhancement Payment now; a formal application will be filed prior to the Final Approval/Fairness Hearing. As will be explained in detail in the application, the requested Enhancement Payment is reasonable and justified based on the significant time, effort and risks the Class Representative incurred in bringing this case on behalf of the Class, as well as the substantial benefits the resulting Settlement provides the Class. The proposed Class Representative Enhancement Payment represents only .005% of the total Gross Settlement Amount and will not significantly reduce the awards of the Class Members. Public policy strongly supports service awards to plaintiffs in employment class actions, and they are routinely granted by courts in this state and around the country. Such awards compensate plaintiffs for the efforts and risks they have undertaken on behalf of the Class, without which no settlement would be possible. And, they provide an incentive for other employees to bring cases that vindicate the public interest in the lawful payment of wages.

CONCLUSION

1 31. Based on my extensive experience in this type of litigation and thorough familiarity
2 with the factual and legal issues in this case, I have reached the firm conclusion that the proposed
3 Settlement is an excellent result for the Class and is in the Class Members' best interest.

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

6
7 **DATED:** February 18, 2022

DA VEGA | FISHER | MECHTENBERG LLP

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9 

10 By: _____

11 Matthew S. Da Vega
12 Attorneys for Plaintiff and Class
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EXHIBIT 1
Settlement Agreement

MATTHEW S. DA VEGA (SBN 195443)
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Attorneys for Defendant
CARELINX, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN MATEO

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

Plaintiff,

v.

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

Defendants.

Case No. 21-CIV-03038

**JOINT STIPULATION OF CLASS ACTION
SETTLEMENT AND RELEASE**

Action Filed: June 3, 2021

1 This Joint Stipulation of Class Action Settlement and Release (the “Agreement” or
2 “Settlement Agreement”) is made and entered into by and between Plaintiff Joanna Magpiong
3 (“Plaintiff”), as an individual and on behalf of all others alleged to be similarly situated, and
4 Defendant CareLinx, Inc. (“CareLinx” or “Defendant”) (Plaintiff and Defendant each a “Party”
5 and collectively the “Parties”). Except as otherwise specified, defined terms shall have the
6 meanings set forth in the Recitals and Section 1 of this Agreement.

7 **RECITALS**

8 A. Plaintiff initiated the above-captioned lawsuit by filing a Class Action Complaint
9 against Defendant on or about June 3, 2021, in the Superior Court for the County of San Mateo
10 (“Court”), Case No. 21-CIV-03038 (the “Action”). Plaintiff filed a First Amended
11 Representative and Class Action Complaint against Defendant on or about August 10, 2021
12 (“First Amended Complaint”). The First Amended Complaint asserted causes of action for
13 alleged (1) failure to pay overtime wages, citing California Labor Code sections 204, 510, 1194,
14 1198, 1199 and applicable Wage Orders; (2) failure to pay minimum wage, citing California
15 Labor Code sections 1182.12, 1194, 1197, 1197.1 and applicable Wage Orders; (3) failure to
16 provide meal breaks, citing California Labor Code sections 226.7 and 512 and applicable Wage
17 Orders; (4) failure to provide rest breaks, citing California Labor Code section 226.7 and
18 applicable Wage Orders; (5) failure to provide timely and accurate wage statements, citing
19 California Labor Code sections 226; (6) failure to pay all wages due at termination – waiting
20 time penalties, citing California Labor Code sections 201, 202 and 203; (7) unlawful and/or
21 unfair business practices under California Business & Professions Code section 17200, *et seq.*
22 (“UCL”); and (8) violation of the Private Attorney General Act (“PAGA”), California Labor
23 Code section 2698, *et seq.* Plaintiff’s First Amended Complaint asserted these claims on behalf
24 of an alleged class of independent contractor nurses working in California and sought alleged
25 unpaid or underpaid compensation, including for regular and overtime hours, restitution,
26 liquidated damages, statutory and civil penalties, attorneys’ fees, costs, and interest.

27 B. On or about September 10, 2021, Defendant filed an Answer to the First Amended
28 Complaint, generally denying all of the claims and allegations in the First Amended Complaint

1 and asserting several affirmative defenses.

2 C. Thereafter, Plaintiff and Defendant engaged in informal discovery, including the
3 exchange of documents and data, including without limitation information regarding all shifts
4 worked by, and amounts paid to, Class Members during the relevant period.

5 D. On November 4, 2021, the Parties participated in an all-day remote mediation
6 before Michael Loeb, a well-respected mediator with significant experience mediating
7 employment wage-and-hour class actions. After a full day of mediation, the Parties agreed to
8 the material terms of this Agreement, which was documented in a signed Memorandum of
9 Understanding.

10 F. At all times, Defendant has denied and continues to deny any wrongdoing and
11 denies that it committed, threatened, or attempted to commit, any of the wrongful acts or
12 violations of law or duty alleged in the First Amended Complaint or the Action, and instead
13 contends that Defendant has acted properly and lawfully. Defendant also denies that Plaintiff or
14 any of the Class Members are entitled to any form of wages, damages, penalties, interests,
15 attorneys' fees, costs, or any relief whatsoever (at law or at equity) based on the conduct alleged
16 in the First Amended Complaint or the Action. In addition, Defendant maintains that it has
17 meritorious defenses to the claims alleged in the First Amended Complaint and the Action, and
18 that it was prepared to vigorously defend the Action. Nonetheless, taking into account the
19 uncertainty and risks inherent in litigation, Defendant has concluded that defense of the claims
20 asserted in the First Amended Complaint and the Action would be burdensome and expensive,
21 and that it is desirable and beneficial to fully and finally settle and terminate the Action in the
22 manner and upon the terms and conditions set forth in this Agreement.

23 G. Plaintiff believes that the claims asserted in the Action have substantial merit.
24 Nonetheless, Plaintiff and her counsel, Matthew S. Da Vega and Matthew Fisher of Da Vega
25 Fisher Mechtenberg LLP ("Class Counsel"), recognize and acknowledge the expense and length
26 of continued prosecution of the Action against Defendant through trial and any subsequent
27 appeals. Plaintiff and Class Counsel have also taken into account the uncertain outcome and risks
28 of litigation, especially in complex actions, as well as the difficulties and delays inherent in such

1 litigation. Based on their evaluation, Class Counsel have concluded that the terms and conditions
2 of this Settlement Agreement are fair, reasonable, and adequate to the Class, and that it is in the
3 best interests of the Class to settle the claims alleged in the First Amended Complaint and the
4 Action pursuant to the terms and provisions of this Settlement Agreement.

5 H. The Gross Settlement Amount was negotiated and agreed-upon by the Parties.
6 The Gross Settlement Amount plus the Additional Estimated Substitute Amount, as defined in
7 Section 1.17 below, is the maximum amount to be paid by Defendant as a result of this
8 Settlement, except as expressly provided in Section 6.2. The value of the Gross Settlement
9 Amount was expressly negotiated to account for and cover the payment of the Class
10 Representative Enhancement Payment, the Settlement Administration Costs to the Settlement
11 Administrator, the Class Counsel Award to Class Counsel, the LWDA Payment, and as
12 described in Section 7.1, all payments to Settlement Class Members (all capitalized terms
13 defined below). In no event shall Defendant be required to pay more than the Gross Settlement
14 Amount plus the Additional Estimated Substitute Amount, except as expressly provided in
15 Section 6.2.

16 I. This Agreement is made and entered into by and between Plaintiff, individually
17 and on behalf of all others alleged to be similarly situated, and Defendant, and is subject to the
18 terms and conditions hereof and the Court's approval. The Parties expressly acknowledge that
19 this Agreement is entered into solely for the purpose of compromising significantly disputed
20 complex claims and that nothing herein is an admission of liability or wrongdoing by
21 Defendant. The Agreement's provisions, and all related drafts, communications and discussions,
22 cannot be construed as or deemed to be evidence of an admission or concession of any point of
23 fact or law by any person or entity and cannot be offered or received into evidence or requested in
24 discovery in this Action or any other action or proceeding as evidence of an admission or
25 concession. If for any reason the Agreement is not approved by the Court, it will be of no force
26 or effect.

AGREEMENT

1. DEFINITIONS.

The following section defines terms that are not defined above. Some definitions use terms that are defined later in this Section:

1.1 “Class” shall refer to the following group of individuals: “All current and former Nurses who have worked at least one Nursing Shift in California through use of Defendant’s Nurse OnDemand platform application at any time during the Class Period.” “Class Member(s)” refers to a member(s) of the Class.

1.2 “Settlement Administrator” means CPT Group, Inc., the third-party class action settlement administrator mutually agreed to by the Parties for the purposes of administering this Settlement. The Parties will each ensure and represent that they do not have any financial interest in the Settlement Administrator or otherwise have a relationship with the Settlement Administrator that could create a conflict of interest.

1.3 “Settlement Administration Costs” means the costs payable to the Settlement Administrator for all fees and expenses reasonably and necessarily incurred as a result of administering this Settlement, including, but not limited to, the cost of providing notice of the proposed settlement to the Class, the cost of administering the settlement and any settlement fund created as a result of this Agreement. The Settlement Administration Costs are estimated to **not exceed twenty-one thousand dollars (\$21,000.00)** and shall be payable from, and not in addition to, the Gross Settlement Amount.

1.4 “Class Counsel” means Matthew S. Da Vega and Matthew Fisher of Da Vega Fisher Mechtenberg LLP.

1.5 “Class Counsel Award” means the amount awarded by the Court pursuant to this Agreement to Class Counsel for reasonable attorneys’ fees and reimbursement of litigation costs and expenses incurred in connection with the litigation and resolution of this Action, including, but not limited to, costs associated with documenting the Agreement, securing the Court’s approval of the Agreement, administering the Agreement, obtaining entry of the

1 judgment in the Action, and expenses for any experts or consultants. The Class Counsel Award
2 shall be paid from, and not in addition to, the Gross Settlement Amount.

3 **1.6** “Class List” means a list of the Class Members formatted in Microsoft Office
4 Excel and shall include each Class Member’s full name; mailing address and telephone number
5 last known to Defendant; Social Security number; and estimated number of Nursing Shifts
6 worked through use of Defendant’s Nurse OnDemand platform during the Class Period. The
7 Settlement Administrator will treat the Class List as confidential, and the Class List shall not be
8 used for any purpose other than as set forth herein. The Settlement Administrator shall not
9 disclose the Class List to Class Counsel or any other person or entity.

10 **1.7** “Class Period” refers to the period of time from June 3, 2017 through the date the
11 Court grants preliminary approval of the Settlement. As a practical matter, there were no
12 Nursing Shifts worked by any Class Member prior to January 1, 2020.

13 **1.8** “Class Representative Enhancement Payment” means the amount to be awarded
14 by the Court pursuant to this Agreement to be paid to Plaintiff in recognition of her effort and
15 work in prosecuting the Action on behalf of the Class Members and others similarly situated,
16 and the associated risks of acting as a class representative. The Class Representative
17 Enhancement Payment shall be reported on an IRS Form 1099.

18 **1.9** “Class Settlement” means the settlement and resolution of the Released Claims,
19 except the PAGA Release.

20 **1.10** “Complaint” means both the First Amended Complaint filed by Plaintiff on or
21 about August 10, 2021, and the Second Amended Complaint to be filed pursuant to Section 3.1
22 of this Agreement (which is substantially similar to the form attached to this Settlement
23 Agreement as Exhibit A).

24 **1.11** “CareLinx’s Counsel” shall mean Cooley LLP.

25 **1.12** “Effective Date” means sixty-one (61) calendar days plus two court days after the
26 entry of the Final Approval Order and Judgment. However, in the event that an appeal or other
27 effort to obtain reconsideration or review has been initiated, the “Effective Date” shall instead
28 mean two court days after the date that such appeal or other reconsideration or review has been

1 finally concluded in favor of the Final Approval Order and Judgment and the Final Approval
2 Order and Judgment is no longer subject to review, whether by appeal, petitions for rehearing,
3 petitions for rehearing en banc, petitions for certiorari, or otherwise.

4 **1.13** “Estimated Net Settlement Fund” means the Gross Settlement Amount less the
5 current estimated amounts for a Class Counsel Award (i.e., \$561,000.00 in attorneys’ fees and
6 \$20,000.00 in attorney costs), the Settlement Administration Costs (i.e., \$21,000.00), the Class
7 Representative Enhancement Payment (i.e., \$10,000.00), and the LWDA Payment (i.e.,
8 \$127,500.00). This estimated amount is only for purposes of Class Counsel calculating the
9 Additional Estimated Substitute Amount. The actual Net Settlement Fund will be determined
10 pursuant to Section 1.21.

11 **1.14** “Fairness Hearing” means the hearing at which the Court decides whether to enter
12 the Final Approval Order and Judgment.

13 **1.15** “Final Approval Order and Judgment” means an order finally approving the
14 Settlement as being fair, reasonable and adequate and certifying the Class. The proposed Final
15 Approval Order and Judgment submitted to the Court for its approval shall be substantially
16 similar to the form attached to this Settlement Agreement as Exhibit D.

17 **1.16** “Gross Settlement Amount” means a non-reversionary common fund in the
18 amount of **one million and seven hundred thousand dollars and no cents (\$1,700,000.00)**,
19 which includes the Class Counsel Award to Class Counsel, all Settlement Administration Costs,
20 the PAGA Penalty Amount, all settlement payments to Settlement Class Members, and the Class
21 Representative Enhancement Payment.

22 **1.17** “Additional Estimated Substitute Amount” means a monetary amount estimated by
23 Class Counsel to be an approximate equivalent to the amount of payroll tax that could have been
24 attributed to an employer based on the settlement payment amounts anticipated to result from the
25 Estimated Net Settlement Fund if the Class Members were classified as employees and if such
26 settlement payment amounts were allocated as being comprised of one-third compensation and
27 two-thirds penalties and interest. In this Action, Plaintiff alleges that Class Members are
28 misclassified, but Defendant maintains that Class Members are properly classified and paid as

1 independent contractors. As a compromise to this dispute, the Parties negotiated and agreed that
2 Defendant would pay this Additional Estimated Substitute Amount, in addition to the Gross
3 Settlement Amount. This Additional Estimated Substitute Amount is intended as a settlement
4 amount that will be paid out to Settlement Class Members as part of their Individual Settlement
5 Payment, and it will be reported as stated in Section 7.1. Class Counsel has calculated the
6 Additional Estimated Substitute Amount to be approximately thirty-seven thousand six hundred
7 and twenty dollars (i.e., \$37,620.00). This Additional Estimated Substitute Amount will be
8 included in the Net Settlement Fund and distributed to Settlement Class Members pursuant to
9 Section 7.1, but it shall not be taken into consideration for any other purpose, including that it
10 shall not be taken into consideration for purposes of determining the Class Counsel Award, Class
11 Representative Enhancement Payment, or PAGA Penalty Amount.

12 **1.18** “Individual Settlement Amount” means the amount paid in settlement hereunder
13 to each Settlement Class Member as determined pursuant to the terms set forth in Section 7.1.

14 **1.19** “LWDA” means the California Labor and Workforce Development Agency.

15 **1.20** “LWDA Payment” means seventy-five percent (75%) of the PAGA Penalty
16 Amount, or **one hundred twenty-seven thousand and five hundred dollars and no cents**
17 **(\$127,500.00)**, to be paid to the LWDA.

18 **1.21** “Net Settlement Fund” means the Gross Settlement Amount plus the Additional
19 Estimated Substitute Amount less the Class Counsel Award to Class Counsel, all Settlement
20 Administration Costs, the Class Representative Enhancement Payment, the LWDA Payment, and
21 the PAGA Group Amount. To the extent the Court does not approve the full requested Class
22 Counsel Award to Class Counsel, the Class Representative Enhancement Payment, or Settlement
23 Administration Costs, the Net Settlement Fund will increase. Settlement payments to Settlement
24 Class Members will come out of the Net Settlement Fund.

25 **1.22** “Notice” or “Class Notice” means the notice of the proposed Settlement terms, as
26 approved by Class Counsel, CareLinx’s Counsel and the Court, to be provided to Class Members.
27 The Class Notice must be substantially similar to the form attached as Exhibit C and contain: (a)
28 information regarding the nature of the Action, (b) a summary of the terms of the Agreement, (c)

1 the definition of the Class, (d) the formula for calculating the Net Settlement Fund (including the
2 amounts sought for the Class Counsel Award, Class Representative Enhancement Payment,
3 Settlement Administration Costs and the LWDA Payment) and Individual Settlement Amounts,
4 (e) the individual Class Member's estimated number of Nursing Shifts worked through use of
5 Defendant's Nurse OnDemand platform application during the Class Period and Gross
6 Allocated Amount (as defined in Section 7.1), (f) the dates which comprise the Class Period,
7 (g) instructions on how to submit a Shift Dispute, Request for Exclusion, or Objection, and (h)
8 the deadlines by which Shift Disputes, Requests for Exclusion, or Objections to the Agreement
9 must be submitted to the Settlement Administrator.

10 **1.23** "Nurse" means a licensed healthcare professional who works as a Certified
11 Nursing Assistant ("CNA"), Medical Assistant, Licensed Vocational Nurse ("LVN"), Licensed
12 Practical Nurse ("LPN"), Registered Nurse ("RN"), and/or Nurse Practitioner ("NP").

13 **1.24** "Nursing Shift" means a shift at a skilled nursing or similar facility in California
14 that was sourced, accepted, and paid through use of Defendant's Nurse OnDemand platform
15 application. All Class Members will be credited with at least one (1) Nursing Shift.

16 **1.25** "Objection" means a Class Member's valid and timely written objection to the
17 Settlement Agreement. For the Objection to be valid, it must: (a) state the case name and
18 number of the Action, (b) contain the Class Member's name, current mailing address, most
19 current telephone number, and last four digits of his or her Social Security number, (c) state the
20 basis for the objection, (d) be signed by the Class Member, (e) be submitted to the Settlement
21 Administrator at the address specified in the Class Notice; and (f) be submitted with proof of
22 the submission date (such as a U.S. Postal Service postmark or another delivery service date
23 stamp) on or before the Response Deadline. If the Class Member intends to speak at the
24 Fairness Hearing, they must file a notice of intention to appear with the Court and provide a
25 copy of this notice and their Objection to counsel for both Parties. Notwithstanding the
26 requirement in the preceding sentence, any Settlement Class Member will be permitted to appear
27 and speak at the Fairness Hearing in order to have an Objection heard by the Court.
28

1 **1.26** “PAGA Group” shall mean all Class Members and thus refer to the following
2 group of individuals: “All current and former nurses who have accepted and worked at least one
3 nursing shift in California through use of Defendant’s Nurse OnDemand business platform at
4 any time during the Class Period.”

5 **1.27** “PAGA Group Amount” means twenty-five percent (25%) of the PAGA Penalty
6 Amount, or **forty-two thousand and five hundred dollars and no cents (\$42,500.00)**, to be
7 distributed pro rata and paid to the PAGA Group by the Settlement Administrator pursuant to
8 Sections 7.2 and 7.3.

9 **1.28** “PAGA Penalty Amount” means **one hundred and seventy thousand dollars**
10 **and no cents (\$170,000.00)** to be paid to settle any and all claims for which penalties under
11 PAGA may be sought or are otherwise available, as set forth in Section 2.5 of this Agreement.

12 **1.29** “Preliminary Approval Order” means the Court order granting preliminary
13 approval of the Settlement Agreement. The proposed Preliminary Approval Order submitted to
14 the Court for its approval shall be substantially similar to the form attached to this Settlement
15 Agreement as Exhibit B.

16 **1.30** “QSF” means the “Qualified Settlement Fund” which is an interest-bearing
17 account designated and controlled by the Settlement Administrator as described in Section 2.1.

18 **1.31** “Released Claims” means any manner of action, cause of action, claim, demand,
19 right, suit, obligation, debt, contract, agreement, promise, liability, or remedy of any nature
20 whatsoever (including without limitation any damages, charges, penalties, losses, costs, expenses,
21 and attorneys’ fees), whether in law or in equity, under contract, tort or any other subject area, or
22 under any statute, rule, regulation, order, or law, whether federal, state, or local, on any grounds
23 whatsoever, including without limitation any and all alleged violations of the California Labor
24 Code, the California Code of Regulations, the California Business & Professions Code, and the
25 Fair Labor Standards Act, that were pled or that could have been pled, and claims sought or that
26 could have been sought, based on or arising out of the factual allegations in the Complaint,
27 whether foreseen or unforeseen, fixed or contingent.

1 **1.32** “Released Parties” means CareLinx and any of its current and former directors,
2 officers, members, administrators, agents, insurers, beneficiaries, trustees, employee benefit
3 plans, representatives, partners, accountants, servants, employees, attorneys, parents, subsidiaries,
4 affiliates, divisions, branches, units, shareholders, investors, contractors, successors, joint
5 venturers, predecessors, related entities, and assigns, and all other individuals and entities acting
6 by, through, under and/or on behalf of CareLinx.

7 **1.33** “Releasing Parties” means Plaintiff and all Class Members who do not timely
8 submit a valid Request for Exclusion, and each of their successors, assigns, legatees, heirs, and
9 personal representatives.

