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**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

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR FINAL APPROVAL OF
CLASS SETTLEMENT, CLASS
REPRESENTATIVE ENHANCEMENT
PAYMENT, and CLASS COUNSEL
AWARD;**

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION;**

**DECLARATION OF MATTHEW S.
DA VEGA IN SUPPORT OF MOTION;
DECLARATION OF MATTHEW H.
FISHER IN SUPPORT OF MOTION;
DECLARATION OF TED D.
MECHTENBERG IN SUPPORT OF
MOTION; and**

[PROPOSED] ORDER with COVER SHEET

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)

1 **TO THIS HONORABLE COURT, ALL INTERESTED PARTIES, and THEIR**
2 **ATTORNEYS OF RECORD PLEASE TAKE NOTICE** that on August 23, 2022 at 2:00 p.m.,
3 or as soon as the matter may be heard, in Department 2 of the above entitled Court located at 400
4 County Center, Redwood City, CA 94063, Plaintiff Joanna Magpiong (“Plaintiff”) pursuant to
5 California Code of Civil Procedure §382 and California Rules of Court, rule 3.769, *et seq.*, will
6 and does move this Court for an Order granting final approval of the proposed class action
7 settlement on the terms and conditions that this Court has previously approved (“The Motion”).
8 The Motion is *unopposed*, and is made pursuant to the California Code of Civil Procedure §382
9 and California Rules of Court, rule 3.769, *et seq.*, and the April 12, 2022 Order Granting
10 Preliminary Approval of Class Settlement (“Preliminary Approval Order”). Specifically,
11 Plaintiff moves the Court for an Order:

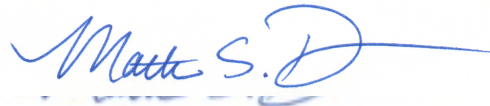
- 12 1. Approving the Class settlement (**\$1,925,620** settlement payment);
- 13 2. Certifying the Class for settlement purposes only;
- 14 3. Appointing Plaintiff as “Class Representative” for settlement purposes;
- 15 4. Appointing Plaintiff’s Counsel Da Vega Fisher Mechtenberg LLP as “Class
16 Counsel” for settlement purposes;
- 17 5. Approving a “Class Representative Enhancement Award” to the Class
18 Representative for their service to the Class and taking the risks of bringing
19 this Action as a class action, which has resulted in substantial benefits to the
20 Class, in an amount up to **\$10,000**;
- 21 6. Approving a “Class Counsel Award” of reasonable attorneys’ fees of
22 **\$623,000** to Class Counsel plus reimbursement of **\$19,781** (up to \$20,000)
23 **for litigation costs** incurred in pursuing the claims;
- 24 7. Approving the “PAGA Penalty Amount” payment for civil penalties under
25 the Private Attorneys General Act of 2004 (“PAGA”) of **\$170,000** (75% of
26 this amount [**\$127,500**] paid to the California Labor and Workforce
27 Development Agency [“LWDA Payment”] and 25% to this amount
28 [**\$42,500**] paid back to the PAGA group [“PAGA Group Amount”]).

8. Approving the “Settlement Administration Costs” of **\$21,000** paid to the CPT Group, Inc. (“CPT”) for settlement administration costs;
9. Directing the Parties to implement the terms of the Settlement; and
10. Entering a Judgment approving the Settlement and retaining jurisdiction over the parties to enforce the terms of the judgment.

This unopposed Motion will be based upon: this Notice; the attached Memorandum of Points and Authorities; the concurrently filed Declarations of Class Counsel, the Class Representative, and the Settlement Administrator Representative; and the records and files in this action, and any other further evidence or argument that the Court may properly receive at or before the hearing. Pursuant to Labor Code § 2699(1)(2), and the instructions provided by the Department of Industrial Relations on its web site, a PDF copy of this motion and the supporting papers will be sent/uploaded electronically to LWDA’s website at the time it is filed and served. A copy of the proof of that LWDA submission is attached to Declaration of Matthew S. Da Vega.

Dated: August 1, 2022

DAVEGA | FISHER | MECHTENBERG LLP



By: _____

Matthew S. Da Vega
Attorneys for Plaintiff

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION and SUMMARY OF SETTLEMENT TERMS**

3 On behalf of herself and similarly situated individuals, Plaintiff Joanna Magpiong
4 (“Plaintiff” or “Class Representative”) respectfully moves for final settlement approval of the
5 **\$1,925,620.00** (one million nine hundred twenty five thousand six hundred and twenty dollars
6 and zero cents) maximum settlement payment for the class claims asserted against Defendant
7 CareLinx, Inc. (“Defendant” or “CareLinx”)(or together with the Plaintiff, the “Parties”).

8 Plaintiff and Defendants vigorously disagree on the merits of the case. Class certification,
9 liability and damages are all sharply disputed. Nevertheless, after litigation, investigations,
10 numerous interviews, exchange of extensive information, data, and documents, and an all day
11 mediation the Parties reached an informed agreement to settle the class claims pursuant to the
12 Joint Stipulation of Class Action Settlement and Release (“Settlement Agreement”).

13 On February 18, 2022, Plaintiff filed their Unopposed Motion for Preliminary Approval of
14 Class Action Settlement. A copy of the Settlement Agreement was submitted to the Court as
15 Exhibit 1 to the Declaration of Matthew S. Da Vega in support of that motion.

16 On March 29, 2022, the Court held a hearing on the motion for Preliminary Approval. The
17 Court preliminarily approved the settlement with minor modifications to the proposed Class
18 Notice which were then made.

19 On April 12, 2022, the Court issued its Order Granting Preliminary Approval of Class
20 Settlement (“Preliminary Approval Order”). The Court’s Preliminary Approval Order states, in
21 part:

22 “The Court determines there is sufficient evidence to suggest that the Agreement
23 (including the Class Representative Enhancement Payment, Class Counsel's fees
24 and costs, the Settlement Administration Costs, and the allocation of payments to
25 Settlement Class Members) falls within the range of possible approval that could
ultimately be given final approval by this Court as fair, reasonable, and adequate
...”

