

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: 195443 NAME: Matthew S. Da Vega FIRM NAME: Da Vega Fisher Mechtenberg LLP STREET ADDRESS: 232 E. Anapamu St. CITY: Santa Barbara STATE: CA ZIP CODE: 93101 TELEPHONE NO.: (805) 232-4471 FAX NO.: (877) 535-9358 E-MAIL ADDRESS: mdavega@mdmflaw.com ATTORNEY FOR (name): Plaintiff Joanna Magpiong	FOR COURT USE ONLY CASE NUMBER: 21-CIV-03038 JUDICIAL OFFICER: Hon. Marie S. Weiner
SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Mateo STREET ADDRESS: 400 County Center Road MAILING ADDRESS: 400 County Center Road CITY AND ZIP CODE: Redwood City, 94063 BRANCH NAME: Hall of Justice	
PLAINTIFF/PETITIONER: Joanna Magpiong DEFENDANT/RESPONDENT: CareLinx, Inc. OTHER:	DEPT: 2
PROPOSED ORDER (COVER SHEET)	

NOTE: This cover sheet is to be used to electronically file and submit to the court a proposed order. The proposed order sent electronically to the court must be in PDF format and must be attached to this cover sheet. In addition, a version of the proposed order in an editable word-processing format must be sent to the court at the same time as this cover sheet and the attached proposed order in PDF format are filed.

1. Name of the party submitting the proposed order:
 Plaintiff Joanna Magpiong

**Electronically
 RECEIVED**
 2/18/2022

2. Title of the proposed order:
 ORDER GRANTING PRELIMINARY APPROVAL OF CLASS SETTLEMENT

**CLERK OF THE SUPERIOR COURT
 SAN MATEO COUNTY**

3. The proceeding to which the proposed order relates is:

- a. Description of proceeding: Hearing re Motion for Preliminary Approval of Class Settlement
- b. Date and time: March 29, 2022 at 2 p.m.
- c. Place: San Mateo County Superior Court, 400 County Center, Redwood City, CA 94063 (Dept 2. - Hon. Marie S. Weiner)

4. The proposed order was served on the other parties in the case.

Matthew S. Da Vega

(TYPE OR PRINT NAME)


 (SIGNATURE OF PARTY OR ATTORNEY)

Page 1 of 2

CASE NAME:
Magpiong v. CareLinx, Inc.

CASE NUMBER:
21-CIV- 03038

**PROOF OF ELECTRONIC SERVICE
PROPOSED ORDER**

1. I am at least 18 years old and **not a party to this action.**

a. My residence or business address is (*specify*):
232 E. Anapamu St., Santa Barbara, CA 93101

b. My electronic service address is (*specify*): mdavega@mdavega@mdmflaw.com

2. I electronically served the *Proposed Order (Cover Sheet)* with a proposed order in PDF format attached, and a proposed order in an editable word-processing format as follows:

a. On (*name of person served*) (*If the person served is an attorney, the party or parties represented should also be stated.*):
Summer Wynn (Counsel for Defendants CareLinx, Inc.).
COOLEY LLP, 4401 Eastgate Mall, San Diego, CA 92121-1909.
Phone: 858.550.6030

b. To (*electronic service address of person served*): swynn@cooley.com

c. On (*date*): February 18, 2022

☐ Electronic service of the *Proposed Order (Cover Sheet)* with the attached proposed order in PDF format and service of the proposed order in an editable word-processing format on additional persons are described in an attachment.

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

Date: February 18, 2022

Matthew S. Da Vega

(TYPE OR PRINT NAME OF DECLARANT)


(SIGNATURE OF DECLARANT)

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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 _____.
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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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