10 **1.34** “Request for Exclusion” means a timely and valid written request submitted by a
11 Class Member indicating that they request to be excluded from the Class Settlement. The
12 Request for Exclusion must: (a) state the case name and number of the Action, (b) set forth the
13 name, address, and telephone number of the Class Member requesting exclusion; (c) be signed
14 by the Class Member; (d) be addressed to the Settlement Administrator; and (e) be postmarked
15 on or before the Response Deadline.

16 **1.35** “Response Deadline” means the deadline by which Class Members must submit
17 to the Settlement Administrator valid Shift Disputes, Requests for Exclusion, or Objections to
18 the Agreement. Shift Disputes, Requests for Exclusion and Objections to the Agreement must
19 be submitted with proof of the submission date (such as a U.S. Postal Service postmark or
20 another delivery service date stamp) on or before the Response Deadline. The Response
21 Deadline shall be forty-five (45) calendar days from the initial mailing of the Class Notice to
22 Class Members pursuant to Section 4. In the event of a re-mailed Class Notice, the Response
23 Deadline will be extended an additional fifteen (15) calendar days for that individual Class
24 Member.

25 **1.36** “Settlement Class Member(s)” means a Class Member who has not opted out of
26 the Class Settlement by submitting a valid and timely Request for Exclusion.

27 **1.37** “Shift Dispute” means the written letter that a Class Member must submit to the
28 Settlement Administrator with proof of the submission date (such as a U.S. Postal Service

1 postmark or another delivery service date stamp) on or before the Response Deadline, if they
2 wish to dispute the number of Nursing Shifts credited to them. The Shift Dispute must: (a) state
3 the case name and number of the Action, (b) set forth the Class Member's name, address, and
4 telephone number; (c) be signed by the Class Member; (d) include any documentary evidence
5 showing that the Nursing Shift information is inaccurate, and (e) be postmarked or submitted to
6 the Settlement Administrator on or before the Response Deadline.

7 **1.38** "Total Shifts" is the total number of Nursing Shifts worked by all Settlement
8 Class Members during the Class Period.

9 **2. SETTLEMENT RELIEF AND RELEASES.**

10 **2.1** Gross Settlement Amount.

11 (a) Defendant shall pay the Gross Settlement Amount (\$1,700,000.00), plus an
12 additional amount representing the Additional Estimated Substitute Amount, into the QSF within
13 five (5) business days after the Effective Date.

14 (b) The Parties agree that the QSF is intended to be a "Qualified Settlement
15 Fund" under Section 468B of the Code and Treas. Reg. §1.468B-1, 26 CFR § 1.468B-1, *et seq.*,
16 and will be administered by the Settlement Administrator as such. Among other duties of the
17 Settlement Administrator provided by this Settlement, the Settlement Administrator shall open
18 and administer a settlement account in such a manner as to qualify, and maintain the qualification
19 of, the account as a "Qualified Settlement Fund" under Section 468B of the Code and Treas. Reg.
20 §1.468B-1 and satisfy all federal, state and local income and other tax reporting, return, and filing
21 requirements with respect to the QSF. The Parties and the Settlement Administrator shall treat the
22 account as coming into existence as a Qualified Settlement Fund on the earliest date permitted as
23 set forth in 26 CFR §1.468B-1(j)(2)(i), and such election statement shall be attached to the
24 appropriate returns as required by 26 CFR §1.468B-1(j)(2)(ii). The Parties agree to cooperate
25 with the Settlement Administrator and one another to the extent reasonably necessary to carry out
26 the provisions of this section.

27 (c) The Gross Settlement Amount shall be used to pay all amounts
28 contemplated or required by this Agreement, including the Class Representative Enhancement

1 Payment to Plaintiff, Settlement Administration Costs to the Settlement Administrator, the
2 Class Counsel Award to Class Counsel, the PAGA Penalty Amount, and as described in Section
3 7.1, to cover all payments to Settlement Class Members.

4 (d) Defendant or the Settlement Administrator will calculate the amounts to be
5 paid to Settlement Class Members in accordance with the terms and provisions of this Agreement
6 and in accordance with applicable state and federal law (including tax regulations).

7 (e) No person or entity shall have any claim against CareLinx, CareLinx's
8 Counsel, any of the Released Parties, Plaintiff, Class Members, Class Counsel or any Settlement
9 Administrator based on distributions and payments made in accordance with this Agreement.

10 **2.2** Class Counsel Award. Subject to Court approval, Defendant agrees not to object to
11 Class Counsel's request for attorneys' fees of up to thirty-three percent (33%) of the Gross
12 Settlement Amount (i.e., \$1,700,000.00 x 33% = **\$561,000.00**) to cover all attorneys' fees.
13 Plaintiff and Class Counsel agree to not seek an award of greater than thirty-three percent (33%)
14 of the Gross Settlement Amount (i.e., \$561,000.00) for fees and that Defendant will not be
15 obligated to pay any award in excess of thirty-three percent (33%) of the Gross Settlement
16 Amount. Subject to Court approval, Defendant agrees not to object to Class Counsel's request for
17 reasonable litigation costs of up to twenty thousand dollars (**\$20,000.00**). Class Counsel will file
18 any papers supporting the request for the Class Counsel Award with the Court sixteen (16) court
19 days before the Fairness Hearing. Class Counsel shall provide the Settlement Administrator their
20 current and valid Form W-9 within five (5) business days of the Effective Date. If the Court
21 approves the Settlement of this Action and a payment of a Class Counsel Award, and so long as
22 Class Counsel has timely provided the Settlement Administrator with their current and valid Form
23 W-9, Class Counsel shall be paid the Class Counsel Award approved by the Court out of the QSF
24 within ten (10) business days after the Effective Date.

25 **2.3** Class Representative Enhancement Payment. Plaintiff agrees not to petition the
26 Court for more than ten thousand dollars (\$10,000.00) for a Class Representative Enhancement
27 Payment. While Defendant does not object to a reasonable Class Representative Enhancement
28 Payment, it takes no position on the propriety of the amount sought by Plaintiff. Plaintiff will file

1 any papers supporting the request for a Class Representative Enhancement Payment with the
2 Court at least sixteen (16) court days prior to the Fairness Hearing. Plaintiff shall provide the
3 Settlement Administrator a current and valid Form W-9 within five (5) business days of the
4 Effective Date. If the Court approves the Settlement of this Action and a Class Representative
5 Enhancement Payment, so long as Plaintiff has timely provided the Settlement Administrator a
6 current and valid Form W-9, the Settlement Administrator shall pay the Class Representative
7 Enhancement Payment awarded by the Court to Plaintiff from the QSF within ten (10) business
8 days after the Effective Date. Plaintiff acknowledges that she has obtained no tax advice from
9 CareLinx or CareLinx's Counsel, and that CareLinx and CareLinx's Counsel have not made any
10 representation concerning the tax consequences, if any, of the Class Representative Enhancement
11 Payment. Plaintiff agrees that she is solely responsible for the tax consequences of the Class
12 Representative Enhancement Payment.

13 **2.4 Reduction in Class Representative Enhancement Payment or the Class Counsel**
14 **Award.** In the event that the Court (or any appellate court) awards less than the amount requested
15 for the Class Counsel Award or the Class Representative Enhancement Payment, only the
16 awarded amounts shall be paid and shall constitute satisfaction of those obligations and full
17 payment thereunder, and any remaining or un-awarded portion of the requested Class Counsel
18 Award and/or the Class Representative Enhancement Payment shall be allocated to the Settlement
19 Class Members pursuant to the terms of Section 7. To the extent the Court does not approve any
20 or all of the amount of the Class Counsel Award and/or the Class Representative Enhancement
21 Payment, the Settlement shall remain binding, and this will not be a justification for Plaintiff to
22 withdraw from the Settlement. Plaintiff shall not have the right to revoke the Settlement
23 Agreement if the Court reduces or does not approve the requested Class Counsel Award, although
24 Plaintiff shall retain the right to appeal any reduction of the Class Counsel Award. Any reduction
25 of the amount of the Class Counsel Award and/or the Class Representative Enhancement
26 Payment by the Court or by an appellate court shall not affect any of the Parties' other rights and
27 obligations under this Agreement.
28

1 **2.5 Payment And Allocation Of The PAGA Penalty Amount. One hundred and**
2 **seventy thousand dollars and no cents (\$170,000.00)** (the PAGA Penalty Amount),
3 representing 10% of the Gross Settlement Amount, will be paid from the Gross Settlement
4 Amount for the settlement, release and discharge of any and all claims for which penalties under
5 PAGA may be sought or could otherwise be available to any member of the PAGA Group as
6 stated in Section 2.8. Pursuant to the express requirements of California Labor Code
7 section 2699(i), the PAGA Penalty Amount shall be allocated as follows: (i) **one hundred and**
8 **twenty-seven thousand and five hundred dollars and no cents (\$127,500.00)** (75%) to be paid
9 to the LWDA (the “LWDA Payment”); and (ii) **forty-two thousand and five hundred dollars**
10 **and no cents (\$42,500.00)** (25%) (the “PAGA Group Amount”) for distribution to the PAGA
11 Group. The LWDA Payment and the PAGA Group Amount shall be paid out of the QSF by the
12 Settlement Administrator within ten (10) business days after the Effective Date.

13 **2.6 Release of Claims by Plaintiff.** Upon the Effective Date, Plaintiff and each of her
14 successors, assigns, legatees, heirs, and personal representatives waive, release, forever discharge,
15 and will not pursue any manner of action, cause of action, claim, demand, right, suit, obligation,
16 debt, contract, agreement, promise, liability, or remedy of any nature whatsoever (including
17 without limitation any damages, charges, penalties, losses, costs, expenses, and attorneys’ fees),
18 whether in law or in equity, under contract, tort or any other subject area, or under any statute,
19 rule, regulation, order, or law, whether federal, state, or local, on any grounds whatsoever, arising
20 out of or relating to any acts, facts, omissions or obligations, whether known or unknown,
21 whether foreseen or unforeseen, fixed or contingent, against any or all of the Released Parties.
22 This release shall not apply to claims for workers’ compensation benefits, unemployment
23 insurance benefits, pension or retirement benefits, or any other claim or right that cannot be
24 waived or released as a matter of law. In addition, Plaintiff, and each of Plaintiff’s successors,
25 assigns, legatees, heirs, and personal representatives, expressly waive and relinquish, to the
26 fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the
27 California Civil Code, or any other similar provision under federal or state law, which provides:

28 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE**

1 **CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT**
2 **TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING**
3 **THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD**
4 **HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH**
5 **THE DEBTOR OR RELEASED PARTY.**

6 Plaintiff agrees that this waiver is an essential and material term of this release and the settlement
7 that underlies it and that without such waiver the settlement would not have been accepted.

8 **2.7** Release of Claims by Class Members. Upon the Effective Date, all Releasing
9 Parties shall waive and forfeit, and be deemed to have fully, finally and forever released and
10 discharged all Released Claims against all Released Parties.

11 **2.8** PAGA Release. Upon the Effective Date, Plaintiff shall on behalf of herself, the
12 PAGA Group, and the LWDA waive, release, and forever discharge the Released Parties from
13 any and all claims or actions for civil penalties under PAGA (the California Private Attorneys
14 General Act, California Labor Code section 2698, *et seq.*) for conduct or omissions during the
15 Class Period based on or arising out of the factual allegations of the Complaint, including without
16 limitation any and all claims under California Labor Code sections 201, 202, 203, 204, 204.2,
17 206, 206.5, 207, 208, 210, 212, 218.5, 218.6, 221, 223, 224, 226, 226.7, 226.8, 227, 227.3, 230,
18 230.1, 233, 246, 432.5, 510, 511, 512, 513, 551, 552, 558, 976, 1025, 1102.5, 1174, 1182.12,
19 1194, 1194.2, 1194.5, 1197, 1197.1, 1198, 1198.3, 1199, 1696.5, 2570.3, 2698, 2699, 2699.3,
20 2699.5, 2753, 2800, 2802, 2806, 6311, and 6399.7.

21 **3. PRELIMINARY APPROVAL PROCESS.**

22 **3.1** Amended Complaint. On or about June 3, 2021, Plaintiff submitted a PAGA letter
23 and draft complaint to the LWDA. On or about December 14, 2021, Plaintiff submitted an
24 amended PAGA letter and draft amended complaint to the LWDA. On or within five (5) court
25 days after execution of this Agreement or 65 days after December 14, 2021, whichever is later,
26 the Parties agree that Plaintiff shall file a Second Amended Complaint in the Action on behalf of
27 herself and the Class and PAGA Group (as defined in Sections 1.1 and 1.26), for purposes of this
28 Settlement only, and that is substantially similar to the form attached hereto as Exhibit A (the

1 “Second Amended Complaint”). Plaintiff shall provide Defendant with a copy of the draft
2 Second Amended Complaint at least five (5) court days prior to filing.

3 **3.2 Preliminary Approval Hearing.** As soon as practicable after this Agreement is fully
4 executed and the filing of the Second Amended Complaint, Plaintiff shall file a motion for
5 preliminary approval seeking an order from the Court for: (i) conditional certification of the Class
6 for settlement purposes only; (ii) preliminary approval of this Settlement Agreement; (iii) setting
7 a date for the Fairness Hearing; (iv) appointing Plaintiff as class representative for settlement
8 purposes only; and (v) appointing the law firm of Da Vega Fisher Mechtenberg LLP as Class
9 Counsel for settlement purposes only. Defendant will not oppose Plaintiff seeking conditional
10 certification of the Class for settlement purposes only. Plaintiff shall provide a copy of the
11 Agreement to the LWDA, pursuant to California Labor Code section 2699(1)(2), at the same time
12 that it is submitted to the Court.

13 **3.3 Preliminary Approval of Notice.** In conjunction with the motion for entry of the
14 Preliminary Approval Order, Plaintiff shall submit for Court approval the proposed Class
15 Notice. The Preliminary Approval Order shall also provide for the Class Notice to be sent to all
16 Class Members by the Settlement Administrator.

17 **3.4 Preliminary Approval Briefing.** Class Counsel shall draft the motion for
18 preliminary approval of the Settlement and provide Defendant with a copy of the draft
19 preliminary approval papers at least five (5) court days prior to filing so that Defendant may
20 provide any comments to the drafts. Defendant shall be permitted, but not required, to file its own
21 brief in support of the Preliminary Approval Order.

22 **4. NOTICE TO THE CLASS, OBJECTIONS, AND REQUESTS FOR EXCLUSION.**

23 **4.1 Delivery of the Class List.** Within ten (10) calendar days after entry of the
24 Preliminary Approval Order, Defendant shall provide the Class List to the Settlement
25 Administrator.

26 **4.2 Notice by First-Class U.S. Mail.** Within thirty (30) calendar days after entry of
27 the Preliminary Approval Order, the Settlement Administrator shall mail the Class Notice via
28 First-Class U.S. Mail to all Class Members for whom it has a valid U.S. Postal address. Each

1 Class Member's Class Notice shall include the number of Nursing Shifts with which the Class
2 Member has been credited.

3 **4.3** Updating of Contact Information in the Class List. After receiving the Class List
4 and prior to mailing the Class Notice, the Settlement Administrator shall perform a search based
5 on the National Change of Address Database for information to update and correct for any
6 known or identifiable address changes. If the Settlement Administrator determines that a Class
7 Member has more than one address and it cannot reasonably determine which address is the
8 most current, the Settlement Administrator shall mail the Class Notice to all such addresses.

9 **4.4** Re-Mailing of Notice. Any Class Notice returned to the Settlement Administrator
10 as non-deliverable on or before the Response Deadline shall be sent promptly via First-Class
11 U.S. Mail to the forwarding address affixed thereto. With respect to Class Notices returned to
12 the Settlement Administrator without a forwarding address, the Settlement Administrator shall
13 make an attempt to locate an address by way of skip-trace and promptly re-mail the returned
14 Class Notice via First-Class U.S. Mail.

15 **4.5** Shift Dispute Procedure. To dispute the number of Nursing Shifts with which
16 they have been credited, a Class Member must timely submit a Shift Dispute to the Settlement
17 Administrator by the Response Deadline. The Shift Dispute may be submitted by U.S. Mail or
18 other delivery service. The submission date is deemed to be, in the case of submission by U.S.
19 Mail or other delivery service, the date the Shift Dispute is sent, as evidenced by the postmark or
20 other delivery service date stamp. Class Members who timely submit Shift Disputes may
21 produce evidence to the Settlement Administrator showing that the Nursing Shift information is
22 inaccurate. The Settlement Administrator shall decide the dispute. Defendant's records will be
23 presumed correct, but the Settlement Administrator will evaluate the evidence submitted by the
24 Class Member and will make the final decision as to the merits of the dispute. The Settlement
25 Administrator may ask Defendant to produce additional information regarding the Class
26 Member disputing their credited Nursing Shifts for the purpose of resolving the dispute.
27 Defendant shall strive to provide such information within five (5) business days of the
28 Settlement Administrator's request. It is understood and agreed that any decision by the

1 Settlement Administrator shall not operate to increase the Gross Settlement Amount unless
2 resolution of the Shift Dispute causes the Nursing Shifts threshold in Section 6.2 to be
3 exceeded.

4 **4.6 Request for Exclusion Procedures.** Any Class Member wishing to opt out of the
5 Class Settlement must submit by U.S. Mail or other delivery service a written and signed
6 Request for Exclusion to the Settlement Administrator (at the address set forth in the Class
7 Notice) containing all the information required by Section 1.34 of this Agreement, on or before
8 the Response Deadline. The date the Request for Exclusion is sent, as evidenced by the
9 postmark or other delivery service date stamp, shall be the exclusive means to determine
10 whether a Request for Exclusion has been timely submitted. Class Members who submit a
11 timely and valid Request for Exclusion will not be bound by the Class Settlement and will have
12 no standing to object to the Settlement; however, they will be bound by the PAGA Release. As
13 described in Sections 7.2 and 7.3, all Class Members will be entitled to a pro rata share of the
14 PAGA Group Amount regardless of whether they opt out under this Section 4.6. If more than
15 twenty-five (25) Class Members timely and validly opt out of the Settlement, Defendant may
16 elect to terminate the Agreement. If Defendant terminates the Agreement under this provision,
17 Defendant will bear any of the already incurred costs of the provision of notice and third party
18 settlement administration.

19 **4.7 Objection Procedures.** To object to the Class Settlement or the Agreement, a
20 Settlement Class Member must submit a valid Objection, by U.S. Mail or other delivery service,
21 to the Settlement Administrator (at the address set forth in the Class Notice) on or before the
22 Response Deadline. The Objection must be signed by the Settlement Class Member and contain
23 all information required by Section 1.25 of this Agreement. The date the Objection is sent, as
24 evidenced by the postmark or other delivery service date stamp, shall be the exclusive means to
25 determine whether an Objection has been timely submitted. If a Class Member intends to speak
26 at the Fairness Hearing, they must file a notice of intention to appear with the Court and
27 provide a copy of the notice and their Objection to counsel for both Parties. Notwithstanding the
28 requirement in the preceding sentence, any Settlement Class Member will be permitted to appear

1 and speak at the Fairness Hearing in order to have an Objection heard by the Court. Class
2 Members who fail to object in the manner specified in this Agreement shall be deemed to have
3 waived all objections to the Agreement and shall be foreclosed from making any objections
4 (whether by appeal or otherwise) to the Settlement.

5 **4.8** Settlement Administration Reports. The Settlement Administrator shall provide
6 CareLinx's Counsel and Class Counsel a weekly report which certifies the number of Class
7 Members who have submitted (i) Shift Disputes, (ii) Requests for Exclusion, and (iii)
8 Objections. Additionally, within five (5) calendar days of the Response Deadline, the
9 Settlement Administrator will provide to CareLinx's Counsel and Class Counsel a report
10 containing the above-mentioned information ("Final Response Report"). The Settlement
11 Administrator will also provide to counsel for both Parties any updated reports regarding the
12 administration of the Agreement as needed or requested by either Party individually, or by the
13 Parties jointly, subject to the terms of this Agreement.

14 **4.9** Notice Sufficient. The Parties agree not to engage in any other form of non-Court-
15 sanctioned notification or publicity relating to this Settlement or the Action.

16 **4.10** No Solicitation of Settlement Objections or Exclusions. The Parties agree that at
17 no time shall any of the Parties or their counsel seek to solicit or otherwise encourage Class
18 Members to submit Objections or Requests for Exclusion, or to appeal from the Court's Final
19 Approval Order and Judgment.

20 **4.11** Certification of Completion. The Settlement Administrator shall provide a
21 written declaration under oath certifying the completion of its notice-related tasks no later than
22 twenty-one (21) calendar days after the Response Deadline.

23 **5. FAIRNESS HEARING; JUDGMENT.**

24 **5.1** Fairness Hearing and Entry of the Final Approval Order and Judgment. Upon
25 expiration of the deadlines to submit Shift Disputes, Requests for Exclusion, or Objections to the
26 Agreement as described above, a Fairness Hearing shall be conducted to determine whether the
27 Court should enter a Final Approval Order and Judgment, providing for, among other things,
28 payment of Individual Settlement Amounts to Settlement Class Members and the amounts

properly payable for (i) the Class Counsel Award; (ii) the Class Representative Enhancement Payment; (iii) the PAGA Penalty Amount; and (iv) all Settlement Administration Costs. Plaintiff shall request that the Fairness Hearing be held between ninety-five (95) and one hundred twenty (120) calendar days after entry of the Preliminary Approval Order, subject to the Court's availability.