26 “The Settlement Agreement and the Notice of Class Action Settlement are
27 preliminarily approved. The Court further preliminarily approves the formulas
28 provided in the Settlement for calculating Individual Settlement Payments to the
Class Members using a shift-based calculation methodology.”

1 “The Settlement Class is provisionally certified for settlement purposes only as a
2 class of: "All current and former Nurses who have worked at least one Nursing
3 Shift in California through use of Defendant's Nurse OnDemand platform
4 application at any time during the Class Period." "Class Period" refers to the
5 period of time from June 3, 2017 through the date the Court grants preliminary
6 approval of the Settlement ...”

7 In that Order the Court also set a date for the Final Approval/Fairness hearing for
8 August 23, 2022 at 2 p.m. in Dept. 2 (Hon. Marie S. Weiner). (Declaration of Matthew S.
9 Da Vega in Support of Plaintiff's Unopposed Motion for Final Approval [“Da Vega Decl.”],
10 **Exhibit 1 – April 12, 2022 Preliminary Approval of Class and Representative Action**
11 **Settlement and Provisional Class Certification Order (“Preliminary Approval Order”).**

12 On May 17, 2022 in accordance with the terms of the Settlement Agreement and
13 Preliminary Approval Order, the Class Settlement Administrator CPT, mailed the Court-approved
14 “Notice of Class Action and Proposed Settlement” via first class mail to all of the approximate
15 2058 putative Class Members after receiving the class member data and running a change of
16 address search. Da Vega Decl., **Exhibit 2 – Declaration of Laura Singh (On Behalf of CPT**
17 **Group, Inc.) with Respect to Notification and Administration** [“CPT Decl.”], ¶¶ 1 - 19.)

18 On July 16, 2022 the “Opt-Out”, dispute, and objection deadline passed. (Exhibit 2 – CPT
19 Decl., ¶ 10).

20 As of July 29, 2022 the Claims Administrator reported:

- 21 • 21 (twenty-one) Undeliverable Notice Packet;
- 22 • 1 (one) Valid Request for Exclusion (“Opt-Outs”);
- 23 • 0 (zero) Disputes of Shifts; and
- 24 • 0 (zero) Objections.

25 (Exhibit 2 – CPT Decl., ¶ 9 - 13).

26 Therefore, there are a total of 2,058 Participating Class Members out of 2,059 Class
27 Members, representing a 99.95 % participation rate. The average individual gross Settlement
28 Share/payment to Participating Class Members is estimated at \$525.42, and the highest individual
Settlement Share to a Participating Class Member is estimated at \$5,569.56 (Exhibit 2 – CPT
Decl., ¶15-17.)

As of August 1, 2022, the date of the filing of this motion, and pursuant to the terms of the
Settlement Agreement and Preliminary Approval Order, the Class will receive an **Estimated Net**

1 **Settlement Fund of \$1,081,839 (One Million Twenty Four Thousand Three Hundred and**
2 **Thirty Nine)** to pay Class Members. That amount was determined by subtracting Class
3 Counsel's attorneys' fees [-\$623,000], Class Counsel's actual litigation costs [-\$19,781], the Class
4 Representative Incentive Award [-\$10,000], the PAGA Penalties to the LWDA [-\$127,500], the
5 PAGA Employee Payment to PAGA members [-\$42,500] and the Settlement Administrator costs
6 [-\$21,000] from the Gross Settlement Amount + Additional Estimated Substitute Amount
7 [\$1,925,620] to determine settlement fund payment to Class Members. (Exhibit 2 – CPT Decl.,
8 ¶16.)

9 This an excellent result for Class Members, especially given the potential challenges
10 entailed in successfully litigating this case. Courts routinely approve wage and hour settlements
11 of comparable cases resulting in far less recovery to individual class members. In Class
12 Counsel's opinion, this is a good result in light of the disputed material factual and legal issues
13 involved, the intrinsic risks of further litigation without any assurance of a better outcome for
14 Class Members, and the substantial benefits available to Class Members under the Settlement.
15 The Settlement promotes judicial economy and eliminates the risk that Class Members could
16 receive nothing after protracted litigation.

17 The Settlement's key terms are summarized as follows:

18 1. The Settlement Class is defined as:

19 ““All current and former Nurses who have worked at least one Nursing
20 Shift in California through use of Defendant's Nurse OnDemand platform
21 application at any time during the Class Period.” (See Settlement
22 Agreement §§1.1, 1.24, 1.7 ; Preliminary Approval Order);

23 The Settlement Class does not include class member of submit valid
24 Requests for Exclusion (aka “Opt Outs”) (Settlement Agreement §§1.34,
25 1.36, 4.6)

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

“Class Period” is from June 3, 2017 through the date the Court grants
preliminary approval [April 12, 2022](Settlement Agreement §1.7;
Preliminary Approval Order);

2. The Gross Settlement Amount:

Defendant shall pay **\$1,888,000** (Gross Settlement Amount) plus **\$37,620**
(Additional Estimated Substitute Amount) which is the amount estimated

equivalent of employer-side payroll tax for a total of **\$1,925,620** (Settlement Agreement §§1.16, 1.17, 2.1, 6.2);

3. The Estimated Net Settlement Fund to Class Members:

After deducting the Class Counsel's Award of attorney fees (-\$623,000) and litigation costs (up to \$20,000 [actual costs = - \$19,781), settlement administration costs (-\$21,000), PAGA penalties paid to the LWDA (-\$127,500), PAGA group employee payment (-\$42,500), and a Class Representative Enhancement Award (-\$10,000) from the total of the Gross Settlement Amount (\$1,888,000) plus Additional Estimated Substitute Amount (\$37,620) of \$1,925,620, the Participating Settlement Class Members shall receive the approximate net settlement remainder of **\$1,081,839** ("Estimated Net Settlement Fund") based on a pro rata allocation formula. (Settlement Agreement §§ 1.2, 1.27, 1.28, 1.3, 1.8, 2.2, 2.3, 6.2).

