

Matthew S. Da Vega (SBN 195443)
Matthew H. Fisher (SBN 229532)
DAVEGA | FISHER | MECHTENBERG LLP
232 E. Anapamu St.
Santa Barbara, CA 93101
Telephone: (805) 232-4471
Facsimile: (877) 535-9358
mdavega@mdmflaw.com

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 H.
FISHER IN SUPPORT OF MOTION FOR
FINAL APPROVAL OF CLASS
SETTLEMENT and ATTORNEY FEES and
COSTS**

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

Date: August 23, 2022

Time: 2:00 p.m.

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

I, Matthew H. Fisher, hereby declare as follows:

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

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

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

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

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

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

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

13 **7. Plaintiff’s Counsel Matthew H. Fisher:** I am a graduate of the University of
14 California, Berkeley (1998) and the USC Gould School of Law (2003), where I served on the Law
15 Review Staff. I became a member of the State Bar of California in 2003. From 2003 to 2006, I
16 worked in private practice for Pollak, Vida & Fisher in Los Angeles representing public entities
17 and insurance companies in bad faith litigation. From 2006 to 2012, I worked as an associate in
18 the nationally recognized law firm of Cappello & Noel LLP in Santa Barbara, California
19 representing plaintiffs in complex business litigation, civil rights, securities, and lender liability
20 suits. In 2012, I started my own law firm, Da Vega Fisher Mechtenberg LLP (“DFM LLP”),
21 originally with an office in the San Francisco Bay Area then later opening additional offices in
22 Santa Barbara, Ventura, and the Sacramento area. I am one of the firm’s two founding partners
23 and the current managing partner. I personally manage the firm’s Folsom's office and travel back
24 and forth between Sacramento and the firm's Mountain View office in the Bay Area. DFM LLP
25 has always been a Plaintiff-side contingency based law firm representing clients predominantly in
26 employment and personal injury matters in both individual and class actions. DFM LLP is
27 experienced counsel in matters such as this and has worked on significant employment cases such
28 as *Salvatierra v. Intuitive Surgical, Inc.*, Santa Clara County Superior Court, Case No. 2014-1-

CV-272069 (2016) (\$4.6M gross settlement for class of 208 misclassified class member employees); *Gibbins/Leal v. Hismeh Enterprises, Inc.*, Ventura County Superior Court, Case No. 56-2015-00468352 (2017) (\$1M gross settlement for class of 4000+ delivery driver members reimbursements); *Sena v. Facebook, Inc.*, San Mateo County Superior Court, Case No. 16CIV00496 (2018) (\$4.25M gross settlement for class of 900+ class member employees for unpaid overtime wage); and *Magpiong v. CareLinx*, San Mateo County Superior Court, Case No. 21-CIV-03038 (2022) (\$1.8 M gross settlement for class of 2000+ class member employees for IC misclassification /unpaid overtime wage), to name but a few. I have also worked on several appellate matters over the course of my career such as *Pitzen v. Superior Court* (2004) 120 Cal.App.4th 1374 (collateral estoppel effect is afforded to claims litigated and decided against a small claims plaintiff); *AREI II Cases* (2013) 216 Cal.App.4th 1004 (construing scope of aiding and abetting liability under California's securities laws); and *Gruber v. Yelp Inc* (2020) 55 Cal.App.5th 591 (California Invasion of Privacy Act covers one-way call recording)

II. CLASS COUNSEL AWARD OF ATTORNEY FEES and COSTS

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

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

10. **Contingency Fee Matter:** As this is a contingency matter, Class Counsel litigated this action without receiving any payment for their services or reimbursement of their costs incurred for the benefit of the Class. To represent the Class on a contingent fee basis, Class

1 Counsel had to forego compensable hourly work on other cases to devote the necessary time and
2 resources to this contingent case. In so doing, Class Counsel gave up work that a firm receives
3 more immediate payment for in exchange for risky class action contingent fee work in this case
4 which could have paid the Class and its Counsel nothing. A number of difficult issues, the
5 adverse resolution of any one of which could have barred the successful prosecution of the action,
6 were present here. Attorneys' fees in this case were not only contingent but risky, with a very real
7 chance that Class Counsel would receive nothing at all for their efforts, having devoted time and
8 advanced costs. Class Counsel has previously invested in similar cases which resulted in little or
9 no recovery due to various issues, including but not limited to bankruptcy, failed
10 certification/decertification, other overlapping class matters, and/or lengthy appeals.