5.2 Judgment and Continued Jurisdiction. Pursuant to California Rules of Court, Rule 3.769(h), upon final approval of this Agreement by the Court, the Parties shall present the judgment to the Court for its approval. After entry of the judgment, the Court shall have continuing jurisdiction solely for purposes of addressing: (i) the interpretation and enforcement of the terms of the Agreement, (ii) Agreement administration matters, and (iii) such post-judgment matters as may be appropriate under court rules or applicable law, or as set forth in this Agreement.

5.3 Settlement Terms Bind All Class Members Who Do Not Opt-Out. Any Class Member who does not affirmatively opt-out of the Class Settlement by submitting a timely and valid Request for Exclusion shall be bound by all of the terms of the Agreement, including those pertaining to the Released Claims, as well as any order that may be entered by the Court if it grants final approval of this Agreement. Notwithstanding the submission of any timely and valid Request for Exclusion, all Class Members (including the PAGA Group) will be bound by the PAGA Release under the Final Approval Order and Judgment pursuant to *Arias v. Superior Court*, 46 Cal. 4th 969 (2009).

6. NULLIFICATION OR MODIFICATION OF AGREEMENT.

6.1 Defendant's Right to Revoke. Defendant may terminate and withdraw from this Agreement at any time prior to the date the Court's approval of the Agreement becomes "final" (i.e., not subject to appeal or reconsideration) if: (a) the Agreement is construed in such a fashion that Defendant is required to pay more than the Gross Settlement Amount and the Additional Estimated Substituted Amount (except as provided in Section 6.2); (b) the Court makes an order inconsistent with any of the terms of this Agreement including, but not limited to, certifying for settlement purposes a class or representative action that is different from the Class defined in

1 Section 1.1 or PAGA Group defined in Section 1.26, or any modification relating to the release of
2 all claims (except for an order reducing the Class Counsel Award or the Class Representative
3 Enhancement Payment); (c) following the signing of this Agreement, any court certifies, whether
4 on a conditional basis or not, a class, collective, or representative action involving a claim
5 covered by this Agreement; (d) any government department or agency raises objections to the
6 terms in the Agreement or otherwise indicates that it intends to pursue remedies beyond those
7 contemplated by the Agreement; or (e) more than twenty-five (25) Class Members timely and
8 validly opt out of the Class. If Defendant terminates and withdraws under this provision,
9 Defendant will bear any of the already incurred Settlement Administration Costs. In the event that
10 the basis for withdrawal is a Court order as described in items (a) and (b) above, Defendant must
11 provide written notice to Plaintiff of its intent to terminate and withdraw within one (1) week of
12 the date on which the offending order is filed. Failure to provide timely notice will serve as a
13 waiver of the right to revoke under the circumstances described in item (a) or (b) above.

14 **6.2** Modification Based on Increase in Number of Class Members. Defendant has
15 represented that there were approximately 1,700 Class Members as of September 23, 2021. If the
16 number of Class Members increases by more than 10% (i.e., more than 170 class members)
17 through the date of the Preliminary Approval Order, then the Gross Settlement Amount shall be
18 increased by the same number of percentage points above 10% by which the actual number of
19 Class Members exceeds 1,700. For example, and for purposes of illustration only, if the number
20 of Class Members increases by 11% (1% over the 10% “grace”), the Gross Settlement Amount
21 will increase by 1%.

22 **6.3** Action Status if Settlement Not Approved. This Agreement is being entered into
23 for Settlement purposes only. In the event that [1] Defendant invokes its rights under Sections 4.6
24 or 6.1 of this Agreement, [2] the Court conditions its approval of either the Preliminary Approval
25 Order or the Final Approval Order and Judgment on any modifications of this Agreement that are
26 not acceptable to all Parties (including, but not limited to, any modification of the Class or the
27 claims and penalties being released) except for any reduction of the Class Counsel Award or the
28 Class Representative Enhancement Payment, [3] the Court does not approve the Settlement

1 Agreement or enter the Final Approval Order and Judgment, or [4] the Court's approval of this
2 Agreement does not become "final" for any reason, then this Agreement will be deemed null and
3 void *ab initio*. In that event, (a) the Preliminary Approval Order, and/or Final Approval Order and
4 Judgment, and all of its or their provisions will be vacated by its or their own terms, including,
5 but not limited to, vacating conditional certification of the Class, conditional appointment of
6 Plaintiff as a class representative and conditional appointment of Da Vega Fisher Mechtenberg
7 LLP as Class Counsel, (b) the Action will revert to the status that existed before the execution
8 date of the Memorandum of Understanding, and (c) no term or draft of the Memorandum of
9 Understanding or this Agreement contemplated by it, or any part of the Parties' settlement
10 discussions, negotiations or documentation will have any effect or be admissible into evidence for
11 any purpose in the Action or any other proceeding. If the Court does not approve this Agreement
12 or enter the Final Approval Order and Judgment for any reason, or if the Court's approval of this
13 Agreement does not become "final" for any reason, Defendant shall retain all its rights to object
14 to the maintenance of the Action as a class and/or representative action, and nothing in the
15 Memorandum of Understanding or this Agreement contemplated by it or other papers or
16 proceedings related to the Memorandum of Understanding or this Agreement contemplated by it
17 shall be used as evidence or argument by any Party concerning whether the Action may properly
18 be maintained as a class and/or representative action.

19 **7. DISTRIBUTION.**

20 **7.1 Individual Settlement Amounts Calculations.** The Individual Settlement Amount
21 is based upon the approximate number of Nursing Shifts each Settlement Class Member worked
22 as a Class Member during the Class Period. Individual Settlement Amounts shall be calculated
23 and apportioned by the Settlement Administrator as follows:

24 (a) The Settlement Administrator shall determine the number of
25 Nursing Shifts during the Class Period for each Settlement Class Member and the Total Shifts
26 based on the Class List provided by Defendant.

27 (b) The Settlement Administrator shall divide the Net Settlement Fund
28 by the number of Total Shifts to derive the "Shift Point Value."

1 (c) For each Settlement Class Member, the Settlement Administrator
2 shall multiply the determined number of Nursing Shifts they worked during the Class Period by
3 the Shift Point Value. The resulting figure shall be the “Individual Settlement Amount” for each
4 such Settlement Class Member. The Individual Settlement Amount(s) shall be reported on an
5 IRS Form 1099.

6 **7.2** Distribution of the PAGA Group Amount. The Settlement Administrator shall
7 divide the PAGA Group Amount by the total number of PAGA Group members (i.e., the total
8 number of Class Members). The resulting figure shall be each Class Member’s pro rata share of
9 the PAGA Group Amount, and these share amounts shall be reported on an IRS Form 1099.

10 **7.3** Distribution Timing of Individual Settlement Amounts and the PAGA Group
11 Amount. Individual Settlement Amounts shall be paid by check and mailed to Settlement Class
12 Members within ten (10) business days following the Effective Date. Class Member pro rata
13 shares of the PAGA Group Amount shall be paid by check and mailed to Class Members within
14 ten (10) business days following the Effective Date. If administratively feasible, the Settlement
15 Administrator will combine into one check a Settlement Class Member’s Individual Settlement
16 Amount and their pro rata share of the PAGA Group Amount.

17 **7.4** Uncashed Settlement Checks. If any checks mailed to Settlement Class Members
18 remain uncashed after the expiration of 180 days, or an envelope mailed to a Settlement Class
19 Member is returned and no forwarding address can be located for the Settlement Class Member
20 after reasonable efforts have been made (including, but not limited to, skip tracing), then any
21 such funds shall be transmitted to the Settlement Administrator and distributed in accordance
22 with California Code of Civil Procedure section 384 to the following cy pres recipient: the
23 Legal Aid Society of San Mateo County, <https://www.legalaidsmc.org/>. Any Settlement Class
24 Member who fails to timely cash or deposit their check(s) shall remain subject to the terms of
25 the Settlement, including without limitation all releases contained herein, and the Final
26 Approval Order and Judgment from the Court.

27 **7.5** Effect of Cashing or Depositing Checks. The Complaint does not allege claims
28 under the Fair Labor Standards Act, 29 U.S.C. § 201 et seq. (“FLSA”) and is thus not an FLSA

1 “action” under 29 U.S.C. § 216(b). The Parties agree this is an “opt-out” action under the
2 California Code of Civil Procedure that does not require an “opt-in” procedure to bind Class
3 Members to the terms of the Settlement, which includes the release of Released Claims as defined
4 in Sections 1.31 and 2.7. Nevertheless, and without prejudice to this position and without
5 changing the nature of this action, the Parties agree that Settlement Class Members who cash or
6 deposit an Individual Settlement Amount check are deemed to “opt-in” to the Settlement. Each
7 Individual Settlement Amount check to Settlement Class Members shall be affixed with the
8 following language as further notice: “By cashing or depositing this check, I confirm my consent
9 to the Settlement, which includes releasing claims under the Fair Labor Standards Act, 29 U.S.C.
10 § 201 et seq. (“FLSA”).”

11 **8. MISCELLANEOUS PROVISIONS.**

12 **8.1 Cooperation.** The Parties shall cooperate fully with one another in seeking
13 approval of the Court of this Settlement and to use their respective best efforts to consummate the
14 Settlement and cause the Preliminary Approval Order and Final Approval Order and Judgment to
15 be entered and to become final. The Parties therefore agree to cooperate in good faith to promptly
16 prepare, execute and finalize all Settlement-related documents, seek all necessary Court
17 approvals, and do all other things necessary to consummate the Settlement. No Party to this
18 Agreement shall seek to evade his, her, or its good faith obligations to seek approval and
19 implementation of this Settlement by virtue of any ruling, order, governmental report or other
20 development, whether in the Action, in any other litigation or otherwise that hereafter might
21 occur and might be deemed to alter the relative strengths of the Parties with respect to any claims
22 or defenses or their relative bargaining power with respect to negotiating.

23 **8.2 Further Assurances.** The Parties must execute and deliver any additional papers,
24 documents and other assurances, and must do any other acts reasonably necessary, to perform
25 their obligations under this Settlement Agreement and to carry out its expressed intent. The
26 Parties and their counsel will cooperate with each other and use their best efforts to effect the
27 implementation of this Agreement. If the Parties are unable to reach agreement on the form or
28 content of any document needed to implement this Agreement, or on any supplemental

provisions that may become necessary to effectuate the terms of this Agreement, the Parties may seek the assistance of the Court to resolve such disagreement.

8.3 Extension of Postmark Deadlines Falling on a Sunday or Federal Holiday. If the last day for a Class Member to submit any document under this Agreement falls on a Sunday or Federal holiday, the deadline will be extended to the next day on which the U.S. Postal Service is open.

8.4 Exhibits Incorporated by Reference. The terms of this Agreement include the terms set forth in any attached Exhibit, which are incorporated by this reference as though fully set forth herein. Any Exhibit to this Agreement is an integral part of the Settlement.

8.5 Confidentiality. Plaintiff and Class Counsel will keep the Settlement Agreement and related documents, and their settlement negotiations (including, but not limited to, the negotiations in the course of mediation), confidential and will not disclose that information to any third party until such time as Plaintiff files the motion seeking entry of the Preliminary Approval Order. Plaintiff and Class Counsel will make no comments of any kind regarding the Settlement Agreement to the press/media, or for purposes of advertising. Plaintiff and Class Counsel agree that they will not issue any press releases or post any statements regarding the Settlement Agreement on any websites or initiate any contact with the media. If Plaintiff and/or Class Counsel are contacted by the media, or any other third party, regarding the Settlement Agreement, they may only advise that the Action has been amicably resolved and refer them to the public filings in the Action. Plaintiff and Class Counsel agree that they will not disclose the terms of the Settlement Agreement on any websites or in any other materials not necessary for the facilitation of the Settlement Agreement. Plaintiff and Class Counsel shall retain the right to discuss the Settlement Agreement with the Parties and the Class. Plaintiff and Class Counsel agree to maintain the confidentiality of any non-public information exchanged pursuant to the Parties' stipulated protective order and that they will not disclose any settlement or mediation privileged communications. Plaintiff and Class Counsel also agree and acknowledge that any breach of this Section 8.5 may cause irreparable harm or damage to Defendant that is difficult to ascertain, and thus Plaintiff and Class Counsel agree that any breach of this Section 8.5 shall give Defendant the

1 right to obtain injunctive or other applicable equitable relief, in addition to any other remedies
2 available in law or equity.

3 **8.6** Non-Disparagement. Plaintiff further agrees that she shall not commit any act or
4 make any statement that is, or could reasonably be interpreted as, detrimental to the business,
5 reputation, or good will of CareLinx, including making any negative or disparaging statements
6 about its business, or its officers, directors, agents, and/or other personnel (past and present), its
7 employment policies and practices, operations, products, or services, either as fact or opinion.
8 Plaintiff acknowledges the terms of this Agreement shall not preclude her from providing truthful
9 testimony if mandated by subpoena or court order to do so, or pursuant to any request from a
10 government agency. Further, Plaintiff acknowledges the terms of this Settlement Agreement shall
11 not preclude her from advocating in favor of Court approval of the Settlement.

12 **8.7** Grammar. The neuter form of a pronoun shall be considered to include within its
13 meaning the masculine and feminine forms of the pronoun, and vice versa.

14 **8.8** No Conflict Intended. Any inconsistency between this Settlement Agreement and
15 the attached exhibits will be resolved in favor of this Settlement Agreement.

16 **8.9** Headings and Formatting of Definitions. The various headings used in this
17 Settlement Agreement are solely for the Parties' convenience and may not be used to interpret
18 this Settlement Agreement. The headings and the formatting of the text in the definitions do not
19 define, limit, extend, or describe the Parties' intent or the scope of this Settlement Agreement.

20 **8.10** Interim Stay of Proceedings. The Parties agree to refrain from further litigation
21 of the Action, except such proceedings necessary to implement and obtain entry of the Final
22 Approval Order and Judgment. The Parties shall jointly seek to stay all dates and deadlines in
23 the Action pending final approval of this Stipulation. The Parties further agree that the mutual,
24 voluntary cessation of litigation shall terminate if the motion for entry of the Preliminary
25 Approval Order or the Final Approval Order and Judgment are denied by the Court.

26 **8.11** No Injunctive Relief Against Defendant. As part of this Settlement Agreement,
27 Defendant shall not be required to enter any consent decree, nor shall Defendant be required to
28 agree to any provision of injunctive relief.

1 **8.12** Waiver of Appeal. Plaintiff and Class Counsel agree to waive appeals of an order
2 granting final approval of this Settlement Agreement or entering judgment in this Action so long
3 as such order is consistent with the material terms of this Agreement.

4 **8.13** Class List. Within seven (7) months after the Effective Date and completion of
5 the administration, or in the event the Settlement is terminated pursuant to Section 4.6 or 6.1,
6 all originals, copies, documents, transcriptions, iterations, or drafts of the Class List or any
7 portion thereof, including any updated Class Member contact information obtained via, e.g., the
8 National Change of Address database, shall be returned to Defendant by the Settlement
9 Administrator.

10 **8.14** Entire Agreement. This Agreement and any attached Exhibit constitutes the
11 entirety of the Parties' settlement terms. No other prior or contemporaneous written or oral
12 agreements may be deemed binding on the Parties.

13 **8.15** Amendment or Modification. This Agreement may be amended or modified only
14 by a written instrument signed by counsel for all Parties or their successors-in-interest and if
15 after entry of the Preliminary Approval Order, as approved by the Court.

16 **8.16** Real Party in Interest. In executing this Settlement Agreement, the Parties warrant
17 and represent that they, including Plaintiff in her representative capacity on behalf of the Class,
18 PAGA Group and all others alleged to be similarly situated, are the only persons having any
19 interest in the claims asserted in the Action. Neither these claims, nor any part of these claims,
20 have been assigned, granted, or transferred in any way to any other persons.

21 **8.17** Authorization to Enter Into Agreement. Counsel for all Parties warrant and
22 represent they are expressly authorized by the Party whom they represent to negotiate this
23 Agreement and to take all appropriate action required or permitted to be taken by such Parties
24 pursuant to this Agreement to effectuate its terms, and to execute any other documents required
25 to effectuate the terms of this Agreement.

26 **8.18** Voluntary Agreement. The Parties have negotiated the settlement at arms-length
27 and in good faith, with assistance from Michael Loeb, a respected mediator, and have executed
28 this Settlement Agreement knowingly, voluntarily, and without duress or undue influence.

1 **8.19** Dispute Resolution. The Parties agree to have mediator Michael Loeb seek to
2 resolve any and all disputes that may arise in connection with interpreting the terms of this
3 Settlement Agreement. In the event mediator Loeb is unavailable, the Parties shall cooperate in
4 good faith to identify another mediator. Defendant and Class Counsel shall split equally and
5 pay for any mediator fees and costs associated with seeking mediator assistance pursuant to this
6 Section 8.19. Under no circumstances shall any mediator fees or costs incurred pursuant to this
7 Section 8.19 be taken out of the Gross Settlement Amount.

8 **8.20** Cooperation and Drafting. The Parties have cooperated in the drafting and
9 preparation of this Agreement. Hence, in any construction made to this Agreement, the same
10 shall not be construed against any of the Parties.

11 **8.21** Change of Time Periods. All time periods and dates described in this Settlement
12 Agreement are subject to the Court's approval. These time periods and dates may be changed by
13 the Court or by the Parties' written agreement without notice to the Class.

14 **8.22** Binding on Successors and Assigns. This Agreement shall be binding upon and
15 inure to the benefit of the Parties and their respective heirs, trustees, executors, administrators,
16 successors and/or assigns.

17 **8.23** California Law Governs. All terms of this Agreement and Exhibits hereto shall
18 be governed by and interpreted according to the laws of the State of California.

19 **8.24** Execution and Counterparts. This Agreement may be executed in counterparts
20 which shall be deemed to be part of one original, and facsimile and electronic image copies of
21 signatures (including by PDF, DocuSign, or any electronic signature complying with the U.S.
22 federal ESIGN Act of 2000) or other transition method shall be equivalent to original
23 signatures.

24 **8.25** Enforceability. The Parties intend this to be a binding, enforceable and
25 admissible settlement agreement under California Code of Civil Procedure section 664.6 and
26 California Evidence Code section 1123(b).

27 **8.26** Inadmissibility. This Settlement Agreement, whether approved or not approved,
28 revoked, or made ineffective for any reason, and any proceedings related to this settlement and

1 any discussions relating thereto shall be inadmissible as evidence of any liability or wrongdoing
2 whatsoever and shall not be offered as evidence of any liability or wrongdoing in any Court or
3 other tribunal in any state, territory, or jurisdiction, or in any manner whatsoever. Further, neither
4 this Settlement Agreement, nor any proceedings taken pursuant to it, shall be construed, offered
5 or received in evidence as an admission, concession or presumption that class certification is
6 appropriate, except to the extent necessary for the consummation of this Agreement.

7 **8.27 Agreement Constitutes a Complete Defense.** To the extent permitted by law, this
8 Settlement Agreement may be pled as a full and complete defense to any action, suit, or other
9 proceedings that may be instituted, prosecuted or attempted against the Released Parties contrary
10 to any releases contained herein, including the release of the Released Claims and the PAGA
11 Release.

12 **8.28 Defendant's Position.** Defendant states that it has acted lawfully at all times and its
13 policies and practices have been lawful, fair and consistent with all relevant laws, rules, and
14 regulations. Defendant denies all claims as to liability, damages, penalties, interest, fees,
15 restitution, injunctive relief and all other forms of relief as well as the class allegations asserted in
16 the Action. To the extent this Agreement is deemed void, Defendant does not waive, but rather
17 expressly reserves, all rights to challenge all such claims and allegations in the Action upon all
18 procedural and factual grounds, including without limitation the ability to challenge class,
19 collective, and representative action treatment on any grounds, as well as asserting any and all
20 other potential defenses or privileges. Plaintiff and her counsel agree that Defendant retains and
21 reserves these rights. Specifically, Plaintiff and her counsel agree not to argue or present any
22 argument that, in the event this Agreement is not approved in full, Defendant could not oppose
23 any class or collective certification motion, file a later motion for de-certification, contest any
24 class action or collective certification on any grounds, or assert any and all other potential
25 defenses and privileges if any or all of the Action were to proceed. Plaintiff and her counsel
26 hereby waive such arguments and agree they will not take a position contrary to this provision.

8.29 No Admission of Liability. Nothing in the Memorandum of Understanding or the Settlement Agreement may be construed as an admission or concession on any point of fact or law by or against any Party.

SIGNATURES - READ CAREFULLY BEFORE SIGNING

PLAINTIFF JOANNA MAGPIONG

Dated: January 21, 2022

Joanna Maggiong

Joanna Magpiong

CARELINX, INC.

Dated: January 21, 2022

Sherwin Sheik

Sherwin Sheik

Please Print Name of Authorized Signatory

1 **APPROVED AS TO FORM:**

2
3 Dated: January 21, 2022

COOLEY LLP

4
5 By: *Summer Wynn*
Summer J. Wynn

6
7 Attorneys for Defendant
CARELINX, INC.

8 Dated: January 21, 2022

DA VEGA FISHER MECHTENBERG LLP

9
10 By: *Matthew Da Vega*
Matthew S. Da Vega

11
12 Attorneys for Plaintiff
JOANNA MAGPIONG

EXHIBIT A
SECOND AMENDED COMPLAINT

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Matthew Fisher, SBN 229532
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Attorneys for Plaintiff and the Proposed Plaintiff Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN MATEO

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

Plaintiff,

v.