4. Individual Settlement Amount Calculations:

The "Individual Settlement Amount Calculations" payment to the Class Members will be based on the approximate number of Nursing Shifts each Settlement Class Member worked during the Class Period. The Settlement Administrator will determine the total number of Nursing Shifts worked by all Class Members during the Class Period and then divide that Net Settlement Fund (which will include the addition of the "Additional Estimated Substitute Amount" [\$37,620]) by the number of Total Shifts to derive the "Shift Point Value". Then for each Settlement Class Member the Settlement Administrator shall multiply the number of their Nursing Shifts worked during the Class Period by the Shift Point Value to determine each Settlement Class Members Individual Settlement Amount and that amount shall be reported on an IRS Form 1099. (Settlement Agreement § 1.8, 7.1).

5. Notice Period and Response/Opt-Out Deadline:

Class Members had **60 calendar days** following Class Notice (mailed on May 17, 2022) on and until July 16, 2022, to mail in a written request to be excluded ("Opt-Out Request") or object to the proposed settlement. (Settlement Agreement §§1.22, 1.25, 1.35; see Preliminary Approval Order and updated Class Notice).

6. Release of Claims For Settling Class Members:

The Settlement Agreement provides for a release of claims for Class Members who did not timely submit an "Opt-Out" Request. The released claims include:

"The "Released Claims" with respect to the "Released Parties" (defined below) are any manner of action, cause of action, claim, demand, right, suit, obligation, debt, contract, agreement, promise, liability, or remedy of any nature whatsoever (including without limitation any damages, charges, penalties, losses, costs, expenses, and attorneys' fees), whether in law or in equity, under contract, tort or any other subject area, or under any statute, rule, regulation, order, or law, whether federal, state, or local, on any grounds whatsoever, including without limitation any and all alleged violations of the California Labor Code, the California Code of Regulations, the California Business & Professions Code, and the Fair Labor Standards Act, that were pled or that could have been pled, and claims sought or that could have been sought, based on or arising out of

the factual allegations in the Complaint, whether foreseen or unforeseen, fixed or contingent. (Settlement Agreement §§1.31, 2.7)

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

7. PAGA Payments

\$170,000 of the Gross 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**, is to be paid to the California Labor and Workforce Development Agency (the “LWDA Payment”) and 25% of that amount, **\$42,500**, to the PAGA Group (the “PAGA Group Amount”). (Settlement Agreement §§1.19, 1.20, 1.26, 1.27, 1.28, 7.2, 7.3).

8. Settlement Administrator Payment

As part of the Final Approval/Fairness Hearing, Class Counsel has applied 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 for **\$21,000** (the “Settlement Administration Costs”). (Settlement Agreement §§ 1.2, 1.3)

9. Class Representative Incentive Award

Pursuant to the terms of the Settlement, Class Counsel will seek an Enhancement Payment of **\$10,000** for the Class Representative. (Settlement Agreement §§1.8, 2.3).

10. Class Counsel Award (Attorney Fees and Costs)

Plaintiff may apply to the Court for an award of up to **\$623,000 in attorney fees plus** reimbursement of up to \$20,000 in litigation costs (**actual costs = \$19,781**) (Settlement Agreement §§ 1.5, 2.2; 6.2).

The final approval of the Settlement is appropriate as all requirements for a class action have been satisfied and the terms of the Settlement are fair and reasonable.

II. FACTUAL BACKGROUND

Plaintiff and Class Members are current and former Nurses (including Certified Nursing Assistant (“CNA”), Medical Assistant, Licensed Vocational Nurse (“LVN”), Licensed Practical Nurse (“LPN”), Registered Nurse (“RN”), and/or Nurse Practitioner (“NP”)) who have worked at least one Nursing Shift in California at a third party skilled nursing facility through use of

1 Defendant's Nurse OnDemand platform application at any time during the Class Period
2 (collectively "Class Members"). The Nurses were classified as independent contractors and paid
3 on an hourly basis. Plaintiff alleges that Nurses were misclassified as independent contractors,
4 worked overtime each week but were paid only their flat hourly rate plus a small shift differential
5 (i.e. an addition \$1- \$3/hr. based on travel distance to work location), instead of the correct
6 overtime or double-time rates of 1.5x or 2x their regular rates, were required to work through and
7 during meal/rest periods, were not provided compliant wage statements, were not reimbursed
8 necessary business expenses, and were not paid all wages upon separation/termination.

9 Defendant denies Plaintiff's allegations and maintains that with respect to Plaintiff and the
10 Class, Defendant acted in accordance with applicable law.

11 **III. PROCEDURAL HISTORY**

12 **June 3, 2021 (Original Complaint Filed and PAGA Notice Sent):** Plaintiff sent PAGA
13 notice and also filed her class action suit under California Code of Civil Procedure §382 to
14 address Defendant's alleged violations of California wage and hour laws. Plaintiff's complaint
15 alleged 7 causes of action, including: 1. Failure to Pay Overtime Wages, 2. Failure to Pay
16 Minimum Wage, 3. Failure to Provide Meal Breaks, 4. Failure to Provide Rest Breaks, 5.
17 Failure to Furnish Timely/Accurate Wage Statements, 6. Failure to Pay All Wages Due at
18 Discharge in Timely Manner, and 7. Unlawful Business Practices.

19 **August 10, 2021 (First Amended Complaint Filed):** Plaintiff filed and served her First
20 Amended Complaint ("FAC") with the addition of an 8th cause of action for violations of the
21 PAGA.