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

22 **12. Class Counsel's Hours and Hourly Rates:** I will have worked on this matter for
23 67 hours at the time of this motion and my current billable rate as of 2022 is \$650/hr. for class
24 action work (\$650/hr. x 67 hours = \$43,550 in lodestar).

25 **13. Class Counsel Lodestar Cross-Check:** I have reviewed my firm's lodestar in this
26 matter and believe the charges are reasonable and were reasonably necessary to the conduct of the
27 case. These rates are in line with the prevailing rates of attorneys in the California legal
28 community for similar work. In this case, the reasonableness of the requested for \$623,000 in

attorneys' fees is further supported by a crosscheck using attorney's lodestar in this matter. Class Counsel has spent a significant amount of hours investigating, researching, and litigating this matter, including but not limited to the following: interviewing Plaintiffs and flushing out facts and issues; researching employer and causes of action; developing facts and investigating Defendant's ownership structure (Secretary of State, etc.); investigating and discussing job functions, duties, compensation, policies and procedures, etc.; regularly meeting and/or communicating with our clients who are the Class Representatives; drafting pleadings (Complaint, case management statements, mediation briefs); drafting and responding to informal discovery; reviewing information produced in formal and informal discovery (payroll data, etc.); researching private right of action for employee misclassification and various impact on class actions; participating in Court-ordered hearings and conferences; attending mediation; retention of expert witnesses; discussion with expert witnesses issues related to damage model calculations; preparing and analyzing damage models; negotiating the terms of the Settlement; reviewing and making changes to Settlement Agreement; and coordinating and overseeing all the administration of the Settlement. The contemporaneous billing records evidence that the attorneys' lodestar is \$177,425 with additional fees still to be incurred for preparation and attending the final approval hearing, managing post approval settlement distribution with the claims administrator, responding to class member inquiries, and handling any potential appeal of the matter. As a result, the current lodestar amount understates the total attorneys' fees ultimately incurred in this action. Class Counsel lodestar crosscheck of attorney fees is as follows:

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

The requested fee award of \$623,000 represents a **positive multiplier of 3.5** which is well within the range warranted under California law of a 1 to 4 multiplier. “Multipliers of 1 to 4 are commonly found to be appropriate in complex class action cases.” *Destefano v. Zynga, Inc.*, 2016 WL 537946, at *21 (N.D. Cal. Feb. 11, 2016) (quoting *Hopkins v. Stryker Sales Corp.*, 2013 WL

1 496358, at *4 (N.D. Cal. Feb. 6, 2013)); see *Vizcaino v. Microsoft Corp.*, 290 F.3d United States
2 District Court Northern District 1043, 1051 n.6 (9th Cir. 2002)(citing survey finding most
3 multipliers range from 1.0 to 4.0). As a result, this Court should have no trouble concluding that
4 an award is supported by the lodestar cross-check is fair and reasonable and is justified under
5 California law. “[T]he lodestar method better accounts for the amount of work done, while the
6 percentage of the fund method more accurately reflects the results achieved.” *Rawlings v.*
7 *Prudential-Bache Properties, Inc.* (6th Cir. 1993) 9 F.3d 513, 516.

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

9 I declare under penalty of perjury under the laws of the State of California that the
10 foregoing is true and correct.
11

12 **DATED:** August 1, 2022

DA VEGA | FISHER | MECHTENBERG LLP

13
14 

15 By: _____
16 Matthew H. Fisher
17 Attorneys for Plaintiff and Class
18
19
20
21
22
23
24
25
26
27
28