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

Defendants.

Case No. 21-CIV-03038

REPRESENTATIVE and CLASS ACTION

SECOND AMENDED COMPLAINT FOR:

- (1) FAILURE TO PAY OVERTIME WAGES (CAL. LABOR CODE §§ 204, 510, 1194 and I.W.C. WAGE ORDERS NO. 5-2001, 15-2001);**
- (2) FAILURE TO PAY MINIMUM WAGE (CAL. LABOR CODE §§ 1182.12, 1194, 1197, 1197.1; and I.W.C. WAGE ORDERS NO. 5-2001, 15-2001);**
- (3) FAILURE TO PROVIDE MEAL BREAKS (CAL. LABOR CODE §§ 226.7, 512 and I.W.C. WAGE ORDER NO. 5-2001, 15-2001);**
- (4) FAILURE TO PROVIDE REST BREAKS (CAL. LABOR CODE § 226.7 and I.W.C. WAGE ORDER NO. 5-2001, 15-2001);**
- (5) FAILURE TO FURNISH TIMELY/ACCURATE WAGE STATEMENTS (RECORD-KEEPING VIOLATIONS) (CAL. LABOR CODE §§ 226, 1174);**
- (6) FAILURE TO PAY ALL WAGES DUE AT DISCHARGE IN TIMELY MANNER - "WAITING TIME PENALTIES" (CAL. LABOR CODE §§ 201-203);**
- (7) UNLAWFUL AND/OR UNFAIR**

BUSINESS PRACTICES (CAL. BUS. & PROF. CODE §§ 17200, *et seq.*)(“UCL”);

(8) VIOLATION OF PRIVATE ATTORNEY GENERAL ACT OF 2004 (“PAGA”)(CAL. LAB. CODE § 2698, *et seq.*;

(9) FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES (CAL. LABOR CODE § 2802);

DEMAND FOR JURY TRIAL

Plaintiff Joanna Magpiong (“Magpiong”), brings this action on behalf of herself (“Plaintiff”), and all others similarly situated (“Class Members”), and on information and belief alleges against Defendants CareLinx, Inc. (“CareLinx”), and Does 1-100 (collectively “Defendants”) the following:

NATURE OF THE CASE

1. **Class Action and PAGA:** This case is brought as a class action under California Code of Civil Procedure (“CCP”) §382 to address Defendants’ violations of various California Labor Codes, Industrial Welfare Commission (“IWC”) wage orders, and Unfair Competition Law (“UCL”). This case is also brought as a representative action for recovery of penalties under the California Labor Code Private Attorney General Act of 2004 (“PAGA”), Cal. Lab. Code § 2698, *et seq.*

2. **Plaintiff and Class Members are Nurse Employees for CareLinx:** Plaintiff is currently employed as a LVN (License Vocational Nurse), along with other RNs (Registered Nurses), CNAs (Certified Nurse Assistants), MAs [Medical Assistants], LPNs [Licensed Practical Nurses], and NPs [Nurse Practitioners] (collectively “Nurses”) who work/worked for Defendant CareLinx at its various client’s facilities / locations in and throughout California. Plaintiff alleges Defendants have engaged in, among other things a system of willful violations of the California Labor Code, applicable IWC wage orders, and UCL.

3. **Misclassification as Independent Contractors:** Defendants acted intentionally and with deliberate indifference and conscious disregard for the rights of Plaintiff and Class Members

1 by intentionally misclassifying CareLinx's Nurses as "Independent Contractors", when in fact.
2 Plaintiff and Class Members are/were Defendants' employees, all of which is in violation of
3 Labor Code § 226.8 and/or §2753, and, in so doing, have denied Plaintiff the benefits and
4 protections of California employment law.

5 4. Failure to Pay Overtime, Failure to Pay Overtime at the Correct Overtime Rates,
6 Failure to Pay Minimum Wage, Failure to Provide Duty-Free Meal/Rest Periods, Failure to
7 Provide Timely/Accurate Wage Statements, Waiting Time Penalties, Failure to Reimburse
8 Necessary Business Expenses: Defendants further failed to pay Plaintiff and Class Members for
9 all wages earned including for overtime hours at the appropriate rate (Defendants paid only a flat
10 rate plus small additional premium for overtime hours and not the correct overtime rates of 1.5x
11 or 2 x flat hourly rates for overtime hours), minimum wages, or for "on-duty" meal periods or
12 "on-duty" rest breaks, failed to keep and provide accurate and timely records of wages earned and
13 other legally mandated records, failed to reimburse Plaintiff and Class Members for necessary
14 business expenses (i.e. use of personal cell phones and vehicles for Defendants' business) and
15 failed to pay Plaintiff and Class Members whose employment has terminated (voluntarily
16 resigned or were terminated) a final payment of his or her wages in a prompt and timely manner
17 in conformity with Labor Codes §§ 201, 202, 203, 204, 216, 226, 226.3, 226.7, 226.8, 510, 512,
18 1174, 1174.5, 1182.12, 1194, 1194.2, 1194.5, 1197, 1197.1, 1198, 1199, 2802, and other unfair
19 and unlawful conduct in violation of the Business & Professional Code §17200, et seq. The
20 policies, practices and customs of Defendants described herein are also violations of California
21 Industrial Welfare Commission (I.W.C.) Wage Order 5-2001, 8 Cal. Code of Reg. § 11050
22 ("Wage Order 5-2001"), California I.W.C. Wage Order 15-2001, 8 Cal. Code of Reg. § 11150
23 ("Wage Order 15-2001").

24 5. The policies, practices and customs of Defendants described herein have resulted
25 in unjust enrichment of Defendants and an unfair business advantage over businesses that
26 routinely adhere to the strictures of the California Labor Code and IWC wage orders, and thus
27 violate the UCL.
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1 6. **The “Class Period”** is designated as the time from June 3, 2017 (4 years prior to
2 the filing date of the original complaint on June 3, 2021), through the entry of judgment, based on
3 the allegation that the violations of California’s wage and hour laws and UCL, as described
4 herein, have been ongoing for at least the four (4) years prior to the filing of the original
5 Complaint and are continuing.

6 7. During the relevant Class Period, Defendants have had a standard and uniform
7 policies that violate California’s Labor Codes, I.W.C. orders, and UCL as follows:

- 8 a. Defendants intentionally misclassified Plaintiff and Class Members
9 (current and former California-based Nurses) as “Independent Contractors”
10 in violation of Labor Codes §§ 226.8 and 2753;
- 11 b. Defendants required Plaintiff and Class Members working for Defendants
12 to perform work without full compensation during overtime hours, and/or
13 paid minimum wage for said hours. On a daily basis Nurses are required to
14 perform work for which they were not lawfully compensated in violation
15 of Labor Code §§ 204, 510, 1182.11, 1182.12, 1194, 1197, 1197.1, 1198,
16 and 1199 (and I.W.C. Orders 5-2001 and 15-2001);
- 17 c. Defendants required Plaintiff and Class Members to work through/during
18 their meal and/or rest breaks on a regular basis, failed to relieve the Nurses
19 of all their duties, did not permit Nurses a reasonable opportunity to take
20 an uninterrupted 30 minute meal break and/or 10 minute rest break,
21 impeded/discouraged them from taking said meal and/or rest breaks, and/or
22 failed to provide compensation for said “on-duty” meal/rest periods in
23 violation of Labor Code §§ 226.7, 512 (and I.W.C. Orders 5-2001 and 15-
24 2001);
- 25 d. Defendants failed to provide Plaintiff and Class Members, with accurate
26 and timely pay stubs (accurate, semi-monthly, itemized statements of the
27 total number of hours each of them worked, applicable hourly rate of pay,
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and/or wages earned) --- in violation of Labor Code § 226; and

- e. Defendants have willfully failed to pay Plaintiff and Class Members whose employment has terminated (voluntarily resigned or were terminated) a final payment of his or her total wages in a prompt and timely manner ---- in violation of Labor Codes §§ 201 - 203;
- f. Defendants have willfully failed to reimburse Plaintiff and Class Members for necessary business expenses (i.e. use of personal cell phones and vehicles for Defendants' business).

8. Plaintiff, on behalf of herself and the proposed Class, seeks unpaid compensation (including unpaid/underpaid regular hours, overtime hours, minimum wages, wages for missed meal and rest periods), interest thereon, waiting time penalties, penalties and relief for failure to provide accurate and timely itemized statements of total hours worked/wages earned, reimbursement of unpaid necessary business expenses, and reasonable attorneys' fees and costs, under Labor Code §§ 201, 202, 203, 204, 218.5, 218.6, 226, 226.7, 226.8, 510, 512, 581, 1174, 1194, 1197.1, 1199, 2699.3, 2699.5, 2802, C.C.P. § 1021.5, California common law, (and I.W.C. orders 5-2001, 15-2001). Plaintiff also claims civil penalties for the above acts, which violate the California Labor Code, under the Private Attorneys General Act ("PAGA"), Cal. Labor Code § 2698 et seq.

9. Under California Business & Professions Code ("Cal. Bus. & Prof. Code") §§ 17200, *et seq.* ("UCL"), and pursuant to class action procedures provided for in these statutes, Plaintiff, on behalf of herself and all others similarly situated also seeks injunctive relief and restitution of all benefits the Defendants have received from their violations, as described herein, during the relevant Class Period.

JURISDICTION AND VENUE

10. **Jurisdiction:** This Court has jurisdiction over this matter pursuant to the laws of the State of California including Code of Civil Procedure § 410.10. Defendants own and/or lease property in San Mateo County. Defendants regularly do business in San Mateo County.

1 Defendant's headquarters are located in Burlingame, California in San Mateo County.
2 Defendants employ and/or employed over 100 (one hundred) Nurses within San Mateo County
3 and have obtained the benefits of the laws of the State of California and the California labor
4 market. This Court has jurisdiction over Plaintiff's and Class Members' claims for: intentional
5 misclassification of Nurses as Independent Contractors; failure to pay overtime and minimum
6 wages; failure to provide required meal/rest breaks (or pay a premium in lieu thereof); penalties
7 for failure to provide itemized statements of hours worked and all applicable hourly rates; failure
8 to reimburse necessary business expenses; penalties for failure to pay wages of discharged
9 employees; and injunctive relief and restitution of ill-gotten benefits arising from Defendants'
10 unlawful business practices.

11 11. **Venue:** Venue is proper in this county pursuant to California Code of Civil
12 Procedure §§395(a) and/or 395.5. Defendants transact business and may be found within San
13 Mateo County. The unlawful acts, as well as the course of conduct alleged herein, occurred in
14 San Mateo County. Defendants maintain offices, transact business, have agents, and employ
15 numerous Class Members in San Mateo County (estimated at 1700 or more currently/formerly
16 employed Nurses), and are otherwise within this Court's jurisdiction for purposes of service of
17 process. The unlawful acts alleged herein have had a direct effect on Plaintiff and those similarly
18 situated within the State of California and within San Mateo County.

19 12. **Original PAGA Notice (June 3, 2021):** California Labor Code §§ 2699 et seq.,
20 the "Labor Code Private Attorneys Generals Act" ("PAGA"), authorizes aggrieved employees to
21 sue directly for various civil penalties under the California Labor Code. On **June 3, 2021** (the
22 same date of the original filing of the Complaint in this matter) Plaintiff provided written notice
23 ("PAGA Notice") and a draft copy of a First Amended Complaint ("FAC"), which included the
24 additional cause of action for alleged PAGA violations, by certified mail and electronic filing to
25 the California Labor and Workforce Development Agency ("LWDA"), via the LWDA website,
26 and to the Defendants with the specific provisions of the California Labor Code alleged to have
27 been violated, including the facts and theories to support the alleged violations, pursuant to
28

1 California Labor Code §2699.3. A true and correct copy of the PAGA Notice showing
2 compliance with Labor Code §2699.3 was attached as **Exhibit A** to the original June 3, 2021 -
3 PAGA Notice. No notice of cure by Defendants was provided and the LWDA did not provide
4 Plaintiff with notice that it intent to investigate this violation, although more than 65 days elapsed
5 as of August 8, 2021 since the postmark date of Plaintiff's PAGA Notice. Plaintiff then filed her
6 FAC on August 10, 2021.

7 13. **Amended PAGA Notice (December 14, 2021):** On December 14, 2021, in
8 accord with a tentative class action settlement awaiting court approval, Plaintiff provided an
9 amended written notice ("Amended PAGA Notice") and a draft copy of a Second Amended
10 Complaint ("SAC"), which included the additional cause of action for Failure to Reimburse
11 Necessary Business Expenses (9th Cause of Action) by certified mail, email, and electronic filing
12 to the California Labor and Workforce Development Agency ("LWDA"), via the LWDA website,
13 and to the Defendants with the specific provisions of the California Labor Code alleged to have
14 been violated, including the facts and theories to support the alleged violations, pursuant to
15 California Labor Code §2699.3. A true and correct copy of the **Amended PAGA Notice**
16 showing compliance with Labor Code §2699.3 was attached as **Exhibit 1** to the Amended PAGA
17 Notice. No notice of cure by Defendants was provided and the LWDA did not provide Plaintiff
18 with notice that it intended to investigate this violation, although more than 65 days elapsed (as of
19 **February 17, 2022**) since the postmark date of Plaintiff's Amended PAGA Notice. Plaintiff will
20 therefore, with leave of court, file her SAC.

21 **THE PARTIES**

22 14. **Plaintiff Joanna Magpiong ("Magpiong"):** Magpiong is a single adult 23 year
23 old Asian-American female. She is a resident and citizen of Hayward, CA in Alameda County.
24 She was employed as a LVN ("Nurse") by Defendants from approximately April 28, 2021 to the
25 present (as of the filing of original complaint she was still employed by Defendants). Defendants
26 misclassified her, and other Nurses, as "Independent Contractors" despite controlling every
27 aspect of their work (i.e. rate of pay, hours work, location of work, instructions, tools and
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1 supplies, unilateral right to hire and fire, etc.). Defendants also classified Plaintiff and other
2 Nurses as non-exempt hourly workers. Plaintiff's hourly rate is/was \$38.00 per hour. While
3 employed by Defendants, she and other Nurses would typically work over 8 hours in a day (for
4 Plaintiff typically 3 p.m. until 11:30 p.m. , 2 to 3 days a week, although she was sometimes
5 required to work 14 or 17 hour shifts). Despite working numerous hours of overtime the
6 Defendants failed to compensate Plaintiff and other Nurses their fully owed wages for all hours
7 worked at the appropriate overtime rate. Defendants only paid Nurses their regular flat hourly
8 rate plus a small premium (i.e. additional \$1/hr. for shifts within 25-35 miles of Class Members
9 home address; additional \$2/hr. for shifts within 35-50 miles of Class Members home address,
10 etc.), thus failing to pay them the correct overtime rate of one and one half times (1.5x) or double
11 time (2x) the flat hourly rate for overtime hours worked above 8 hours a day or 40 hours in a
12 workweek. Furthermore, Plaintiff and the other Nurses were not permitted to report duty-filled
13 meal and/or rest breaks although they were often required to work through and/or during meal
14 and/or rest periods. Plaintiff and other Nurses were denied duty-free meal and/or rest breaks on a
15 regular basis. Defendants did not provide compliant itemized wage statement in writing
16 showing gross wages, total hours worked, all deductions, net wages, applicable hourly rates, etc.
17 and did not reimburse Plaintiff for use of her personal cell phone (i.e. use of CareLinx mobile
18 application, phone calls and text messages to/from CareLinx managers/third party care facilities)
19 or personal vehicle (mileage/travel to and from third party care facilities).

20 **15. Defendant CareLinx Inc. ("CareLinx"):** At all relevant times, Defendant
21 CareLinx was and is a corporation organized under the laws of the State of Delaware, and
22 authorized and qualified to do business in San Mateo County. CareLinx is headquartered at 1350
23 Bayshore Hwy, Ste 850, Burlingame, CA 94010 in San Mateo County. CareLinx is a California
24 based employment agency providing caregivers (i.e. Nurses including RNs, LVNs, and CVAs) to
25 skilled nursing facilities, residential care facilities, and private homes. CareLinx,
26 employs/employed hundreds of Nurses during the Class Period, and has intentionally
27 misclassified them as "Independent Contractors" despite controlling their schedules, tracking
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1 their time, processing their payroll, setting their wages, unilateral power of hiring/firing, etc. It
2 currently employs 100+ Nurses in California. It also employs over 50+ administrative and
3 non-Nurse support staff. Plaintiff alleges that the practices and policies that are complained of in
4 this Complaint have been occurring throughout the Class Period and are currently applied by
5 CareLinx in California. CareLinx is, and at all relevant times has been, an employer subject to
6 the California Labor Code.

8 FICTITIOUS DEFENDANTS

9 16. Defendants Does 1-100, inclusive, are sued herein under fictitious names. Their
10 true names and capacities are unknown to Plaintiff at this time. When their true names and
11 capacities are ascertained, Plaintiff will amend this Complaint by inserting their true names and
12 capacities. Plaintiff is informed and believe, and thereon allege that each of the fictitiously-
13 named Defendants is responsible in some manner for the occurrences alleged herein and that
14 Plaintiff's' and the proposed Class Members' damages and penalties alleged herein were
15 proximately caused by such Defendants.

16 AGENCY

17 17. Plaintiff is informed, believe, and thereon allege that each of the Defendants herein
18 was, at all times relevant in this action, the agent, employee, representing partner, and/or joint
19 venture of the remaining Defendants and was acting within the course and scope of that
20 relationship. Plaintiff is further informed, believe, and thereon allege that each of the Defendants
21 herein gave consent to, ratified, and authorized the acts alleged herein to the remaining
22 Defendants.

23 CLASS ACTION ALLEGATIONS

24 18. Plaintiff brings this action individually and as a class action on behalf of opt-out
25 classes (the "Class") defined as follows:

26 **All current and former California based Nurse employees who**
27 **were misclassified as "Independent Contractors" and worked**
28 **for Defendants from June 3, 2017 until the entry of judgment.**

1 19. Plaintiff is a member of the proposed class and representative of other Nurse
2 employees and are acting on behalf of their interests. Plaintiff believes this includes, but is not
3 limited to, Defendants' employees misclassified as Independent Contractors and working as
4 Registered Nurses (RNs), License Vocational Nurses (LVNs), and Certified Nurse Assistants
5 CNAs), Medical Assistants (MAs), Licensed Practical Nurses (LPNs), Nurse Practitioners
6 (NPs)(collectively "Nurses") as their specific titles may have changed over time. Plaintiff
7 reserves the right under Rule 3.765(b), California Rules of Court, to amend or modify the class
8 description with greater specificity or further division into a subclasses or limitations to particular
9 issues.

10 20. The Plaintiff and Class Members assert the following claims:

- 11 a. Plaintiff and Class Members were intentionally misclassified as
12 "Independent Contractors" in violation of Labor Codes §§ 226.8 and 2753;
- 13 b. Plaintiff and Class Members were not paid all wages owed for all hours
14 work including regular hours, overtime hours, and/or minimum wage for
15 said hours worked as required by California Labor Code §§ 204, 510,
16 1182.11, 1182.12, 1194, 1197, 1197.1, 1198, and 1199 and I.W.C. Orders;
- 17 c. Plaintiff and Class members were not provided duty-free meal breaks (or
18 paid in lieu thereof) as required by California Labor Code §§226.7; 512
19 and I.W.C. Orders;
- 20 d. Plaintiff and Class members were not provided duty-free rest breaks (or
21 paid in lieu thereof) as required by Labor Code §226.7 and I.W.C. Orders;
- 22 e. Plaintiff and Class members were not paid upon their separation from
23 employment with Defendants as required by Labor Code §§ 201 - 203;
- 24 f. Plaintiff and Class members did not receive pay stubs in conformity with
25 Labor Code §226;
- 26 g. Plaintiff and Class members were not reimbursed for necessary business
27 expenses (i.e. use of personal cell phones and vehicles for Defendants'
28

business).

21. This action is brought, and may properly be maintained, as a class action pursuant to California Code of Civil Procedure §382 (and the analogous provisions of Federal Rules of Civil Procedure 23(a)(1)-(4) and 23(b)) as to violations of California Labor Codes, I.W.C. Wage Orders, and UCL for unpaid regular hours worked, overtime hours worked, and/or minimum pay for said hours, wages for missed meal and rest break violations, waiting time penalties, failure to furnish timely, itemized wage statements, failure to reimburse necessary business expenses, and attorneys' fees and costs. The similarly situated employees are known to Defendants and are readily identifiable and locatable through Defendants' own employment records. There is a well-defined community of interest in the litigation, and the proposed class is easily ascertainable. As described below, this action also satisfies the numerosity, commonality, predominance, typicality, adequacy, and superiority requirements of these provisions.

22. **Numerosity:** A class action is the only available method for the fair and efficient adjudication of this controversy. Although the exact number and identities of all Class Members are unknown to Plaintiff at this time and can only be ascertained through appropriate discovery, Plaintiff is informed and believe that the Class includes over 100 persons. On information and belief, therefore, Plaintiff alleges that the members of the Class are so numerous that joinder of all members is impractical, if not impossible. Membership in the Class will be determined upon analysis of, *inter alia*, records maintained by Defendants.