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

25 **November 4, 2021 (Mediation Proceedings):** The Parties, after exchanging
26 data/evidence, participated in mediation at JAMS with experienced mediator Michael Loeb.
27 At the mediation the Parties reached a tentative settlement of the class and PAGA claims pending
28 this Court's approval. The Parties executed an confidential MOU regarding settlement. The

1 Parties then executed the long form settlement in the form of a Joint Stipulation of Class Action
2 Settlement and Release (“Settlement Agreement”).

3 **February 18, 2022 (Motion for Preliminary Approval):** The Plaintiff filed her
4 Unopposed Motion for Preliminary Approval of Class Action and PAGA Settlement. A copy of
5 the Settlement Agreement was attached as Exhibit 1.

6 **March 29, 2022 (Hearing on Motion for Preliminary Approval):** The Court held a
7 hearing on the motion for Preliminary Approval. The Court granted the motion subject to minor
8 and additional changes to the Notice to class members regarding the proposed settlement.

9 **April 12, 2022 (Court Issues Order Preliminary Approving Class Settlement):** The
10 Court issued its Order Granting Preliminary Approval of Class Settlement (“Preliminary
11 Approval Order”). In the Preliminary Approval Order the Court set the hearing for Final
12 Approval Hearing on August 23, 2022 at 2 p.m.

13 **May 14, 2022 (Parties Contact Court re Amending Notice to Include Increased Gross**
14 **Settlement Payment to Class Based on Increased Number of Class Members):** The Parties
15 contacted the Court to inform the Court that since the Mediation and Preliminary Approval
16 Hearing there had been an increase in the number of putative Class Members that has triggered
17 the “escalation clause” in the Settlement Agreement thus causing an increase of the Gross
18 Settlement Amount. (Settlement Agreement §§ 6.2 - Modification Based on Increase in Number
19 of Class Members). Specifically, at the time of the mediation there were an estimated 1700 Class
20 Members and now based on the final Class List data provided by Defendant to the Class
21 Settlement Administrator CPT there were now 2058 putative Class Members (an additional 358
22 putative Class Members). Per the Settlement Agreement’s escalation clause formula this
23 amounted to an increase of the Gross Settlement Amount from \$1,700,000 to \$1,888,000. The
24 \$1,888,000 when added to the “additional estimated substitute amount” of \$37,620 (Settlement
25 Agreement §1.17) increased the maximum total settlement payment to the Class/PAGA group to
26 \$1,925,620. The Parties provided the Court with an amended class settlement notice to reflect
27 the above changes and the Court approved it for mailing.
28

1 **May 17, 2022 (Notice of Class Action and PAGA Settlement Mailed):** Notice to Class
2 Members was mailed by the Settlement Administrator CPT.

3 **July 16, 2022 (Class Action Notice Period/Response Deadline Ended):** The Class
4 Notice/Response Deadline ended.

5 **August 23, 2022 (Hearing on Final Approval/Fairness of Class Settlement):** Hearing
6 on Final Approval/Fairness of Class Action and PAGA settlement to be held.

7 **IV. THE SETTLEMENT SHOULD RECEIVE FINAL APPROVAL**

8 Pursuant to the Settlement, the Settlement Administrator CPT has engaged in a
9 comprehensive notification process which started on May 17, 2022 with mailing of notice to 2058
10 putative Class Members via First Class mail. The notice period in which to submit a dispute or
11 “opt out” of the settlement concluded on July 16, 2022. The terms of the Settlement have been
12 well received by the Class Member as only 1 (one) Class Members has submitted a valid and
13 complete “opt-out” (99.95 % participation rate), 0 (zero) have objected, and 0 (zero) Class
14 Members submitted a dispute. (Exhibit 2– CPT Decl., ¶¶ 10-15)

15 “The trial court’s discretion is broad” regarding approval of a class action settlement, and
16 “is to be exercised though the application of several well-recognized factors.” *Munoz v. BCI*
17 *Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 407. These factors include,
18 but are not limited to, the strength of Plaintiff’s case; the risk, expense, complexity and likely
19 duration of further litigation; the risk of maintaining class action status through trial; the amount
20 offered in settlement; the extent of discovery completed and the stage of the proceedings; the
21 experience and views of counsel; and the reaction of the class members to the proposed
22 settlement. *Id.* (omitting quotations and citations). “The most important factor is the strength of
23 the case for plaintiffs on the merits, balanced against the amount offered in settlement.” *Id.* at
24 407-408 (quoting *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130). An
25 analysis of the pertinent factors to the Parties’ Settlement demonstrates that final approval is
26 appropriate.

26 **A. The Parties Disputed the Merits of Plaintiff’s Case and Likelihood of Class**
27 **Certification**
28

1 The Settlement is the result of the exchange of significant data and information and
2 vigorously investigated and debated claims. Plaintiff's Counsel began their investigation into the
3 claims well before the case was filed. Plaintiff's Counsel interviewed and obtained informal
4 discovery from the Plaintiff and various current and former Class Members regarding their
5 experiences working for Defendant. Likewise, Defendant's counsel conducted their own
6 investigation of Plaintiff's allegations after the litigation was initiated. These investigations were
7 crucial to the Parties' dispute over both the merits of the case, as well as with respect to the
8 appropriate scope of the Class.

9 After the Action was initiated, Plaintiff's counsel and Defendant's counsel engaged in
10 litigation, discovery, discussions and negotiations before reaching this Settlement. Early on they
11 began having regular discussions regarding the claims, discovery, production of data, the scope of
12 the Class, and the possibility of mediation and settlement. The Parties each feel strongly
13 regarding their respective positions as to the claims asserted, both at the certification stage and on
14 the merits. In this case, Plaintiff alleges that class certification is appropriate because Defendant's
15 Nurse employees were misclassified as independent contractors and subjected to consistent wage
16 and hour policies regarding the payment of overtime wages, meal/rest periods, and wage
17 statements. Plaintiff alleges Defendant misclassified all Class Members as independent
18 contractors and Class Members worked overtime hours but were not paid the appropriate overtime
19 rates throughout the Class Period (flat hourly rate plus a small shift differential, i.e. an addition
20 \$1- \$3/hr. based on travel distance to work location), instead of the correct 1.5x or 2x their regular
21 flat rates. Defendant asserts that class certification would not be appropriate because Plaintiff's
22 proposed Class Members were not misclassified.