23. **Commonality and Predominance:** The Plaintiff and the Class share a community of interest because there are numerous common issues of fact and law that predominate over any questions and issues solely affecting individual members. Such common factual and legal issues include, but are not limited to, the following:

- a. Whether Plaintiff and Class Members served Defendants as employees rather than "Independent Contractors" under California law;
- b. Whether Defendants intentionally misclassified Plaintiff and Class Members as "Independent Contractors" in violation of Labor Codes §§

226.8 and 2753;

- c. Whether Defendants knowingly and willfully violated Labor Code §§ 204, 510, 1182.11, 1182.12, 1194, 1197, 1197.1, 1198, and 1199, by failing to pay all wages for regular hours worked, overtime hours worked, and/or minimum wage for said hours, to Plaintiff and Class Members;
- d. Whether Defendants violated Labor Code §§226.7, 512 by failing to provide duty-free meal breaks (or one additional hour of pay in lieu thereof) to Plaintiff and Class Members;
- e. Whether Defendants violated Labor Code §226.7 by failing to provide duty-free rest breaks (or one additional hour of pay in lieu thereof) to Plaintiff and Class Members;
- f. Whether Defendants violated Labor Code §§226 and 1174 by failing to keep or provide accurate records of Plaintiff's and Class Members' gross wages, total hours worked, deductions, net wages, dates of the pay period, hourly rates, etc.;
- g. Whether Defendants violated Labor Code §§201, 202, 203 by failing to pay all wages due and owing at the time that Plaintiff's and Class Members' employment with Defendants terminated;
- h. Whether former employees are entitled to "waiting time" penalties pursuant to Labor Code §203;
- i. Whether Defendant violated Labor Code §2802 for failing to reimburse Plaintiff's and Class Members' necessary business expenses;
- j. Whether Defendants knowingly and willfully violated the above wage and hour laws; and
- k. Whether Defendants various violation of the Labor Code, described above, serve as a predicate violations of Business & Professions Code §§17200, *et seq.* ("UCL").

1 24. **Typicality:** Plaintiff's claims are typical of the claims of the Class. Plaintiff and
2 all members of the Class sustained injuries and damages arising out of, and caused by,
3 Defendants' common course of conduct in violation of law as alleged herein.

4 25. **Adequacy of Representation:** Plaintiff is an adequate representative of the Class
5 in that Plaintiff have the same interests in the litigation of this case as the Class Members as they
6 include current and former Nurses working for Defendants. Plaintiff is committed to vigorous
7 prosecution of this case and have retained competent counsel who are experienced in class
8 actions and wage and hour litigation of this nature. Plaintiff is not subject to any individual
9 defenses different from those conceivably applicable to the Class as a whole.

10 26. **Superiority of Class Action:** A class action is superior to other available
11 methods for the fair and efficient adjudication of this controversy because individual litigation of
12 the claims of all Class Members is impractical.

13 27. The California Labor Code and Wage Order provisions upon which Plaintiff and
14 Class Members assert these claims are broadly remedial in nature. These laws and labor standards
15 serve an important public interest in establishing minimum working conditions and standards in
16 California. These laws and labor standards protect the average working employee from
17 exploitation by employers who may seek to take advantage of superior economic and bargaining
18 power in setting onerous terms and conditions of employment.

19 28. The nature of this action and the format of laws available to Plaintiff and members
20 of the class identified herein make the class action format a particularly efficient and appropriate
21 procedure to redress the wrongs alleged herein. If each employee were required to file an
22 individual lawsuit, the corporate Defendants would necessarily gain an unconscionable advantage
23 since they would be able to exploit and overwhelm the limited resources of each individual class
24 member with their vastly superior financial and legal resources. Requiring each class member to
25 pursue an individual remedy would also discourage the assertion of lawful claims by employees
26 who would be disinclined to file an action against their current or former employer for real and
27 justifiable fear of retaliation and permanent damage to their careers at subsequent employment.

1 29. Even if every Class Member could afford individual litigation, the court system
2 could not. It would be unduly burdensome to the courts in which individual litigation of
3 numerous cases would proceed. Individualized litigation would also present the potential for
4 varying, inconsistent, or contradictory judgments and would magnify the delay and expense to all
5 parties and to the court system resulting from multiple trials of the same complex factual issues.
6 By contrast, the conduct of this action as a class action, with respect to some or all of the issues
7 presented herein, presents fewer management difficulties, conserves the resources of the parties
8 and the court system, and protects the rights of each Class Member. Plaintiff anticipate no
9 management difficulties in this litigation.

10 30. Further, the Defendants have also acted, or have refused to act, in respects
11 generally applicable to the Class, thereby making appropriate relief with regard to the members of
12 the Class as a whole, as requested herein.

13 **COMMON FACTUAL ALLEGATIONS**

14 31. Plaintiff is informed and believes and based thereon allege the following:

15 32. Defendants have for years intentionally misclassified Class Members as
16 Independent Contractors in violation of Labor Code § 226.8 and/or §2753, and, in so doing, have
17 denied them the benefits and protections of California employment law.

18 33. Defendants failed to: 1) pay Class Members all wages due for work performed
19 including regular hours, overtime hours, and/or minimum wage for said hours worked; 2) provide
20 Class Members the opportunity to take duty-free meal periods/rest breaks (or pay premiums for
21 failure to provide duty-free meal periods/rest breaks); 3) provide Class Members accurate and
22 timely wage statements; 4) provide reimbursement of necessary business expenses, and 5) pay all
23 wages due upon termination; thereby enjoying a significant competitive edge over their
24 competitors.

25 34. Defendants have and had a consistent and uniform policy, practice and procedure
26 of willfully failing to comply with California's wage and hour laws, I.W.C orders and UCL as
27 described herein.

1 35. **Misclassification as “Independent Contractors”:** Plaintiff and Class Members
2 are current and former persons employed by Defendants as Nurses providing services for
3 Defendants’ employment agency providing caregiver Nurses to Defendants’ clients (i.e.
4 residential skilled nursing facilities). Defendants hired Plaintiff and Class Members as
5 “Independent Contractors” despite the fact that Defendants retained control over all aspects of
6 Class Members work including but not limited to their rate of pay, hours work, training,
7 instructions, tools and supplies, and the unilateral right to hire and fire. By intentionally
8 misclassifying Plaintiff and Class Members as Independent Contractors in violation of Labor
9 Code § 226.8 and/or §2753, Defendants purposely and willfully attempted to avoid their
10 obligations under California labor law. If an employer has “willfully” misclassified an employee
11 it shall be fined not less than \$5,000 and up to \$15,000 per violation. Further, if that entity is
12 found to have engaged in a “pattern or practice” of misclassification (as is the case here), then
13 those fines are ratcheted up to a minimum of \$10,000 per violation, with a cap of \$25,000 per
14 violation in addition to other penalties authorized by law.

15 36. **Regular Time, Overtime, and Minimum Wage Violations:** Specifically, as
16 alleged above, Defendants failed to compensate Plaintiff and Class Members all wages owed for
17 all hours worked including failing to pay minimum wages, regular wages, and overtime wages.
18 Therefore, Plaintiff and Class Members are entitled to recover wages and/or penalties as provided
19 by Labor Code §§ 204, 510, 1182.11, 1182.12, 1194, 1197, 1197.1, 1198, and 1199 and
20 applicable IWC Wage Orders.

21 37. **Meal and Rest Break Violations:** Defendants’ practices and policies regarding
22 meal and rest breaks as described herein, resulted in the systemic and uniform failure to provide
23 Plaintiff and Class Members with meal and/or rest breaks as required by Labor Code § 226.7,
24 Labor Code § 512. Defendants have failed to provide Plaintiff and Class Members with a full 30-
25 minute duty-free meal period for each workday. When Plaintiff and other Class Members were
26 not provided duty-free and/or on-time meal periods they were not provided with an additional
27 premium hours pay as required by California Labor Codes.

1 38. Defendants have also failed to provide Plaintiff and Class Members duty-free rest
2 periods based on the total hours worked daily at the rate of ten (10) minutes net rest time per four
3 (4) hours or major fraction thereof. When Plaintiff and Class Members were not provided their
4 duty-free rest periods they were not provided with additional compensation pursuant to Labor
5 Code § 226.7. Defendants intentionally and knowingly understaffed, overworked, and required
6 Nurses to work through and/or during meal and/or rest breaks and by also delaying the taking of
7 such meal and/or rest breaks past the legally required times. Plaintiff estimate that they, and other
8 Nurses at Defendants, would typically be required to work through/during and/or be delayed in
9 taking numerous meal periods and rest breaks on an almost daily basis.

10 39. Therefore, Plaintiff and Class Members are entitled to recover wages and/or
11 penalties as provided by Labor Code § 558 and applicable IWC Wage Orders. Since Defendants
12 required these employees to work during meal periods in violation of Labor Code § 226.7, these
13 current and/or former aggrieved employees seek wages of one additional hour of pay as permitted
14 by Labor Code § 226.7(c) as well as all available penalties as set forth in Labor Code § 2699(f).

15 40. Further, Plaintiff and Class Members were also at all times entitled to rest breaks
16 as authorized and permitted by applicable I.W.C. Wage Order. Defendants failed to authorize or
17 permit rest breaks as required by Labor Code § 226.7, Labor Code § 512, and I.W.C. Orders.
18 Therefore, Plaintiff, on behalf of the Class Members, seeks recovery of wages and/or penalties as
19 provided by Labor Code § 558 and applicable IWC Wage Orders. Because Defendants required
20 its employees to work during rest periods in violation of Labor Code § 226.7, Plaintiff and Class
21 Members also seeks wages of one additional hour of pay as permitted by Labor Code § 226.7(c)
22 as well as all available penalties as set forth in Labor Code § 2699(f.)

23 41. Plaintiff estimates, based on observation and conversations with other Class
24 Members, that typically Nurses were not provided the opportunity for duty-free meal periods a
25 couple times a week and/or duty-free rest breaks a couple times a week, including taking such
26 meal periods after the 5th hour and lack of or late second meal period on shifts longer than 10
27 hours. Further, Defendants were not accurately keeping track of Class Members meal/rest breaks
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1 periods. Defendants despite knowing that the employees were not provided their duty-free meal
2 periods/rest breaks the Class Members were not being paid an additional hours wage for the
3 rest/meal periods.

4 42. Defendants' uniform failure to allow duty-free rest and/or meal periods to these
5 employees during their workday and other derivative claims were done with a systematic policy
6 of nonpayment of an additional one-hour's wage per day per violation at the Class Members'
7 regular rate of pay, or alternatively, premium compensation, if applicable. Defendants' failure to
8 provide such compensation in lieu of meal periods or rest breaks violated Labor Code §§ 204 and
9 204(b), such that penalties are recoverable as set forth in Labor Code § 210 and/or § 1194, et.seq

10 43. **Wage Statement Violations:** Defendants' practices and policies, as described
11 above, resulted in the systemic and uniform failure to provide timely and/or accurate wage
12 statements in violation of Labor Code §§ 226, 226.3, and 1174. Despite knowledge of Plaintiff's
13 and Class Members' entitlement to additional pay for hours worked (including regular hours,
14 overtime hours, and minimum wage) and failure to provide a duty-free/on-time meal periods
15 and/or rest breaks, Defendants have violated California Labor Code §1174 by failing to provide
16 or require the use, maintenance, or submission of accurate time records by members of the Class.
17 Defendants failed to take appropriate steps to correct its mistakes. As described above, Class
18 Members' were not provided paystubs at all, let alone accurate and timely ones, in part due to
19 being misclassified as "Independent Contractors". The payments received by Class Members did
20 not accurately reflect all of the hours worked or correct pay rates, including work performed
21 during meal periods and/or rest breaks, and Defendants did not provide its Nurses payment of an
22 additional hour(s) of pay at the employee's/Class Member's regular rate for each duty-free meal
23 period and/or rest break that was not provided. Defendants' failure to provide Plaintiff and Class
24 Members with timely and/or accurate, semi-monthly itemized statements was done knowingly
25 and intentionally.

26 44. **Wages Owed Upon Separation/Termination Violations:** Defendants' practices
27 and policies resulted in the systemic and uniform failure to provide Plaintiff and Class Members,
28

1 upon termination or separation, the total wages they were owed. Plaintiff and Class Member's
2 employees who quit, were laid off, or were terminated were not paid the wages owed them in
3 accord with Labor Code §§ 201, 202, 203, 206, 226.7, 512, and 1174.

4 **45. Failure to Reimburse Business Expenses:** Defendants' practices and policies
5 resulted in the systemic and uniform failure to provide Plaintiff and Class Members
6 reimbursement for necessary business related expenses (i.e. use of personal cell phone and
7 vehicles for Defendants' business). Plaintiff and Class Member's employees were not reimbursed
8 in accord with Labor Code §2802.

9 **46.** As a direct and proximate result of Defendants' unlawful conduct, as set forth
10 herein, Plaintiff and the Class Members have sustained damages, including for the lack of pay for
11 all hours worked (including regular hours, overtime hours, and/or minimum wage for said hours),
12 wages for failure to provide duty-free/on-time meal periods and/or rest breaks and loss of interest
13 on those wages, and reimbursement of necessary business expenses, in an amount to be
14 established at trial. As a further direct and proximate result of Defendants' unlawful conduct, as
15 set forth herein, many Class Members herein are entitled to recover "waiting time" penalties and
16 penalties for failure to provide accurate and timely semi-monthly statements, all in amounts to be
17 established at trial. Plaintiff and the Class Members are also entitled to recover prejudgment
18 interest, attorneys' fees and costs, pursuant to statute.

19 **47.** At all times herein set forth, PAGA was applicable to the Plaintiff's employment
20 by Defendants. Pursuant to PAGA, a civil action under PAGA may be brought by an "aggrieved
21 employee," who is any person that was employed by the alleged violator and against whom one
22 or more of the alleged violations was committed.

23 **48.** Plaintiff were employed by Defendants and the Labor Code violations alleged
24 herein were committed against them and other employees during their time of employment, and
25 they are therefore aggrieved employees. Plaintiff and other Class Members are "aggrieved
26 employees" as defined by California Labor Code §2699(c) in that they are all current or former
27 employees of Defendants, and one or more of the Labor Code violations alleged herein were
28

1 committed against them.

2 49. Pursuant to California Labor Code §§ 2699.3 and 2699.5, an aggrieved employee,
3 may pursue a civil action arising under PAGA after the following requirements have been met:

4 50. The aggrieved employees shall give written notice by certified mail/electronic
5 filing on website (hereinafter "PAGA Notice") to the California Labor and Workforce
6 Development Agency ("LWDA") and the employer(s) of the specific provisions of the California
7 Labor Code alleged to have been violated, including the facts and theories to support the alleged
8 violations.

9 51. The LWDA shall provide notice (hereinafter "LWDA Notice") to the employer
10 and the aggrieved employee by certified mail that it does not intend to investigate the alleged
11 violation within sixty (60) calendar days of the postmark date of the PAGA Notice. Upon receipt
12 of the LWDA Notice, or if the LWDA Notice is not provided within sixty-five (65) calendar days
13 of the postmark date of the employees' PAGA Notice, the aggrieved employee may commence a
14 civil action pursuant to California Labor Code § 2699 to recover civil penalties in addition to any
15 other penalties to which the employee may be entitled.

16 52. On **December 14, 2021** Plaintiff provided a written **Amended PAGA Notice** and
17 draft copy of the Second Amended Complaint ("SAC") by certified mail, via email to
18 Defendants' counsel, and via the LWDA website, to the LWDA and to the employer Defendants,
19 of the specific provisions of the California Labor Code alleged to have been violated, including
20 the facts and theories to support the alleged violations, pursuant to California Labor Code
21 §2699.3.

22 53. Therefore, Plaintiff has complied with the PAGA written notice requirements set
23 forth in California Labor Code §2699.3(a). No notice of cure by Defendants was provided and
24 the LWDA has not provided Plaintiff with any LWDA Notice that it intends to investigate these
25 violations, although more than 65 days have elapsed since the postmark date of the Employee's
26 Amended PAGA Notice. Therefore as of **February 17, 2021**, (65 calendar days post Amended
27 PAGA notice) the administrative prerequisites under California Labor Code §2699.3(a) were
28

1 satisfied for filing this Second Amended Complaint with an additional cause of action for
2 Labor Code §2802 / PAGA violations, as provided by California Code of Civil Procedures and
3 recovery of civil penalties.
4

5 **CAUSES OF ACTION**

6 **FIRST CAUSE OF ACTION** 7 **FAILURE TO PAY OVERTIME WAGES** 8 **(Labor Code §§ 204, 510, 1194, 1199)** 9 **(Plaintiff Against All Defendants and Does 1-100)**

10 54. Plaintiff incorporates by reference in this cause of action each allegation of all of
11 the foregoing paragraphs as if fully restated herein, and further allege against Defendants and
12 Does 1-100, and each of them, as follows:

13 55. During the Class Period Plaintiff and Class Members often worked in excess of 8
14 hours in a work day and/or 40 hours in a workweek without compensation in violation of Labor
15 Code §510. The precise number of hours will be proven at trial.

16 56. On information and belief, at all relative times, Defendants were aware of, and
17 were under a duty to comply with, various provisions of the California Labor Code. These
18 provisions include

19 a. Labor Code § 510: “Eight hours of labor constitutes a day’s work. Any
20 work in excess of eight hours in one workday and any work in excess of 40 hours in any one
21 workweek and the first eight hours worked on the seventh day or work in any one workweek shall
22 be compensated at the rate of no less than one and one-half times the regular rate of pay for an
23 employee . . .”

24 b. Labor Code § 1194: “Notwithstanding any agreement to work for a lesser
25 wage, any employee receiving less than . . . the legal overtime compensation applicable to the
26 employee is entitled to recover in a civil action the unpaid balance of the full amount of this . . .
27 overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.”

28 c. Labor Code § 1198: “The maximum hours of work and the standard
conditions of labor fixed by the commission shall be the maximum hours of work and the

1 standard conditions of labor for employees. The employment of any employee for longer hours
2 than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

3 d. Labor Code § 1199: “Every employer or other person acting either
4 individually or as an officer, agent, or employee of another person is guilty of a misdemeanor and
5 is punishable by a fine of not less than one hundred dollars (\$100) or by imprisonment for not less
6 than 30 days, or by both, who does any of the following: (a) Requires or causes any employee to
7 work for longer hours than those fixed, or under conditions of labor prohibited by an order of the
8 commission . . . [or] (c) Violates or refuses or neglects to comply with any provision of this
9 chapter or any order of the commission.”

10 57. By refusing to compensate Plaintiff and the Class Members for overtime wages
11 earned, Defendants violated and continue to violate those California Labor Codes and I.W.C.
12 wage orders, including Labor Code §§ 204, 510, 1194, 1198, 1199 and Wage Orders 5-2001, 15-
13 2001).

14 58. As a direct and proximate result of Defendants’ unlawful conduct, as set forth
15 herein, Plaintiff and the Class Members have sustained damages, including loss of earnings for
16 unpaid hours of overtime worked on behalf of Defendants in an amount to be established at trial.
17 As a further direct and proximate result of Defendants’ unlawful conduct, as set forth herein,
18 Plaintiff and Class Members are entitled to recover interest on the overtime wages earned but not
19 paid, at a rate of 10% per year, as well as attorneys’ fees and costs per Labor Code §§ 218.5,
20 218.6, and 1194, and the assessment of any other statutory penalties provided by the Labor Code.

21
22 **SECOND CAUSE OF ACTION**
23 **FAILURE TO PAY MINIMUM WAGE**
(Labor Code §§ 1182.12, 1194, 1197, 1197.1;)
(Plaintiff Against All Defendants and Does 1-100)

24 59. Plaintiff incorporates by reference in this cause of action each allegation of all of
25 the foregoing paragraphs as if fully restated herein, and further allege against Defendants and
26 Does 1-100, and each of them, as follows:

27 60. Labor Code §§ 1182.12, 1194, 1197 and 1197.1 (and I.W.C. Wage Orders 5-2001
28

1 and 15-2001, establish and protect the right of employees in California to receive minimum
2 wages for their work, in amounts set by California law. The applicable minimum wage in
3 California during the Class Period has been \$8/hr. from the beginning of Class Period until June
4 30, 2014, \$9/hr. from July 1, 2014 to Jan. 1, 2016, and \$10/hr. from Jan. 1, 2016 on.

5 61. At all relevant times, Defendants failed to pay Plaintiff and Class Members the
6 applicable minimum wage for all hours worked due to its failure to compensate Plaintiff and
7 Class Members for all work performed, specifically for work performed pre and post scheduled
8 shifts and/or during meal and/or rest breaks, and by requiring Nurses to perform work prior to and
9 after regular scheduled shifts.

10 62. As a direct and proximate result of the Defendant's unlawful conduct, Plaintiff and
11 Class Members have been deprived of their minimum wages in an amount to be proven at trial,
12 and are entitled to recover such amounts, plus interest and penalties thereon, attorney's fees and
13 costs, under Labor Code §§ 218.5, 218.6, 558, 1182.12, 1194, 1194.2, 1197.1, I.W.C. Wage
14 Orders 5-2000 and 5-7 2001, and are entitled to injunctive relief.

15
16 **THIRD CAUSE OF ACTION**
17 **FAILURE TO PROVIDE MANDATED MEAL PERIODS**
(Labor Code §§ 226.7, 512)
(Plaintiff Against All Defendants and Does 1-100)

18 63. Plaintiff incorporates by reference in this cause of action each allegation of all of
19 the foregoing paragraphs as if fully restated herein, and further allege against Defendants and
20 Does 1-100, and each of them, as follows:

21 64. Plaintiff and Class Members regularly work in excess of five (5) hours per day
22 without being afforded a duty-free meal period of not less than 30 minutes as required by Labor
23 Code §§ 226.7, 512 and I.W.C Wage Orders 5-1001, 15-2001.

24 65. California Labor Code § 512 provides that an employer may not employ an
25 employee for a work period of more than five (5) hours per day without providing the employee
26 with a meal period of not less than 30 minutes.

27 66. Furthermore, California Labor Code § 226.7 provides that:
28

1 (a) No employer shall require any employee to work during any
2 meal or rest period mandated by an applicable order of the
Industrial Welfare Commission.

3 (b) If an employer fails to provide an employee a meal period or
4 rest period in accordance with an applicable order of the Industrial
Welfare Commission, the employer shall pay the employee one
5 additional hour of pay at the employee's regular rate of
compensation for each work day that the meal or rest period is not
provided.

6 67. As a direct and proximate result of Defendants' unlawful conduct in not providing
7 for duty-free meal periods, Plaintiff and Class Members are entitled to one additional hour of pay
8 at their regular rate as wages under Labor Code §§ 226.7, 512 for each day in which the proper
9 meal period was not provided. In addition, Plaintiff and Class Members are entitled to interests,
10 penalties, attorney's fees and costs pursuant to C.C.P. §1021.5.

11
12 **FOURTH CAUSE OF ACTION**
13 **FAILURE TO PROVIDE MANDATED REST PERIODS**
(Labor Code § 226.7)
14 **(Plaintiff Against All Defendants and Does 1-100)**

15 68. Plaintiff incorporates by reference in this cause of action each allegation of all of
16 the foregoing paragraphs as if fully restated herein, and further allege against Defendants and
Does 1-100, and each of them, as follows:

17 69. Plaintiff and Class Members regularly work in excess of four (4) hours per day
18 without being afforded a rest period of not less than ten (10) minutes as required by Labor Code
19 § 226.7 and I.W.C Order 5-2001, 15-2001 (employees are entitled to 10 minutes rest for shifts
20 from 3 ½ hours to 6 hours in length, 20 minutes for shifts of more than 6 hours up to 10 hours, 30
21 minutes for shifts of more than 10 hours up to 14 hours, and so) (See *Brinker Restaurant Corp., et*
22 *al v. Superior Court (2012)*, 53 Cal. 4th 1004, 1029.

23 70. California Labor Code § 226.7 mandates that no employer shall require any
24 employee to work during any meal or rest period.

25 71. California Labor Code § 226.7 provides that:

26 (a) No employer shall require any employee to work during any
27 meal or rest period mandated by an applicable order of the
Industrial Welfare Commission.

(b) If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

72. As a direct and proximate result of Defendants' unlawful conduct in not providing for duty-free rest periods, Plaintiff and Class Members are entitled to one additional hour of pay at their regular rate as wages under Labor Code § 226.7, for each day in which the proper rest break was not provided. In addition, Plaintiff and Class Members are entitled to interests, penalties, attorney's fees and costs pursuant to C.C.P. §1021.5.

FIFTH CAUSE OF ACTION
FAILURE TO PROVIDE TIMELY AND ACCURATE WAGE STATEMENTS
(Labor Code § 226)
(Plaintiff Against All Defendants and Does 1-100)

73. Plaintiff incorporates by reference in this cause of action each allegation of all of the foregoing paragraphs as if fully restated herein, and further allege against Defendants and Does 1-100, and each of them, as follows:

74. Labor Code § 226(a) provides as follows:

Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee . . . (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions . . . , (5) net wages earned . . . and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

75. Labor Code § 226(e) provides as follows:

An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) shall be entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and shall be entitled to an award of costs and reasonable attorney fees.

76. During the relevant time period, Defendants failed to provide Plaintiff sand Class

1 Members with accurate, semi-monthly itemized statements of the total hours worked, all
2 applicable hourly rates in effect, and all gross and net wages earned during the pay period. On
3 information and belief, this was the direct and proximate result of a willful refusal by Defendants
4 to provide such accurate statements.

5 77. Defendants knowingly and intentionally failed to provide timely, accurate,
6 itemized wage statements to Plaintiff and Class Members in accordance with Labor Code
7 § 226(a). The statements provided to Plaintiff and Class Members have not accurately reflected
8 the total hours worked, all applicable hourly rates in effect, and all gross and net wages earned
9 during the pay period.

10 78. As a direct and proximate result of Defendants' unlawful conduct in failing to
11 provide accurate itemized wages statements, Plaintiff and Class Members suffered actual
12 damages and harm by being unable to determine their applicable hourly rate or the amount of
13 regular time or overtime worked each pay period, which prevented them from becoming aware of
14 these violations and asserting their statutory protections under California law. Plaintiff and Class
15 Members are entitled to recover the greater of all actual damages or fifty dollars (\$50.00) for the
16 initial pay period in which a violation occurs and one hundred dollars (\$100.00) per employee for
17 each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand
18 dollars (\$4,000.00). Plaintiff and Class Members are entitled to seek penalties, and attorneys' fees
19 and costs as provided by Labor Code §§ 226(e), 226(h), 226.3, and 1174.5.

20
21 **SIXTH CAUSE OF ACTION**
22 **FAILURE TO PAY ALL WAGES DUE AT TERMINATION –**
23 **WAITING TIME PENALTIES**
(Labor Code §§ 201, 202, 203)
(Plaintiff Against All Defendants and Does 1-100)

24 79. Plaintiff incorporates by reference in this cause of action each allegation of all of
25 the foregoing paragraphs as if fully restated herein, and further allege against Defendants and
26 Does 1-100, and each of them, as follows:

27 80. California Labor Code § 201 requires Defendants to pay its discharged employees
28 all wages due immediately upon discharge or termination of employment.

1 81. California Labor Code § 202 requires that if an employee quits his or her
2 employment, “his or her wages shall become due and payable not later than 72 hours thereafter,
3 unless the employee has given 72 hours previous notice of his or her intention to quit, in which
4 case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any
5 other provision of law, an employee who quits without providing a 72-hour notice shall be
6 entitled to receive payment by mail if he or she so requests and designates a mailing address.”

7 82. California Labor Code § 203 provides that if an employer willfully fails to timely
8 pay any wages that are due to an employee who quits or is discharged, the employer must, as a
9 penalty, continue to pay the employees’ wages until the back wages are paid in full or an action is
10 commenced. The penalty accrues for up to 30 days of wages. To this end, Labor Code § 203
11 provides as follows:

12 If an employer willfully fails to pay, without abatement or
13 reduction, in accordance with Sections 201, 201.5, 202 and 205.5,
14 any wages of an employee who is discharged or who quits, the
15 wages of the employee shall continue as a penalty from the due date
 thereof at the same rate until paid or until an action therefore is
 commenced; but the wages shall not continue for more than
 30 days.

16 83. Plaintiff and Class Members who have been discharged or who have quit are
17 entitled to unpaid compensation, pursuant to Labor Code § 203, but to date have not received
18 such compensation.

19 84. During the relevant time period, Plaintiff and many Class Members were
20 employed by Defendants and were thereafter terminated or resigned from their positions with
21 Defendants. Defendants, however, did not pay such Plaintiff and Class Members all wages due
22 upon their termination or within 72 hours of their resignation of employment. On information
23 and belief, Plaintiff alleges that such non-payment was the direct and proximate result of a willful
24 refusal to do so by Defendants.

25 85. As a direct and proximate result of Defendants’ unlawful and willful conduct in
26 not paying compensation for all hours worked, many Class Members are entitled to up to 30 days
27 wages as a penalty (“waiting time penalty”) under Labor Code § 203, together with reasonable
28

attorneys' fees and costs.

SEVENTH CAUSE OF ACTION
UNFAIR PRACTICE UNDER THE UNFAIR COMPETITION ACT
(California Business & Professions Code §§ 17200-17208)
(Plaintiff Against All Defendants and Does 1-100)

86. Plaintiff incorporates by reference in this cause of action each allegation of all of the foregoing paragraphs as if fully restated herein, and further allege against Defendants and Does 1-100, and each of them, as follows:

87. Plaintiff brings this cause of action on behalf of herself and the Class as well as on behalf of the general public, seeking equitable and statutory relief to stop the misconduct of Defendants, as complained of herein, and to compel disgorgement of all profits obtained by Defendants through the unfair, unlawful, and/or fraudulent business practices described herein.

88. The conduct of Defendants, as alleged herein, constitutes an unlawful business practice as set forth in Business and Professions Code §§ 17200, *et seq.*

89. Specifically, Defendants conducted business activities while failing to comply with California Labor Codes and IWC wage orders as described in this Complaint. Defendants, and each of them, have intentionally and improperly failed to pay Class Members for all hours worked including regular hours, overtime hours, and/or minimum wage for said hours; additional wages for their failure to provide duty-free meal periods and/or rest breaks; and failed to provide other benefits in violation of the California Labor Code and IWC wage orders. Section 17200 of the Business and Professions Code prohibits unfair competition by prohibiting unlawful, unfair, or fraudulent business practices or acts. Defendants' failure to adopt policies in accordance and/or adherence with these laws, all of which are binding upon and burdensome to Defendants' competitors, engenders an unfair competitive advantage for Defendants, thereby constituting an unfair business practice, as set forth in California Business and Professions Code §§ 17200, *et seq.*

90. Furthermore, Defendants has under-reported to federal and state authorities the wages earned by their employees and, therefore, have underpaid state and federal taxes, employer

1 matching funds, unemployment premiums, Social Security, Medicare, and Workers'
2 Compensation premiums.

3 91. Defendants' conduct as alleged herein has damaged Plaintiff and the Class
4 Members by wrongfully denying them earned wages, failing to pay them all wages due upon
5 termination of employment, and failing to provide accurate and timely itemized wage statements.
6 Such conduct was substantially injurious to Plaintiff and the Class.

7 92. Under the circumstances alleged herein, it would be inequitable and result in a
8 miscarriage of justice for Defendants to continue to retain the property of Plaintiff and the Class
9 Members, entitling Plaintiff and the Class Members to restitution of the unfair benefits obtained
10 and disgorgement of Defendants' ill-gotten gains.

11 93. As a direct and proximate result of Defendants' unlawful and unfair business
12 practices, Plaintiff and Class Members are entitled to, and hereby do, seek restitution and
13 disgorgement of these ill-gotten gains, including but not limited to, restitution of all unpaid
14 wages, plus interest thereon, as well as attorney's fees and costs, and other appropriate injunctive
15 and other relief available under California Business and Professions Code §§ 17200, *et seq.*

16 **EIGHTH CAUSE OF ACTION**
17 **VIOLATION OF THE PRIVATE ATTORNEY GENERAL ACT ("PAGA")**
18 **(California Labor Code §§ 2698, *et. seq.*)**
19 **(Plaintiff Against All Defendants and Does 1-100)**

20 94. Plaintiff incorporates by reference in this cause of action each allegation of all of
21 the foregoing paragraphs as if fully restated herein, and further allege against Defendants and
22 Does 1-100, and each of them, as follows:

23 95. California Labor Code §§ 2698, *et seq.* ("PAGA") permits Plaintiff to recover civil
24 penalties for the violation(s) of the Labor Code sections enumerated in Labor Code § 2699.5.

25 96. PAGA provides as follows, "[n]otwithstanding any other provision of law, a
26 Plaintiff may as a matter of right amend an existing complaint to add a cause of action arising
27 under this part at any time within 60 days of the time periods specified in this part."

28 97. Defendants' conduct, as alleged herein, violates numerous sections of the
California Labor Code and I.W.C. Orders, including, but not limited to, the following: violation

1 of Labor Code § 226.8 and/or § 2753 (for willfully misclassifying Class Members as
2 “Independent Contractors”); violation of Labor Code §§ 204, 510, 1182.11, 1182.12, 1194, 1197,
3 1197.1, 1198, and 1199 (for failure to pay wages for all hours worked including regular hours,
4 overtime hours, and/or paid minimum wage for said hours); violation of Labor Code §§ 226.7,
5 512 (for failure to provided duty-free meal periods/rest periods or pay a premium in lieu thereof);
6 violation of Labor Code § 226(a) (for failure to provide accurate wage statements as herein
7 alleged); violation of Labor Code § 2802 (for failure to reimburse employee necessary business
8 expenses) and violation of Labor Code §§ 201, 202, and 203 (for failure to timely pay all earned
9 wages upon discharge).

10 98. California Labor Code § 1198 makes it illegal to employ an employee under
11 conditions of labor that are prohibited by the applicable wage order. California Labor Code §1198
12 requires that, " ... the standard conditions of labor fixed by the commission shall be the ...
13 standard conditions of labor for employees. The employment of any employee ... under
14 conditions of labor prohibited by the order is unlawful."

15 99. California Labor Code § 204 requires that all wages earned by any person in any
16 employment between the 1st and the 15th days, inclusive, of any calendar month, other than those
17 wages due upon termination of an employee, are due and payable between the 16th and the 26th
18 day of the month during which the labor was performed, and that all wages earned by any person
19 in any employment between the 16th and the last day, inclusive, of any calendar month, other
20 than those wages due upon termination of an employee, are due and payable between the 1st and
21 the 10th day of the following month. California Labor Code § 204 also requires that all wages
22 earned for labor in excess of the normal work period shall be paid no later than the payday for the
23 next regular payroll period. During the relevant time period, Defendants failed to pay Plaintiff
24 and other aggrieved employees all wages due to them, including, but not limited to, overtime
25 wages, within any time period specified by California Labor Code § 204.

26 100. Defendants, at all times relevant to this complaint, were employers or persons
27 acting on behalf of an employer(s) who violated Plaintiff and other aggrieved employees' rights
28

1 by violating various sections of the California Labor Code as set forth above.

2 101. As set forth above, Defendants have violated numerous provisions of both
3 the Labor Code sections regulating hours and days of work as well as the applicable order of the
4 Industrial Welfare commission. Accordingly, Plaintiff seeks the remedies set forth in Labor Code
5 § 558 for themselves, the State of California, and all other aggrieved employees.

6 102. Pursuant to PAGA, and in particular California Labor Code §§ 2699(a), 2699.3,
7 2699.5, and 558, Plaintiff, acting in the public interest as a private attorney general, seeks
8 assessment and collection of unpaid wages and civil penalties for Plaintiff and all aggrieved
9 employees, and the State of California against Defendants, in addition to other
10 remedies, plus reasonable attorneys' fees and costs, pursuant to California Labor Code §§ 201,
11 202, 203, 204, 210, 218.5, 218.6, 226, 226(a), 226.3, 226.7, 226.8, 510, 512, 1174, 1194, 1197,
12 1197.1, 1198, 1199, 2802, C.C.P. § 1021.5, California common law, (and I.W.C. orders 5-2001,
13 15-2001).

14 **NINTH CAUSE OF ACTION**
15 **FAILURE TO REIMBURSE EMPLOYEES FOR NECESSARY BUSINESS EXPENSES**
16 **(California Labor Code §2802)**
17 **(Plaintiff Against All Defendants and Does 1-100)**

18 103. Plaintiff incorporates by reference in this cause of action each allegation of all of
19 the foregoing paragraphs as if fully restated herein, and further allege against Defendants and
20 Does 1-100, and each of them, as follows:

21 104. Cal. Lab. Code § 2802 provides, in relevant part, that:

22 “An employer shall indemnify his or her employee for all necessary expenditures
23 or losses incurred by the employee in direct consequence of the discharge of his
24 or her duties, or of his or her obedience to the directions of the employer, even
25 though unlawful, unless the employee, at the time of obeying the directions believed them
26 to be unlawful.”

27 105. Pursuant to California Labor Code §2802, Defendants were required to reimburse
28 Plaintiffs and the Class Members for necessary business expenditures. The purpose of this
statute is to prevent employers from passing their operating costs and expenses onto their
employees. See *Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal. 4th 554, 562.

106. At all relevant times herein, Defendants violated Cal. Lab. Code § 2802, by failing

1 to indemnify and reimburse Plaintiff and Class Members for required expenses incurred in the
2 discharge of their job duties for Defendants' benefit. Specifically, Defendants failed to reimburse
3 Plaintiff and Class Members for expenses which included, but were not limited to, the cost
4 associated with the use of their personal cellular phones and personal vehicles for Defendants'
5 benefit.

6 107. In order to work as a Nurse for Defendants, Plaintiff and other Class Members
7 were required to use Defendants' mobile application and as such it is mandatory to have a cell
8 phone that is compatible with Defendants' mobile application. As a result, in the course of their
9 employment with Defendants, Plaintiff and Class Members incurred unreimbursed business
10 expenses which included, but were not limited to, the costs related to the use of their personal
11 cellular phones (using CareLinx mobile phone application and making phone calls/text messages
12 to/from CareLinx managers and third party health care facilities) and personal vehicles (mileage /
13 travel to and from Defendants' client third party health care facilities [i.e. skilled nursing
14 facilities]) all on behalf of and for the benefit of Defendants. These expenses are necessary to
15 complete the Nurses' principal job duties.

16 108. Although these expenses are necessary expenses incurred by Plaintiff and Class
17 Members Defendants failed to indemnify and reimburse Plaintiff and Class members for these
18 expenses as an employer is required to do under the laws and regulations of California.

19 109. As a direct and proximate cause of Defendants' conduct, Plaintiff and Class
20 Members have suffered substantial losses according to proof, as well as pre-judgment interest,
21 costs, and attorneys' fees for the prosecution of this action. Plaintiff therefore demands
22 reimbursement for expenditures or losses incurred by Plaintiff and Class Members in the
23 discharge of their job duties for Defendants, or their obedience to the directions of Defendants,
24 with interest at the statutory rate and costs under Cal. Lab. Code § 2802. Further, by unlawfully
25 failing to indemnify Plaintiff and Class Members the Defendants are liable for reasonable
26 attorneys' fees and costs under Labor Code § 2802(c).

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1 J. That the Defendants are found to have committed unfair and unlawful business
2 practices in violation of California Business & Professions Code §§ 17200, et seq., by their
3 violations of the Labor Code and Wage Order(s) as described above;

4 K. That Defendants be ordered and enjoined to pay restitution to Plaintiff and Class
5 Members due to Defendants' unlawful activities, pursuant to Business & Professions Code
6 §§ 17200, *et seq.*;

7 L. That Defendants further be ordered and enjoined to cease and desist from unlawful
8 activities in violation of Business & Professions Code §§ 17200, *et seq.*;

9 M. That Defendants' violations as described above are found to have been willful;

10 N. That Plaintiff and Class Members receive an award of damages for the amount of
11 unpaid compensation (including for regular hours, overtime hours, and minimum wage for said
12 hours, reimbursement of necessary business expenses, and failure to provided duty-free meal
13 periods/rest breaks), interest thereon, and liquidated damages and/or statutory penalties as set
14 forth herein, according to proof at trial;

15 O. That Plaintiff and the Class be awarded reasonable attorneys' fees, costs, interest,
16 penalties and liquidated damages pursuant to Labor Code §§ 200, 201, 202, 203, 204, 218.5,
17 218.6, 225.5, 226, 226 (a), 226.8, 1174, 1174.5, 1182.11, 1182.12, 1194, 1194.2, 1197, 1197.1,
18 2699, et seq., 2802; Code of Civil Procedure § 1021.5; and/or other applicable law;

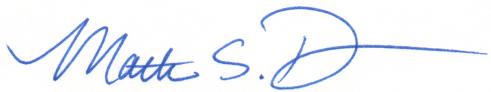
19 P. That Plaintiff and the Class Members be awarded pre-judgment and/or post-
20 judgment interest on all damages and other relief awarded pursuant to Labor Code § 218.6 and
21 Civil Code § 3287, and/or other applicable law;

22 Q. Actual and/or liquidated damages pursuant to Labor Code §226(e);

23 R. For penalties as provided, per violation, under the Private Attorneys General Act
24 (PAGA) Labor Code § 2699, et seq., and as provided by Labor Code § 558, and distributed in
25 accordance with the Act.

26 S. That Plaintiff and the Class Members receive an award of such other and further
27 relief as this Court may deem appropriate.

1
2 Dated: March 29, 2022

3 By: _____

4 Matthew S. Da Vega
5 **DA VEGA | FISHER | MECHTENBERG, LLP**
6 Attorneys for the Plaintiff, the Proposed Plaintiff Class
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DEMAND FOR JURY TRIAL

Plaintiff, on behalf of herself and all others similarly situated, hereby demands a trial by jury for all issues so triable.

Dated: March 29, 2022



By: _____

Matthew S. Da Vega
DA VEGA | FISHER | MECHTENBERG, LLP
Attorneys for the Plaintiff, the Proposed Plaintiff Class

EXHIBIT B
[PROPOSED] PRELIMINARY APPROVAL ORDER

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN MATEO

10 JOANNA MAGPIONG, on behalf of herself and
11 all similarly situated,

12 Plaintiff,

13 v.