23 Throughout the litigation, the Parties also have vigorously disputed the merits of Plaintiff's
24 claims. Plaintiff alleges that all Class Members throughout the Class Period were subject to the
25 same misclassification and wage policy and practices promulgated by Defendants. Plaintiff
26 alleges Defendant misclassified Class Members as independent contractors when they were in fact
27 not independent contractors and worked overtime hours that was not paid for at the appropriate
28 overtime rates, denied duty-free meal/rest periods, and not reimbursed for necessary business

1 expenses, etc. Defendants have generally denied Plaintiff's allegations, and further asserts that it
2 has no liability for any of Plaintiff's or the Class Members' alleged claims on the basis that it
3 properly classified Class Members as independent contractors. Defendant further contends that, if
4 this matter were to be further litigated, it would have strong defenses on the merits.

5 As the Parties clearly disagree regarding the strength of Plaintiff's claims and likelihood
6 of class certification, the Settlement represents a fair compromise assuring significant recovery to
7 the Class Members that they would not otherwise be guaranteed.

8 **B. The Risk, Expense, And Complexity Of Continuing To Litigate The Action**

9 As demonstrated above, the Parties are sharply divided on the factual and legal issues
10 pertaining to the underlying claims, as well as whether class certification can be obtained in this
11 case. Defendant is represented by well-staffed counsel who are experienced in wage and hour
12 law and class actions, as are Plaintiff's counsel. The Parties contend that continued litigation
13 would be protracted and expensive, with no assurance of a better outcome for the Class.

14 Significantly, while extensive informal discovery has occurred to ensure the Settlement is
15 fair and reasonable to the Class, should the Settlement not be finally approved, the Parties will
16 need to start from scratch in terms of engaging in formal discovery on the certification issues, as
17 well as the merits in this matter. The Settlement reached by the Parties through extensive arms-
18 length negotiations eliminates the risk that the Class Members will receive nothing, eliminates the
19 need for protracted and expensive litigation that financially jeopardizes any recovery, and
20 eliminates the risk of lengthy and uncertain appeals. The elimination of those many uncertainties
21 is reflected in the Settlement which provides prompt and substantial relief to the Class Members.
22 These factors weigh heavily in favor of approving the Settlement.

23 **C. The Settlement Amount Offered To Class Members Is Fair And Reasonable**

24 The Settlement provides for Defendant to make a payment of **\$1,925,620** in settlement of
25 all Class claims in the case, including attorney's fees and costs, settlement administration fees,
26 PAGA penalties, and a class representative enhancement award. Class Members will share in a
27 Estimated Net Settlement Fund of approximately **\$1,081,839** after subtracting attorney fees
28 [-\$623,000] and estimated attorney costs [-\$19,781], the class representative enhancement award
[- \$10,000], LWDA Payment [-\$127,500], PAGA employee group payment [-\$42,500], and

1 settlement administration costs [-\$21,000]. (Exhibit 2 – CPT Decl., ¶16.) This is an excellent
2 recovery for the class, which at the time of filing includes 2058 (out of 2059) Class Members.
3 The average Class Member will receive a pre-tax award of approximately \$525.42. (Exhibit 2 –
4 CPT Decl., ¶ 17.) The amount of the Settlement is reasonable given the difficulty of the claims,
5 the degree of risk and uncertainty involved in further litigation, the amount of time that would
6 pass before Plaintiff and the Class Members would see the fruits of any class verdict in their
7 favor, and the lack of ability of Defendants to pay.

8 The Individual Settlement Amount Calculations are based on the approximate number of
9 Nursing Shifts each Settlement Class Member worked during the Class Period. The Settlement
10 Administrator will determine the total number of Nursing Shifts worked by all Class Members
11 during the Class Period and then divide the Net Settlement Fund (which includes the Gross
12 Settlement Amount and Additional Estimated Substitute Amount) by the number of Total Shifts
13 to derive the “Shift Point Value”. Then for each Settlement Class Member the Settlement
14 Administrator shall multiply the number of their Nursing Shifts worked during the Class Period
15 by the Shift Point Value to determine each Settlement Class Members Individual Settlement
16 Amount and that amount shall be reported on an IRS Form 1099. (Settlement Agreement § 7.1).

17 As stated in the Class Notices, the Settlement Class Members need not take any further
18 action to receive a Settlement payment other than cash the settlement checks they receive in the
19 mail. Any settlement checks not cashed after 180 days from the date of the class-wide distribution
20 shall be void and the sums correlating to those checks not cashed and any residual amounts shall
21 be returned to the Settlement Administrator and will be paid out per guidelines in CCP § 384 to
22 the Legal Aid Society of San Mateo County (<https://www.legalaidsmc.org/>). (Settlement
23 Agreement §7.4). Since any uncashed settlement check funds will be distributed pursuant to the
24 *cy-pres* doctrine, this Settlement and the associated Final Approval Order and Judgment do not
25 and will not create any unpaid residue, and no distribution of such shall be required.