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

15 Defendants.

Case No. 21-CIV-03038

**[PROPOSED] PRELIMINARY APPROVAL OF
CLASS AND REPRESENTATIVE ACTION
SETTLEMENT AND CONDITIONAL CLASS
CERTIFICATION ORDER**

FAC Filed: August 10, 2021

16
17 On _____, this Court heard Plaintiff's Motion for Preliminary
18 Approval of class action settlement and conditional class certification under California Rule of
19 Court 3.769, as filed by Plaintiff Joanna Magpiong (the "Plaintiff"). This Court reviewed the
20 motion, including the Joint Stipulation of Class Action Settlement and Release (the
21 "Agreement," "Settlement," or "Settlement Agreement"). Based on this review, the hearing, and
22 the findings below, the Court finds good cause to GRANT the motion.

23 **FINDINGS:**

24 1. Unless otherwise specified, defined terms in this Preliminary Approval of Class
25 and Representative Action Settlement and Conditional Class Certification Order (the
26 "Preliminary Approval Order") have the same definition as the defined terms in the Agreement.

27 2. The Court determines there is sufficient evidence to suggest that the Agreement
28 (including the Class Representative Enhancement Payment, Class Counsel's fees and costs, the
Settlement Administration Costs, and the allocation of payments to Settlement Class Members)

1 falls within the range of possible approval that could ultimately be given final approval by this
2 Court as fair, reasonable, and adequate, and that the final determination of these issues will be
3 made at the Final Approval Hearing (referred to in the Agreement as the “Fairness Hearing”).
4 More specifically, the Court finds on a preliminary basis that:

5 **(a)** The Settlement provides for a Gross Settlement Amount of \$1,700,000.00
6 plus an Additional Estimated Substitute Amount of \$37,620.00, such that Defendant will pay a
7 total of \$1,737,620.00 into the settlement fund pursuant to the terms and timing specified in the
8 Agreement. The Settlement further provides that the Net Settlement Fund shall be calculated by
9 subtracting the following amounts from the total of the Gross Settlement Amount and the
10 Additional Estimated Substitute Amount: (1) the Class Counsel Award (estimated at
11 \$561,000.00 in attorneys’ fees and \$20,000.00 in attorney costs); (2) all Settlement
12 Administration Costs (estimated not to exceed \$21,000.00); (3) the Class Representative
13 Enhancement Payment (estimated at \$10,000.00); and (4) the amount allocated under the Private
14 Attorneys General Act of 2004, California Labor Code section 2698 et seq. (“PAGA”) (i.e.,
15 \$170,000.00), including the payment to the California Labor Workforce and Development
16 Agency (“LWDA”) and the PAGA amount distributed to the Class Members. The Net
17 Settlement Fund (\$960,500) plus Additional Estimated Substitute Amount (\$37,620), to be
18 disbursed to Settlement Class Members who have not excluded themselves from the Settlement,
19 is presently anticipated to be approximately \$998,120.00. If the Settlement is approved, the full
20 amount of the Net Settlement Fund will be paid out to Settlement Class Members who do not
21 exclude themselves from the Settlement in accordance with the terms of the Agreement.

22 **(b)** The Agreement is fair, adequate and reasonable as to all Class Members
23 when balanced against the probable outcome of further litigation relating to liability and
24 damages issues.

25 **(c)** Settlement at this time will avoid substantial additional costs by all parties,
26 as well as avoid the delay and risks that would be presented by the further prosecution of this
27 class action.

1 (d) The Settlement does not improperly grant preferential treatment to class
2 representatives or segments of the class, supporting a presumption of fairness.

3 (e) Adequate inquiry, investigation and discovery have been conducted so
4 that counsels for the Parties are able to reasonably evaluate their respective positions, supporting
5 a presumption of fairness.

6 (f) The Agreement has been reached as a result of intensive, serious and non-
7 collusive, arms-length negotiations, supporting a presumption of fairness.

8 3. The Court finds that distribution of the Notice of Class Action Settlement,
9 substantially in the form attached to the Settlement Agreement as “**Exhibit C**”, via first class
10 U.S. postal mail to Class Members (a) constitutes the best notice practicable under the
11 circumstances, (b) constitutes valid, due, and sufficient notice to all members of the Class, and
12 (c) complies fully with the requirements of California Code of Civil Procedure section 382,
13 California Rules of Court 3.766 and 3.769, the California and United States Constitutions, and
14 other applicable law.

15 4. For settlement purposes only, the Court finds the Class is so numerous that
16 joinder of all Class Members is impracticable, Plaintiff’s claims are typical of the Class’s claims,
17 there are questions of law and fact common to the Class, which predominate over any questions
18 affecting only individual Class Members, the Plaintiff is an adequate representative of the Class,
19 and class certification is superior to other available methods for the fair and efficient
20 adjudication of the controversy.

21 5. Pursuant to Labor Code section 2699, subdivision (l)(2), the Court notes that
22 Plaintiff provided a copy of the Agreement to the LWDA at the same time that Plaintiff provided
23 it to the Court, and the Court has reviewed the Settlement’s provisions relating to settlement of
24 claims under PAGA. The Court tentatively finds that the payment of \$170,000.00 for settlement
25 of any and all claims for which civil penalties under PAGA may be sought or are otherwise
26 available (the “PAGA Penalty Payment”), is fair and adequate. Further, the Court tentatively
27 finds that the PAGA Penalty Payment satisfies the requirements of California Labor Code
28 section 2699, subdivision (i), because \$127,500.00 (75%) of the PAGA Penalty Amount is

1 allocated to the LWDA for the enforcement of labor laws and education of employers, and
2 \$42,500.00 (25%) is allocated for distribution to all Class Members, i.e., the allegedly
3 “aggrieved employees.”
4

5 **IT IS ORDERED THAT:**

6 **1. Settlement Preliminary Approval.** The Settlement Agreement and the Notice of
7 Class Action Settlement are preliminarily approved. The Court further preliminarily approves
8 the formulas provided in the Settlement for calculating Individual Settlement Payments to the
9 Class Members using a shift-based calculation methodology.

10 **1.1 Conditional Certification.** The Settlement Class is conditionally certified for
11 settlement purposes only as a class of: “All current and former Nurses who have worked at least
12 one Nursing Shift in California through use of Defendant’s Nurse OnDemand platform
13 application at any time during the Class Period.” “Class Period” refers to the period of time
14 from June 3, 2017 through the date the Court grants preliminary approval of the Settlement. As a
15 practical matter, there were no Nursing Shifts worked by any Class Member prior to January 1,
16 2020. Excluded from the Settlement Class are putative Class Members who submit a timely and
17 valid Request for Exclusion (as defined by the Agreement and paragraph 8 below).

18 **2. Appointment of Class Representative and Class Counsel.** Plaintiff Joanna
19 Magpiong is conditionally appointed as the Class Representative to implement the Parties’
20 Settlement in accordance with the Agreement. Matthew S. Da Vega and Matthew Fisher of
21 Da Vega Fisher Mechtenberg LLP are conditionally appointed as Class Counsel. Class Counsel
22 is conditionally authorized to act on behalf of the Class with respect to all acts or consents
23 required by, or which may be given, pursuant to the Settlement, and such other acts necessary to
24 finalize the Settlement Agreement and its terms. Any Class Member may enter an appearance
25 through his or her own counsel at such Class Member’s own expense. Any Class Member who
26 does not enter an appearance or appear on his or her own behalf will be represented by Class
27 Counsel for settlement purposes only. Plaintiff and Class Counsel must fairly and adequately
28 protect the Class’s interests.

1 **3. Appointment of Settlement Administrator.** CPT Group, Inc. is hereby
2 appointed as the Settlement Administrator for this case.

3 **4. Provision of Class Notice.** Within ten (10) calendar days after entry of this
4 Preliminary Approval Order, Defendant shall provide the Class List to the Settlement
5 Administrator. On or before thirty (30) calendar days of entry of this Preliminary Approval
6 Order, the Settlement Administrator shall mail the Notice of Class Action Settlement (which
7 shall be substantially similar to the form attached to the Settlement Agreement as **Exhibit C**)
8 to all Class Members via regular First-Class U.S. Mail in the manner specified under Section 4
9 of the Agreement.

10 **5. Response Deadline.** The Response Deadline shall be forty-five (45) calendar
11 days from the initial mailing of the Class Notice to Class Members pursuant to Section 4. In
12 the event of a re-mailed Class Notice, the Response Deadline will be extended an additional
13 fifteen (15) calendar days for that individual Class Member.

14 **6. Objection to Settlement.** Settlement Class Members who have not submitted a
15 timely and valid Request for Exclusion pursuant to the Agreement and paragraph 8 below and
16 who want to object to the Agreement must sign and submit by U.S. Mail or other delivery
17 service a valid written Objection to the Settlement Administrator on or before the Response
18 Deadline. The Settlement Administrator will provide copies of all such Objections to Class
19 Counsel and CareLinx's counsel weekly and will also provide a Final Response Report within
20 five (5) calendar days of the Response Deadline. For an Objection to be valid, it must: (a) state
21 the case name and number ("*Joanna Magpiong v. CareLinx, Inc.*, Case No. 21-CIV-03038"),
22 (b) contain the Class Member's name, current mailing address, most current telephone number,
23 and last four digits of his or her Social Security number, (c) state the basis for the objection,
24 (d) be signed by the Class Member, (e) be submitted to the Settlement Administrator at the
25 address specified in the Class Notice; and (f) be submitted with proof of the submission date
26 (such as a U.S. Postal Service postmark or another delivery service date stamp) on or before
27 the Response Deadline. The date the Objection is sent, as evidenced by the postmark or other
28 delivery service date stamp, shall be the exclusive means to determine whether an Objection

1 has been timely submitted. If a Class Member intends to speak at the Final Approval Hearing,
2 they must file a notice of intention to appear with the Court and provide a copy of the notice
3 and their Objection to counsel for both Parties. Notwithstanding the requirement in the
4 preceding sentence, any Settlement Class Member will be permitted to appear and speak at the
5 Final Approval Hearing in order to have an Objection heard by the Court.

6 **7. Failure to Object to Settlement.** Class Members who fail to timely object to the
7 Agreement in the manner specified above will: (1) be deemed to have waived their right to
8 object to the Agreement; and (2) be foreclosed from objecting (whether by appeal or otherwise)
9 to the Agreement.

10 **8. Requesting Exclusion.** Any Class Member wishing to opt-out from the
11 Agreement must sign and submit by U.S. Mail or other delivery service a valid written Request
12 for Exclusion to the Settlement Administrator on or before the Response Deadline containing
13 all the information required by the Agreement. To be valid, the Request for Exclusion must: (a)
14 state the case name and number (“*Joanna Magpiong v. CareLinx, Inc.*, Case No. 21-CIV-
15 03038”); (b) set forth the name, address, and telephone number of the Class Member
16 requesting exclusion; (c) be signed by the Settlement Class Member; (d) be addressed to the
17 Settlement Administrator; and (e) be postmarked on or before the Response Deadline. The date
18 the Request for Exclusion is sent, as evidenced by the postmark or other delivery service date
19 stamp, shall be the exclusive means to determine whether a Request for Exclusion has been
20 timely submitted.

21 **9. Shift Dispute.** If a Settlement Class Member wishes to dispute the number of
22 Nursing Shifts with which he or she has been credited, the Settlement Class Member must
23 submit to the Settlement Administrator, by U.S. Mail or other delivery service, a Shift Dispute
24 on or before the Response Deadline. The Shift Dispute must: (a) state the case name and
25 number (“*Joanna Magpiong v. CareLinx, Inc.*, Case No. 21-CIV-03038”), (b) set forth the
26 Class Member’s name, address, and telephone number; (c) be signed by the Class Member; (d)
27 include any documentary evidence showing that the Nursing Shift information is inaccurate,
28 and (e) be postmarked or submitted to the Settlement Administrator on or before the Response

1 Deadline. The submission date is deemed to be, in the case of submission by U.S. Mail or other
2 delivery service, the date the Shift Dispute is sent, as evidenced by the postmark or other
3 delivery service date stamp.

4 **10. Termination.** If the Agreement terminates, the following will occur: (a) the
5 Preliminary Approval Order, and/or Final Approval Order and Judgment, and all of its or their
6 provisions will be vacated by its or their own terms, including, but not limited to, vacating
7 conditional certification of the Class; (b) Plaintiff will stop functioning as the Class
8 Representative and Class Counsel will stop serving as counsel for the proposed class; and (c) the
9 Action will revert to its previous status in all respects as it existed immediately before the Parties
10 executed the Memorandum of Understanding. No term or draft of the Memorandum of
11 Understanding or the Agreement, or any part of the Parties' settlement discussions, negotiations
12 or documentation will have any effect or be admissible into evidence for any purpose in the
13 Action or any other proceeding. This Preliminary Approval Order will not waive or otherwise
14 impact the Parties' rights or arguments.

15 **11. No Admissions.** Nothing in this Preliminary Approval Order is, or may be
16 construed as, an admission or concession on any point of fact or law by or against any Party.

17 **12. Stay of Dates and Deadlines.** All discovery and pretrial proceedings and
18 deadlines in the Action, and related Actions, are stayed and suspended until further notice from
19 the Court, except for such actions as are necessary to implement the Agreement and this
20 Preliminary Approval Order.

21 **13. Final Approval Hearing.** On _____, at _____, this Court will hold a
22 Final Approval Hearing to determine whether the Agreement should be finally approved as fair,
23 reasonable, and adequate. Plaintiff's motion for final approval of the Settlement and all papers
24 supporting the Class Counsel Award and Class Representative Enhancement Payment must be
25 filed by _____. Any additional papers supporting final approval, including the
26 Settlement Administrator declaration and any response to Objections to the Agreement must be
27 filed by no later than _____.
28

1 **14.** The Court reserves the right to adjourn or continue the date of the Final Approval
2 Hearing and all dates provided for in the Agreement without further notice to the Class, and
3 retains jurisdiction to consider further applications concerning the Settlement.

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6 DATED: _____
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8 JUDGE OF THE SUPERIOR COURT
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EXHIBIT C
NOTICE OF CLASS ACTION SETTLEMENT

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN MATEO

JOANNA MAGPIONG,

v.

CARELINX, INC.,

Case No. CIV-03038

NOTICE OF CLASS ACTION AND PROPOSED SETTLEMENT

TO: All current and former Nurses who have worked at least one Nursing Shift in California through use of Defendant's Nurse OnDemand platform application at any time from June 3, 2017 through the date the Court grants preliminary approval of the Settlement.

IF YOU ARE A MEMBER OF THIS CLASS OF PERSONS, YOU SHOULD READ THIS NOTICE CAREFULLY BECAUSE IT
WILL AFFECT YOUR LEGAL RIGHTS AND OBLIGATIONS.

A settlement ("Settlement") has been proposed in a class action lawsuit pending in San Mateo County Superior Court ("Court") titled *Joanna Magpiong v. Carelinx, Inc.* Case No. CIV-03038 (the "Action"). If the Court gives final approval to the Settlement, Carelinx, Inc. ("Defendant") will provide each Settlement Class Member a payment as set forth in this notice. Here is a summary of your rights and options; they are described in more detail later in this document. If you have any questions, please contact the Carelinx Settlement Administration, c/o [_____].

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT		
GET A PAYMENT	If you do nothing, you will automatically receive a payment if the Settlement is finally approved by the Court.	N/A
SUBMIT A SHIFT DISPUTE	If you believe that the number of Nursing Shifts with which you have been credited is incorrect, you must submit a Shift Dispute to the Settlement Administrator. Detailed instructions for this option are set forth in Section 10 below.	Deadline: _____
EXCLUDE YOURSELF	If you wish to exclude yourself from the Settlement, you must submit to the Settlement Administrator a valid Request for Exclusion. If you exclude yourself from the Settlement, you will not receive a payment under the Settlement. Excluding yourself is the only option that allows you to bring or maintain your own claims or lawsuit against Defendants regarding the allegations in the Action. Detailed instructions for this option are set forth in Section 17 below.	Deadline: _____
OBJECT	If you wish to object to the settlement, you must submit your objections to the Settlement Administrator. Submitting an objection does not exclude you from the Settlement. Detailed instructions for this option are set forth in Section 18 below.	Deadline: _____
APPEAR AT THE "FINAL APPROVAL HEARING"	The Court will hold a "Final Approval Hearing" to consider the Settlement, the request for attorneys' fees and costs by counsel representing the Class in the Action, and the Representative Plaintiff's request for service award for bringing the Action. You may, but are not required to, speak at the Final Approval Hearing about any objection to the Settlement that you submitted. If you intend to speak at the Final Approval Hearing, you must also provide a "Notice of Intention to Appear" indicating your intent to do so. Notwithstanding the requirement in the preceding sentence, you will be permitted to appear and speak at the Final Approval Hearing in order to have an Objection heard by the Court.	Hearing Date: _____ at _____

The Court in charge of this Action has preliminarily approved the Settlement and must decide whether to give final approval to the Settlement. The relief provided to Class Members will be provided only if the Court gives final

approval to the Settlement and, if there are any appeals, after the appeals are resolved in favor of the Settlement.
Please be patient.

WHAT THIS NOTICE CONTAINS

BACKGROUND INFORMATION.....X

1. Why did I get this notice?
2. What is this lawsuit about?
3. Why is this a class action?
4. Why is there a Settlement?
5. How do I know if I am part of the Settlement?
6. I'm still not sure if I am included.

THE PROPOSED SETTLEMENTX

7. What relief does the Settlement provide to the Class Members?

PAYMENT TO THE CLASSX

8. How can I get a payment?
9. When will I get a payment?
10. What if I disagree with the calculation regarding my estimated settlement payment?
11. If I receive a settlement payment will I have to pay taxes on it?
12. No retaliation or discrimination.

THE LAWYERS IN THIS CASE AND THE REPRESENTATIVE PLAINTIFFX

13. Do I have a lawyer in this case?
14. How will the lawyers be paid?
15. Will the Representative Plaintiff receive any compensation for their efforts in bringing this Action?

RELEASE OF ALL CLAIMS.....X

16. What am I giving up to obtain relief under the Settlement?

HOW TO EXCLUDE YOURSELF FROM THE SETTLEMENTX

17. How do I exclude myself from the Settlement?

HOW TO OBJECT TO THE SETTLEMENT.....X

18. How do I tell the Court that I do not like the Settlement?
19. What is the difference between excluding myself and objecting to the Settlement?

FINAL APPROVAL HEARINGX

20. What is the Final Approval Hearing?
21. When and where is the Final Approval Hearing?
22. May I speak at the hearing?

ADDITIONAL INFORMATIONX

23. How do I get more information?
24. What if my address or other information has changed?

BACKGROUND INFORMATION

1. Why did I get this notice?

You received this Notice because a Settlement has been reached in this Action. According to Defendant's available records you are a member of the Class and may be eligible for the relief detailed below.

This Notice explains the nature of the Action, the general terms of the proposed Settlement, and your legal rights and obligations. To obtain more information about the Settlement, including information about how you can see a copy of the Settlement Agreement (which defines the capitalized terms used in this Notice), see Section 23 below.

2. What is this lawsuit about?

Plaintiff Joanna Magpiong (the “Plaintiff” or “Representative Plaintiff”) filed a lawsuit against Defendant on behalf of herself and all others similarly situated. The lawsuit alleges that Defendant violated California law by, among other things, failing to classify nurses as employees, failing to pay overtime and minimum wage, failing to provide meal and rest breaks, failing to timely pay wages, including at termination, failing to provide expense reimbursement, and failing to provide compliant wage statements. The lawsuit also asserts claims under the California Private Attorneys General Act of 2004, Labor Code section 2698, et seq. (“PAGA”).

Defendant denies each and every one of the allegations of unlawful conduct, any wrongdoing, and any liability whatsoever, and no court or other entity has made any judgment or other determination of any liability. Defendant further denies that any Class Member is entitled to any relief and, other than for settlement purposes, that this Action is appropriate for certification as a class action.

The issuance of this Notice is not an expression of the Court’s opinion on the merits or the lack of merits of the Plaintiff’s claims in the Action.

For information about how to learn about what has happened in the Action to date, please see Section 23 below.

3. Why is this a class action?

In a class action lawsuit, one or more people called “Plaintiff” (in this Action, Joanna Magpiong) sues on behalf of other people who allegedly have similar claims. For purposes of this proposed Settlement, one court will resolve the issues for all Class Members. The company sued in this case, Carelinx, Inc., is called the Defendant.

4. Why is there a Settlement?

The Plaintiff has made claims against Defendant. Defendant denies that they have done anything wrong or illegal and admit no liability. **The Court has not decided that the Plaintiff or the Defendant should win this Action. Instead, both sides agreed to a Settlement.** That way, they avoid the cost of a trial, and the Class Members will receive payment now rather than years from now, if at all.

5. How do I know if I am part of the Settlement?

The Court has decided that everyone who fits this description is a Class Member for purposes of the proposed Settlement: “All current and former Nurses who have worked at least one Nursing Shift in California through use of Defendant’s Nurse OnDemand platform application at any time during the Class Period.” “Class Period” refers to the period of time from June 3, 2017 through the date the Court grants preliminary approval of the Settlement. As a practical matter, there were no Nursing Shifts worked by any Class Member prior to January 1, 2020.

6. I’m still not sure if I am included.

If you are still not sure whether you are included, you can write to the Settlement Administrator for free help. The address of the Settlement Administrator is: Carelinx Settlement Administration, c/o [_____].

THE PROPOSED SETTLEMENT

7. What relief does the Settlement provide to the Class Members?

Defendant has agreed to fund a settlement with a maximum value of \$1,737,620. The settlement amount will be used to pay the claims of Settlement Class Members, the cost of providing notice to the Class and administering the Settlement (i.e., \$21,000); to pay any awards of the Court for attorneys' fees (i.e., \$561,000) and costs (i.e., \$20,000) to Plaintiff's counsel; any service award the Court awards to the Representative Plaintiff (i.e., \$10,000); and the amount allocated under the California Private Attorneys General Act of 2004, California Labor Code section 2698 et seq. ("PAGA") (i.e., \$170,000.00, the "PAGA Penalty Amount"), which includes the 75% payment to the California Labor Workforce and Development Agency ("LWDA") (i.e., \$127,500) and the 25% PAGA Group Amount distributed to the Class Members.

Your Estimated Settlement Payment is included with this notice. Your estimated payment was calculated using Defendant's records. Individual Settlement Payments will be calculated and apportioned as follows:

(a) The "Net Settlement Fund" shall be calculated by subtracting, from the total of \$1,737,620, the payments to Class Counsel, the Representative Plaintiff, and the Settlement Administrator, and the PAGA Penalty Amount.

(b) For each Class Member, the Settlement Administrator shall determine the number of Nursing Shifts worked by them during the Class Period based on Defendant's records. The sum of the Nursing Shifts for all Class Members shall be the "Total Shifts."

(c) The Net Settlement Fund shall be divided by the number of Total Shifts; the resulting figure is the "Shift Point Value."

(d) For each Settlement Class Member (i.e., Class Members who do not request to be excluded from the Settlement), the Settlement Administrator will multiply the number of Nursing Shifts he or she worked during the Class Period by the Shift Point Value. The resulting figure shall be the "Individual Settlement Amount" for each such Settlement Class Member.

(e) The Settlement Administrator shall divide the PAGA Group Amount by the total number of PAGA Group members (i.e., the total number of Class Members); the resulting figure shall be each Class Member's pro rata share of the PAGA Group Amount.

PAYMENT TO THE CLASS

8. How can I get a payment?

If you wish to remain a Settlement Class Member and obtain any share of the settlement that you may be entitled to receive, then you do not have to do anything and you will automatically receive a settlement payment check in the mail if the Court approves the proposed Settlement. You are not required to go to court or pay anything to the lawyers in this case. The Settlement Payment you will receive will be a full and final settlement of your Released Claims described below.

9. When will I get a payment?

As described in Sections 20 and 21, the Court will hold a hearing on _____ at _____, to decide whether to approve the Settlement. If the Court approves the Settlement, after that, there may be appeals. It is always uncertain whether these appeals can be resolved, and resolving them can take time, perhaps more than a year. *Please be patient.*

10. What if I disagree with Defendant's calculation regarding my estimated settlement payment?

If you believe that the number of Nursing Shifts with which you have been credited is incorrect, you reduce evidence to the Settlement Administrator by _____ showing that such information is inaccurate. Settlement Administrator shall decide the dispute. Defendant's records will be presumed correct, but the Settlement Administrator will evaluate the evidence submitted by you and will make the final decision as to the merits of the dispute. You can submit a Shift Dispute by mail to the Settlement Administrator at: Carelinx Settlement Administration, c/o [_____].

11. If I receive a settlement payment will I have to pay taxes on it?

Your Settlement payment will be reported on IRS Form 1099. You should consult a tax professional for more information about your own specific situation.

12. No retaliation or discrimination.

Defendant respects your right to participate in this lawsuit and will take no adverse action against you should you accept payment under the Settlement.

THE LAWYERS IN THIS CASE AND THE REPRESENTATIVE PLAINTIFF

13. Do I have a lawyer in this case?

The Court has ordered that the law firm of Da Vega, Fisher, Mechtenberg LLP ("Class Counsel") will represent the interests of all Class Members. You will not be separately charged for these lawyers. If you have a question about the settlement, you may contact the Class Counsel by writing them at 232 E. Anapamu Street, Santa Barbara, California 93101 or emailing them at (mdavega@mdmflaw.com) or (mfisher@mdmflaw.com) or calling them at (805) 232-4471. If you want to be represented by your own lawyer, you may hire one at your own expense.

14. How will the lawyers be paid?

Defendant has agreed to pay Class Counsel's attorneys' fees up to \$561,000 and costs and expenses of up to \$20,000 for their services in litigating the Action, subject to approval by the Court. You will not be required to pay any attorneys' fees or costs.

15. Will the Representative Plaintiff receive any compensation for their efforts in bringing this Action?

The Representative Plaintiff will request a service award (also known as an "incentive" award) of up to \$10,000 for her service as class representative and her effort in bringing the Action. The Court will make the final decision as to the amount to be paid to the class representative.

RELEASE OF ALL CLAIMS

16. What am I giving up to obtain relief under the Settlement?

If the Court approves the proposed Settlement, unless you exclude yourself from the Settlement, you will be releasing your claims against Defendant. This generally means that you will not be able to file a lawsuit, continue existing lawsuits, or be part of any other lawsuit against Defendant regarding the allegations in the Action. The Settlement Agreement, which is available by contacting the Settlement Administrator as described in Section 23 below, sets forth the full terms of the release.

HOW TO EXCLUDE YOURSELF FROM THE SETTLEMENT

17. How do I exclude myself from the Settlement?

You may exclude yourself from the Class and the Settlement. If you want to be excluded, you must send a letter or postcard (also known as a "Request for Exclusion") via U.S. Mail or other delivery service that states: **(a)** the case name and number of the Action "*Joanna Magpiong v. Carelinx, Inc.* Case No. CIV-03038"; **(b)** your full name, address, and telephone number; and **(c)** a statement that you do not wish to participate in the Settlement. You must sign the letter or postcard for it to be valid. The letter or postcard must be sent (i.e., postmarked or delivery date stamped) by no later than _____ and sent to the Settlement Administrator at: Carelinx Settlement Administration, c/o [_____].

If you timely request exclusion from the Class, you will be excluded from the Class, you will not be bound by the judgment entered in the Action, you will not be precluded from prosecuting any timely, individual claim against Defendant based on the conduct complained of in the Action, and you will not receive an Individual Settlement Payment.

Even if you request exclusion from the Class, however, you will still be bound by the Settlement Agreement's release of PAGA Claims upon final approval of the Settlement Agreement and judgment. Requests for Exclusion do not apply to PAGA Claims. All Class Members will be sent a check for their pro rata share of the PAGA Group Amount.

HOW TO OBJECT TO THE SETTLEMENT

18. How do I tell the Court that I do not like the Settlement?

At the date, time, and location stated in Section 21 below, the Court will hold a Final Approval Hearing to determine if the Settlement is fair, reasonable, and adequate, and to also consider Class Counsel's request for an award of attorneys' fees and costs, and service award to the Representative Plaintiff.

If you wish to object to the fairness, reasonableness, or adequacy of the Settlement Agreement or the proposed Settlement, you must submit via U.S. Mail or other delivery service a valid, written Objection to the Settlement Administrator at the address set forth below by no later than (i.e., postmarked or delivery date stamped by) _____.

SETTLEMENT ADMINISTRATOR
CPT Group, Inc. [_____]

To be valid, any objections must: **(a)** state the name and case number of the Action "*Joanna Maggiong v. Carelinx, Inc.* Case No. CIV-03038"; **(b)** state your full name, current mailing address, most current telephone number, and last four digits of your Social Security number; **(c)** state your objection to the settlement and the legal and/or factual arguments supporting the objection; **(d)** be submitted to the Settlement Administrator via U.S. Mail or other delivery service with proof of submission date (such as a U.S. Postal Service postmark or another delivery service date stamp) no later than _____. You must sign the objection for it to be valid. You may, but need not, submit your objection through counsel of your choice. If you make your objection through counsel, you will be responsible for your attorney's fees and costs.

If you wish to appear at the Final Approval Hearing to object to the Settlement, either in person or through personal counsel hired at your expense, then you must include in your Objection the statement, "Notice of Intention to Appear at Final Approval Hearing". Doing so, however, does not obligate you to appear. Notwithstanding the requirement in the preceding sentence, you will be permitted to appear and speak at the Final Approval Hearing in order to have an Objection heard by the Court.

IF YOU DO NOT TIMELY MAKE YOUR OBJECTION, YOU WILL BE DEEMED TO HAVE WAIVED ALL OBJECTIONS.

19. What is the difference between excluding myself and objecting to the Settlement?

Objecting is telling the Court that you don't like something about the Settlement. You can object only if you stay in the Settlement Class. Excluding yourself is telling the Court that you don't want to be part of the Settlement Class. If you exclude yourself, you have no basis to object because the Settlement no longer affects you.

FINAL APPROVAL HEARING

20. What is the Final Approval Hearing?

The Court has preliminarily approved the Settlement meaning only that it concluded that there is sufficient evidence to suggest that the Agreement falls within the range of possible approval as fair, reasonable, and adequate, and that the final determination of these issues will be made at the Final Approval Hearing. The purpose of the Final Approval Hearing will be for the Court to determine whether the Settlement should be approved as fair, reasonable, adequate, and in the best interests of the Settlement Class; to consider the award of attorneys' fees and expenses to Class Counsel; and to consider the request for service awards to the Representative Plaintiff.

21. When and where is the Final Approval Hearing?

On _____ at _____, a hearing will be held on the fairness of the proposed Settlement. At the hearing, the Court will be available to hear any objections and arguments concerning the proposed Settlement's fairness. The hearing will take place before the Honorable Marie S. Weiner in Department 2 of the California Superior Court, for the County of San Mateo, located at the Southern Branch, 400 County Center, Redwood, CA 94063. The hearing may be postponed to a different date or time or location without notice.

22. May I speak at the hearing?

At that hearing, the Court will be available to hear any Objections and arguments concerning the fairness of the Settlement. You may attend, but you do not have to.

ADDITIONAL INFORMATION

23. How do I get more information?

To see a copy of the Settlement Agreement, the Court's Preliminary Approval Order, and the operative Complaint filed in the Action, please contact the Settlement Administrator at the postal mailing address: Carelinx Administration, c/o [_____].

This description of this Action is general and does not cover all of the issues and proceedings that have occurred. In order to see the complete file you may visit the Clerk's office at the Southern Branch, 400 County Center, Redwood, CA 94063, to obtain the file for inspection and copying at your own expense. Some documents are also available online for a fee at: <https://www.sanmateocourt.org/>

24. What if my address or other information has changed?

It is your responsibility to inform the Settlement Administrator of your updated information. You may make corrections to your address by contacting the Settlement Administrator at: Carelinx Settlement Administration, c/o [_____].

PLEASE DO NOT ADDRESS ANY QUESTIONS ABOUT THE SETTLEMENT OR THE LITIGATION TO THE CLERK OF THE COURT OR THE JUDGE.

EXHIBIT D
[PROPOSED] FINAL APPROVAL ORDER AND JUDGMENT

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 COUNTY OF SAN MATEO
3

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

5 Plaintiff,

6 v.

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

8 Defendants.
9

Case No. 21-CIV-03038

**[PROPOSED] FINAL APPROVAL OF CLASS
AND REPRESENTATIVE ACTION
SETTLEMENT ORDER AND JUDGMENT**

FAC Filed: August 10, 2021

10 On _____, this Court heard the Motion for Final Approval of class
11 action settlement as filed by Plaintiff Joanna Magpiong (the “Representative Plaintiff”). This
12 Court reviewed: (a) the motion and the supporting papers, including the Joint Stipulation of
13 Class Action Settlement and Release (the “Agreement,” “Settlement,” or “Settlement
14 Agreement”); (b) any Objections filed with or presented to the Court; (c) the Parties’ responses
15 to any Objections; and (d) counsels’ arguments. Based on this review and the findings below, the
16 Court finds good cause to GRANT the motion.

17 **FINDINGS:**

18 **1.** Unless otherwise specified, defined terms in this Final Approval of Class and
19 Representative Action Settlement Order and Judgment (the “Final Approval Order”) shall have
20 the same definition as used in the Settlement Agreement.

21 **2.** The Court finds the Settlement was entered into in good faith, that it is fair,
22 reasonable and adequate, and that it satisfies the standards and applicable requirements for final
23 approval of this class action settlement under California law, including the provisions of
24 California Code of Civil Procedure section 382 and California Rules of Court, Rule 3.769.

25 **3.** With respect to the Settlement Class and for the purpose of approving the
26 Settlement only, this Court finds and concludes that: (a) the Class Members are ascertainable and
27 so numerous that joinder of all members is impracticable; (b) there are questions of law or fact
28 common to the Class Members, and there is a well-defined community of interest among Class

1 Members with respect to the subject matter of the claims in the Litigation; (c) the claims of the
2 Representative Plaintiff are typical of the claims of the Class Members; (d) the Representative
3 Plaintiff has fairly and adequately protected the interests of the Settlement Class Members; (e) a
4 class action is superior to other available methods for an efficient adjudication of this
5 controversy; and (f) the counsel of record for the Representative Plaintiff, i.e., Class Counsel, are
6 qualified to serve as counsel for the Plaintiff in their individual and representative capacities and
7 for the Settlement Class.

8 **4.** The Parties adequately performed their obligations under the Settlement
9 Agreement.

10 **5.** Notice was provided to the putative Class Members in compliance with Section 4
11 of the Settlement Agreement, California Code of Civil Procedure section 382, California Rules
12 of Court 3.766 and 3.769, the California and United States Constitutions, and any other
13 applicable law. The notice: (i) fully and accurately informed putative Class Members about the
14 lawsuit and Settlement; (ii) provided sufficient information so that putative Class Members were
15 able to decide whether to accept the benefits offered, opt-out and pursue their own remedies, or
16 object to the proposed Settlement; (iii) provided procedures for putative Class Members to file
17 written Objections to the proposed Settlement, to appear at the hearing, and to state Objections to
18 the proposed Settlement; and (iv) provided the time, date and place of the final approval hearing.

19 **6.** The Gross Settlement Amount and the means of distributing the Net Settlement
20 Fund to Settlement Class Members are fair and reasonable in light of the nature of this case.

21 **7.** Class Counsel has provided services and benefits to absent Class Members and
22 expended efforts and resources to secure the benefits, and is thus entitled to the requested and
23 unopposed attorneys' fees and costs as ordered by the Court.

24 **8.** The Class Representative prosecuted this lawsuit, worked with counsel,
25 undertook the risks associated with litigation, acted to protect the Class's interests, and conferred
26 a benefit on absent Class Members, and is thus entitled to receive enhancement awards.

27
28

1 **9.** The designated Settlement Administrator, CPT Group, Inc, rendered services, and
2 will continue to render services, in connection with administering the claims and settlement
3 process, and is thus entitled to its requested administration fees.

4 **10.** An award of \$561,000.00 in attorneys' fees and \$20,000.00 in attorney costs to
5 Class Counsel is fair and reasonable in light of the nature of this case, Class Counsel's
6 experience and efforts in prosecuting this Action, and the benefits obtained for the Class.

7 **11.** An incentive award to Representative Plaintiff in the amount of \$10,000.00 is fair
8 and reasonable in light of: (a) Plaintiff's risks (including financial and professional) in
9 commencing this action as the class representative; (b) the time and effort spent by Plaintiff in
10 litigating this action as the class representative; and (c) Plaintiff's public interest service.

11 **12.** Payment of \$21,000.00 to CPT Group, Inc. for its services as the Settlement
12 Administrator is fair and reasonable.

13 **13.** Pursuant to California Labor Code section 2699, subdivision (l)(2), the Court
14 approves of the Settlement's provisions relating to settlement of claims under the Private
15 Attorneys General Act of 2004, Labor Code Section 2698 et seq. ("PAGA"). Representative
16 Plaintiff provided a copy of the Settlement Agreement to the California Labor and Workforce
17 Development Agency ("LWDA") at the same time that Representative Plaintiff provided it to the
18 Court. Payment of \$170,000.00 for settlement of any and all claims for which civil penalties
19 under PAGA may be sought or are otherwise available (the "PAGA Penalty Payment") is fair
20 and adequate. The PAGA Penalty Payment satisfies the requirements of California Labor Code
21 section 2699, subdivision (i) because \$127,500.00 (75%) of the PAGA Penalty Amount is
22 allocated to the LWDA for the enforcement of labor laws and education of employers, and
23 \$42,500.00 (25%) is allocated to for distribution to all Class Members, i.e., the allegedly
24 "aggrieved employees."

25 **IT IS ORDERED THAT:**

26 **1. Settlement Class Members.** The Settlement Class Members are defined as: "All
27 current and former Nurses who have worked at least one Nursing Shift in California through use
28 of Defendant's Nurse OnDemand platform application at any time during the Class Period."

1 “Class Period” refers to the period of time from June 3, 2017 through the date the Court grants
2 preliminary approval of the Settlement. As a practical matter, there were no Nursing Shifts
3 worked by any Class Member prior to January 1, 2020. Excluded from the Settlement Class are
4 those putative Class Members who submit a timely and valid Request for Exclusion.

5 **2. Binding Effect of Final Approval Order.** This Final Approval Order applies to
6 all claims or causes of action settled under the Settlement Agreement, including any claims
7 under PAGA, and binds all Class Members. Except with respect to claims under PAGA, this
8 Final Approval Order does not bind persons who filed timely and valid Requests for Exclusion.
9 Attached as “Exhibit A” hereto is a list of persons who properly requested to be excluded from
10 the Settlement. Notwithstanding the submission of any timely and valid Requests for
11 Exclusion, all Class Members are bound by the PAGA Release under this Final Approval Order
12 and Judgment. *See Arias v. Superior Court*, 46 Cal. 4th 969 (2009).

13 **3. Representative Plaintiff’s Release.** Representative Plaintiff is deemed to have
14 released and discharged the entities and claims as described in Section 2.6 of the Settlement
15 Agreement.

16 **4. Class Member Release.** Representative Plaintiff and all Settlement Class
17 Members who did not properly request exclusion, on behalf of the Releasing Parties, are: (1)
18 deemed to have released and discharged the Released Parties from all Released Claims under the
19 Settlement Agreement; and (2) barred and permanently enjoined from asserting, instituting, or
20 prosecuting, either directly or indirectly, these Released Claims. The full and complete terms of
21 the releases described in this paragraph are set forth in Sections 2.6, 2.7, and 2.8 of the
22 Settlement Agreement. Section 2.6 is applicable only to the Representative Plaintiff.

23 **1.2 PAGA Release.** Representative Plaintiff and all Class Members shall on behalf of
24 themselves and on behalf of the State of California forever discharge, waive and release the
25 Released Parties from any and all claims or action for civil penalties under PAGA during the
26 Class Period based on or arising out of the factual allegations of the Complaint including
27 without limitation any and all claims under California Labor Code sections 201, 202, 203, 204,
28 204.2, 206, 206.5, 207, 208, 210, 212, 218.5, 218.6, 221, 223, 224, 226, 226.7, 226.8, 227, 227.3,

230, 230.1, 233, 246, 432.5, 510, 511, 512, 513, 551, 552, 558, 976, 1025, 1102.5, 1174, 1182.12, 1194, 1194.2, 1194.5, 1197, 1197.1, 1198, 1198.3, 1199, 1696.5, 2570.3, 2698, 2699, 2699.3, 2699.5, 2753, 2800, 2802, 2806, 6311, and 6399.7. The full and complete terms of the release described in this paragraph are set forth in Section 2.8 of the Settlement Agreement.

5. Class Relief. Defendant CareLinx, Inc. (“Defendant”), or the Settlement Administrator on Defendant’s behalf, will distribute the Net Settlement Fund to the Settlement Class Members. The distribution shall be in accordance to the instructions and timeline set forth in Section 7 of the Settlement Agreement.

6. Attorney’s Fees and Costs. Class Counsel is awarded \$561,000.00 total in fees and \$20,000 in costs. Defendant or the Settlement Administrator on Defendant’s behalf, must pay Class Counsel this amount according to the timeline set forth in Section 2.2 of the Settlement Agreement.

7. Enhancement Award. Representative Plaintiff is awarded \$10,000.00 as an enhancement payment. Defendant or the Settlement Administrator on Defendant’s behalf, must pay Representative Plaintiff these amounts according to the timeline set forth in Section 2.3 of the Settlement Agreement.

8. Payment of Settlement Administration Costs. Payment of \$21,000.00 shall be made to CPT Group, Inc. for its services as the Settlement Administrator according to the timeline set forth in the Settlement Agreement.

9. Final Accounting Report. A Party or the Parties shall file a report from the Settlement Administrator concerning the amount of money distributed pursuant to the Settlement, and this report shall be filed by no later than _____.

10. Judgment. The Court finds that there is no reason for delay and directs the Clerk to enter judgment in accordance with the terms of this Order as of the date of this Order.

11. Copy to LWDA. Within 10 days of entry of this Final Approval Order and Judgment, Representative Plaintiff shall provide a copy of this Final Approval Order and Judgment to the LWDA, pursuant to California Labor Code section 2699, subdivisions (1)(3) & (4).

1 **12. Court's Jurisdiction.** Pursuant to the Parties' request, California Code of Civil
2 Procedure section 664.6, and California Rule of Court 3.769(h), the Court retains jurisdiction
3 over this action and the Parties until final performance of the Settlement Agreement.
4
5

6 DATED: _____

JUDGE OF THE SUPERIOR COURT