26 **D. The Settlement Agreement Is Fair And Reasonable**

27 The law favors settlements, especially of class actions. *See Potter v. Pacific Coast Lumber*
28 *Co.* (1951) 37 Cal. 2d 592, 602; *Van Bronkhorst v. Safeco Corp.* (9th Cir. 1976) 529 F.2d 943,
950. To ensure there is no “fraud, collusion or unfairness to the class,” class claims can only be

1 settled through Court review and approval. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794,
2 1801. The trial court is required to determine whether the “settlement is fair, adequate and
3 reasonable,” and has “broad discretion” in making this assessment. *Id.*

4 Following notice to the Class, the Court can now make a final determination regarding the
5 fairness of the Settlement. In making this evaluation, courts consider and balance a number of
6 factors, as described above, including: [T]he strength of plaintiffs’ case, the risk, expense,
7 complexity and likely duration of further litigation, the risk of maintaining class action status
8 through trial, the amount offered in settlement, the extent of discovery completed and the stage of
9 the proceedings, the experience and views of counsel, the presence of a governmental participant,
10 and the reaction of the class members to the proposed settlement. *Wershba v. Apple Computer,*
11 *Inc.* (2001) 91 Cal.App.4th 224, 244–45 (quoting *Dunk v. Ford Motor Co.*, *supra*, 48 Cal.App.4th
12 at 1801).

13 A presumption of fairness exists when: (1) the parties reached a settlement through arm’s-
14 length bargaining; (2) the parties conducted sufficient investigation and discovery to allow
15 counsel and the Court to act intelligently; (3) counsel are experienced in similar litigation; and,
16 (4) the percentage of objectors is small. *Dunk, supra*, 48 Cal.App.4th at 1802. In this case, both
17 Plaintiff and Defendant recognized that it was in their mutual interest to explore early resolution.
18 Defendant agrees, through an informal discovery process, to produce a significant amount of data
19 to enable Plaintiff to fully and fairly evaluate both liability and damages. Indeed, prior to and
20 during the mediation, Defendant produced voluminous data, which Plaintiff analyzed through
21 dynamic spreadsheet calculations via Plaintiff’s experts.

22 The Parties therefore had more than enough information to allow for a sufficient analysis
23 of the likelihood of certification (and decertification), liability, and damages. Prior to attending
24 mediation, the Parties were aware of the strengths and weaknesses of their respective positions,
25 and they addressed their respective positions at the lengthy mediation session. It was only after
26 the exchange of information and multiple rounds of arm’s-length demands and offers facilitated
27 by the mediator that the parties finally reached their proposed Settlement. The amount is, of
28 course, a compromise figure, and considers risks related to liability, possible damage scenarios,
and all defenses asserted by Defendants.

1 Should a Class Member not desire to participate in the Settlement, for whatever reason,
2 the Parties provided for an “opt-out” procedure. This procedure allowed any Class Members who
3 believed they had claims worth more than what the Settlement provides with an opportunity to
4 pursue their individual claims. Moreover, in the event that a Class Member disagreed with the
5 Settlement for any reason whatsoever, the Parties provided for an objection procedure. However,
6 to date, only 1 person(s) have validly “opted out” and 0 of Class Members have objected to final
7 settlement approval. At all times during this litigation, the Parties were represented by competent
8 and experienced counsel with decades of class action experience, who vigorously prosecuted their
9 respective positions while seeking a cost-effective resolution to this Action. Counsel is confident
10 that the Settlement is in the best interest of the Plaintiff, and the Class, as it is fair, reasonable,
11 and provides substantial relief which the Class would not be guaranteed, for numerous reasons,
12 should litigation proceed.

13 **V. THE CLASS REPRESENTATIVE ENHANCEMENT PAYMENT IS**
14 **REASONABLE**

15 Pursuant to the terms of the Settlement, Class Counsel now seeks an Enhancement
16 Payment of **\$10,000 for the Class Representative**. (Settlement Agreement §§1.8, 2.3). Courts
17 have routinely granted such enhancements. *Staton v. Boeing Co.*, 327 F.3d 938, 977 (9th Cir.
18 2003) (“[N]amed Plaintiffs . . . are eligible for reasonable incentive payments.”).

19 When considering whether to make an incentive award, courts consider the following
20 factors: (1) the risk to the class representative in commencing suit, both financial and otherwise;
21 (2) the notoriety and personal difficulties encountered by the class representative; (3) the amount
22 of time and effort spent by the class representative; (4) the duration of the litigation; and (5) the
23 personal benefit, or lack thereof, received by the class representative as a result of the litigation.
24 *Van Vranken v. Atl. Richfield Co.*, 901 F. Supp. 294, 299 (N.D. Cal. 1995) (quotations and
citation omitted).

25 The typical enhancement award ranges from approximately \$5,000.00 to \$40,000.00,
26 although some awards are higher, and commonly more than one class representative receives
27 awards in the above range. *Mirkarimi v. Nev. Property 1, LLC*, No. 12cv2160 BTM (DHB), 2016
28 WL 795878, at *6 (S.D. Cal. Feb. 29, 2016) (finding a \$30,000.00 enhancement award is proper);

1 *Chu v. Wells Fargo Inv., LLC*, Nos. C 05-4526 MHP, C 06-7924 MHP, 2011 WL 672645, at *5
2 (N.D. Cal. Feb. 16, 2011) (awarding \$10,000.00 to two named plaintiffs, and \$4,000.00 to three
3 named plaintiffs, and indicating that enhancement awards have ranged from \$5,000.00 to
4 \$50,000.00); *see also Williams v. Centerplate, Inc.*, No 11-CV-2159 H-KSC, 12-cv-0008-H-KSC,
5 2013 WL 4525428, at * (S.D. Cal. Aug. 26, 2013) (finding \$5,000.00 incentive awards to three
6 named plaintiffs, representing 2.3% of the common fund, reasonable).

7 Here, the requested Class Representative Enhancement Payment of \$10,000 is reasonable
8 and justified based on the significant risk, difficulties, time and effort the Class Representative
9 incurred in bringing this case on behalf of the Class, as well as the substantial benefits the resulting
10 Settlement provides the Class. The requested award is at the bottom of the reasonable range, and
11 is justified because of the Class Representative's involvement. The Class Representative has made
12 exceptional efforts to provide information, witnesses, and evidence to Plaintiff's Counsel to
13 achieve the excellent result described herein. The proposed Class Representative Incentive Award
14 of \$10,000 represents only .03% of the **\$1,925,620** gross settlement payment and will not
15 significantly reduce the awards of the Class Members.

16 Plaintiff is a single Asian-American women working as a nurse. She was the driving force
17 behind this case. She initiated the respective claims, arranged for Plaintiff's Counsel to obtain
18 evidence through production of her own employment files, interviewed former co-workers,
19 reviewed the pleadings/briefs, had numerous calls and meetings with counsel, attended a full day
20 mediation, and took personal and financial risk in coming forward (*see, e.g., Earley v. Sup. Ct.*, 79
21 Cal. App. 4th 1420, 1433 (2000) (representative risk an adverse award of costs). Plaintiff knows
22 little about the legal system but provided and obtained additional information in support of her
23 legal claims. Plaintiff and witnesses expressed fear that by participating in a class action lawsuit
24 they might risk their current jobs and/or future opportunities. Plaintiff however stepped up and
25 worked diligently in support of the case. Plaintiff had numerous meetings and telephone
26 conversations with Class Counsel to aid in the initial investigation, factual development,
27 mediation, and resolution of this case. She also reached out to and communicated with other
28 former/current Class Members about their work, and encouraged by Plaintiff, these other Class

1 Members to contact Class Counsel to provide information about their time at Defendants. In sum,
2 the Settlement could never have been achieved without her service to the greater good on behalf of
3 the Class has resulted in recovery for these workers. (See Da Vega Decl., **Exhibit 3 - Declaration**
4 **of Joanna Magpiong ISO Motion for Final Approval of Class Settlement, ¶¶ 1-10**). The Class
5 Representatives also risked potential judgments against herself if these matters were unsuccessful
6 as a losing party is liable for the prevailing party's costs. *Earley v. Sup. Ct.* (2000) 79 Cal.App.4th
7 1420, 1431-33. Additionally, Plaintiff has protected the interests of Class Members during the
8 pending of this matter, and will continue to do so.

9 **VI. THE PROPOSED ATTORNEYS' FEES AND COSTS ARE REASONABLE**

10 Under the terms of the Settlement Agreement, Class Counsel now moves for a Class
11 Counsel Award of reasonable attorney's **fees in the amount of \$623,000** (33.33% of the Gross
12 Settlement Amount of \$1,888,000) approved per Court's Preliminary Approval Order and and
13 Settlement Agreement. (Settlement Agreement § 1.5, 2.2; Preliminary Approval Order). Class
14 Counsel also seeks reimbursement of reasonable **costs incurred in the amount of \$19,781**
15 (Da Vega Decl., ¶14; Settlement Agreement § 1.5, 2.2). Class Counsel's fees are based on a
16 percentage of the Gross Settlement Amount (\$1,888,000) and does not include a percentage of
17 the Additional Estimated Substitute Amount (\$37,620) added onto payment to Class Members
18 that is meant to approximate the equivalent amount of payroll tax attributed to employer.
19 (Settlement Agreement § 1.17). These amount falls well within the historical range of attorneys'
20 fee awards, especially as Class Counsel's fees constitute one-third (1/3) of the total settlement
21 value. The requested fee represents fair compensation for undertaking complex, risky, expensive,
22 and time-consuming litigation on a contingent fee basis, especially in light of the substantial
23 benefits achieved by Class Counsel for the Class Members. Plaintiff's Counsel diligently litigated
24 and investigated this case. Class Counsel has attached a detailed declaration justifying the award
25 of fees and costs. (see Da Vega Decl., ¶¶ 1- 21).

26 It has long been recognized that "a litigant or a lawyer who recovers a common fund for
27 the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee
28 from the fund as a whole." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). The purpose of
this doctrine is to avoid unjust enrichment and to spread litigation costs proportionately among all

1 the beneficiaries. *Id.* This common fund doctrine is firmly rooted in American case law. *See, e.g.,*
2 *Trustees v. Greenough*, 105 U.S. 527 (1882); *Central R. & Banking Co. v. Pettus*, 113 U.S. 116
3 (1885); *Blum v. Stenson*, 465 U.S. 886, 900 n.16 (1984).

4 California courts have recognized that an appropriate method for awarding attorney’s fees
5 in class action cases like this is to award a percentage of the “common fund” created as a result of
6 the settlement. *City & Cnty. of San Francisco v. Sweet* (“*Sweet*”), 12 Cal.4th 105, 110-11 (1995);
7 *Quinn v. State*, 15 Cal.3d 162, 168 (1975). The basis of the common fund is fairness to the
8 successful litigant who might otherwise receive no benefit because his recovery might be
9 consumed by the expenses; correlative prevention of an unfair advantage to others who are
10 entitled to share in the fund and who should bear their share of the burden of its recovery; and
11 encouragement of the attorney, who will be more willing to undertake and diligently prosecute
12 proper litigation for the protection or recovery of the fund if he is assured that he will be properly
13 and directly compensated should his efforts be successful. *Sweet*, 12 Cal.4th 105, 111 (1995). In
14 *Quinn v. State*, the California Supreme Court expressly recognized that “one who expends
15 attorneys’ fees in winning a suit which creates a fund from which others derive benefits may
16 require those passive beneficiaries to bear a fair share of the litigation costs.” 15 Cal.3d 162, 167
17 (1975). Similarly, in *Sweet*, the Court recognized that the common fund doctrine has been
18 applied “consistently in California when an action brought by one party creates a fund in which
19 other persons are entitled to share.” 12 Cal.4th at 110.

20 Several courts have expressed frustration with the alternative “lodestar” approach for
21 deciding fee awards, which usually involves wading through voluminous and often
22 indecipherable time records. *Lealao v. Beneficial Cal., Inc.*, 82 Cal. App. 4th 19, 31 n.5 (citing *In*
23 *re Activision Sec. Litig.*, 723 F. Supp. 1373, 1375 (N.D. Cal 1989)). The percentage approach is
24 preferable to the lodestar because it: (1) aligns the interests of class counsel and absent class
25 members; (2) encourages efficient resolution of the litigation by providing an incentive for early,
26 yet reasonable, settlement; and (3) reduces the demands on judicial resources. *In re Activision*,
27 723 F. Supp. at 1378-79. The Ninth Circuit now routinely uses the percentage of the common
28 fund approach to determine the award of attorney’s fees. *Lealao*, 82 Cal. App. 4th at 30-31; *see*
e.g., In re Pacific Enters. Sec. Litig., 47 F.3d 373, 378-79 (9th Cir. 1995) (approving attorney’s

1 fee of 33%).

2 Class Counsel's request for fees of one-third of the Gross Settlement Amount is well
3 within the range of reasonableness. Historically, courts have awarded percentage fees between
4 20% and 50%, depending on the circumstances of the case. *See In re Activision*, 723 F.Supp. at
5 1378. Awarding 33% of a common fund is neither unreasonable nor uncommon. California
6 courts have frequently awarded attorneys' fees in common fund cases equal to one-third of the
7 gross recovery. *See, e.g., Lafitte v. Robert Half International Inc.* (2016) 1 Cal.5th 480 (approving
8 one-third percent attorneys' fee); *Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 66 n.11 (1st Dist.
9 2008) (noting that fee of one-third gross settlement value is customary); *see also, e.g., In re*
10 *M.D.C. Holdings Sec. Litig.*, 1990 WL 454747, at *7 (S.D. Cal. Aug. 30, 1990) ("In private
11 contingent litigation, fee contracts have traditionally ranged between 30% and 40% of the total
12 recovery.").

13 Further, California courts recognize that a percentage fee "may be calculated on the basis
14 of the total fund made available rather than the actual payment made to the class." *Lealao*, 82
15 Cal.App.4th at 51 (citing *Boeing Co. v. Van Gemert*, 444 U.S. 472 (1980); *Waters v. Intern.*
16 *Precious Metals Corp.*, 190 F.3d 1291 (11th Cir. 1999); *Williams v. MGM-Pathe Commun's. Co.*,
17 129 F.3d 1026 (9th Cir. 1997)); *see also, e.g., Bergman v. Thelen LLP*, 2016 U.S. Dist. LEXIS
18 170861, *21-22 (N.D. Cal. Dec. 9, 2016) ("...Ninth Circuit precedent requires courts to award
19 class counsel fees based on the total benefits being made available to class members rather than
20 the actual amount that is ultimately claimed.") (citing *Williams*).

21 Class Counsel has borne, and continues to bear, the entire risk and cost of litigation
22 associated with this class action on a pure contingency basis. The factual and legal issues posed
23 in this case are highly disputed, and there also were risks whether a class would be certified,
24 leaving a large number of putative class members unlikely to receive any recovery. While
25 California courts recognize that the percentage method is superior to the lodestar method, they
26 also recognize that the lodestar provides a useful "cross-check" in determining reasonableness of
27 percentage fees sought. Here, the requested fee award of \$623,000 represents a positive multiplier
28 of 3.5 of the lodestar to date (\$177,425) which is well within the range warranted under
California law of a 1 to 4 multiplier. (see Da Vega Decl., ¶ 13, 19-21; **Exhibit 4 - NALFA 2020**

1 **Litigation Hourly Rate Range Growth; Exhibit 5 - Laffey Matrix; Exhibit 6 - National Law**
2 **Journal Billing Survey 2017**; See also Declaration of Matthew H. Fisher ISO Final Approval, ¶¶
3 8-13; Declaration of Ted Mechtenberg ISO Final Approval ¶¶ 8-13). ““Multipliers of 1 to 4 are
4 commonly found to be appropriate in complex class action cases.”” *Destefano v. Zynga, Inc.*,
5 2016 WL 537946, at *21 (N.D. Cal. Feb. 11, 2016) (quoting *Hopkins v. Stryker Sales Corp.*, 2013
6 WL 496358, at *4 (N.D. Cal. Feb. 6, 2013)); see *Vizcaino v. Microsoft Corp.*, 290 F.3d United
7 States District Court Northern District 1043, 1051 n.6 (9th Cir. 2002)(citing survey finding most
8 multipliers range from 1.0 to 4.0). As a result, this Court should have no trouble concluding that
9 an award is supported by the lodestar cross-check is fair and reasonable and is justified under
10 California law. “[T]he lodestar method better accounts for the amount of work done, while the
11 percentage of the fund method more accurately reflects the results achieved.” *Rawlings v.*
12 *Prudential-Bache Properties, Inc.* (6th Cir. 1993) 9 F.3d 513, 516. The Court should approve the
13 requested attorneys’ fees and costs, which are justified by the results achieved, the complexity of
14 the issues, the difficulty of the case, and the risk undertaken by Class Counsel. The requested
15 attorneys’ fees and costs will not be opposed by Defendant and are well within established
16 guidelines.

17 **VII. CONCLUSION**

18 For the reasons set forth above and in the accompanying papers, Plaintiff respectfully
19 requests that the Court grant Plaintiff’s Unopposed Motion for Final Approval of the Class
20 Settlement and sign the proposed Order and judgment thereon. The Settlement is fair, adequate,
21 and reasonable. It will result in substantial payments to Class Members; it is non-collusive; and it
22 was achieved as the result of informed, extensive, and arm’s length negotiations conducted by
23 counsel for respective Parties who are experienced in wage and hour class action litigation.

24 **DATED:** August 1, 2022

DA VEGA | FISHER | MECHTENBERG LLP

25 

26 By: _____

27 Matthew S. Da Vega
28 Attorneys for Plaintiff and Class