

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 Breana Harrison	FOR COURT USE ONLY CASE NUMBER: 21-CV003143 JUDICIAL OFFICER: Hon. Evelio Grillo
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Alameda STREET ADDRESS: 1221 Oak Street MAILING ADDRESS: same CITY AND ZIP CODE: Oakland 94612 BRANCH NAME: Administration Building	
PLAINTIFF/PETITIONER: Breana Harrison DEFENDANT/RESPONDENT: University Healthcare Alliance OTHER:	DEPT: 21
PROPOSED ORDER (COVER SHEET)	

Reservation ID: 319404208984

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 Breana Harrison
2. Title of the proposed order:
ORDER GRANTING PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS SETTLEMENT
3. The proceeding to which the proposed order relates is:
 - a. Description of proceeding: HEARING RE: PLAINTIFFS MOTION FOR PRELIMINARY APPROVAL OF CLASS SETTLEMENT
 - b. Date and time: February 7, 2023
 - c. Place: Alameda County Superior Court
Administration Building (Dept 21 - Hon. Evelio Grillo)
1221 Oak Street, Oakland CA 94612
4. The proposed order was served on the other parties in the case.

Matthew S. Da Vega

(TYPE OR PRINT NAME)

Matthew S. Da Vega

(SIGNATURE OF PARTY OR ATTORNEY)

CASE NAME: Harrison v. University Healthcare Alliance	CASE NUMBER:
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**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*):

DA VEGA FISHER MECHTENBERG LLP, 232 E. Anapamu St., Santa Barbara, CA 93101

b. My electronic service address is (*specify*): 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.*):

Rachel Wintterle (Attorney for Defendant University Healthcare Alliance)

Gordon & Rees Scully Mansukhani, 275 Battery St., Suite 2000, San Francisco CA 94111

b. To (*electronic service address of person served*): rwintterle@grsm.com

c. On (*date*): January 5, 2023

☐ 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: January 5, 2023

Matthew S. Da Vega

(TYPE OR PRINT NAME OF DECLARANT)



Matthew S. Da Vega

(SIGNATURE OF DECLARANT)

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA**

BREANA HARRISON, on behalf of herself
and all similarly situated,

Plaintiff,

v.

UNIVERSITY HEALTHCARE
ALLIANCE, and DOES 1-100, inclusive,

Defendants.

Case No. 21-CV003143

CLASS and REPRESENTATIVE ACTION

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

[Assigned To Hon. Evelio Grillo
Dept. 21]

Date: _____

Time: _____

Location: Dept. 21 (Hon. Evelio Grillo)

Action Filed: November 17, 2021

On _____ this Court heard Plaintiff's Motion for Preliminary Approval of Class Action Settlement and provisional class certification under California Rule of Court 3.769, as filed by Plaintiff Breana Harrison (the "Plaintiff"). This Court reviewed the motion, including the Joint Stipulation of Class Action Settlement and Release (the "Agreement," "Settlement," or "Settlement Agreement"). Based on this review, the hearing, and the findings below, the Court finds good cause to GRANT the motion.

1 **FINDINGS:**

2 1. Unless otherwise specified, defined terms in this Preliminary Approval of Class
3 and Representative Action Settlement and Provisional Class Certification Order (the
4 “Preliminary Approval Order”) have the same definition as the defined terms in the Agreement.

5 2. The Court determines there is sufficient evidence to suggest that the Agreement
6 (including the Class Representative Enhancement Payment, Class Counsel’s fees and costs, the
7 Settlement Administration Costs, and the allocation of payments to Settlement Class Members)
8 falls within the range of possible approval that could ultimately be given final approval by this
9 Court as fair, reasonable, and adequate, and that the final determination of these issues will be
10 made at the Final Approval Hearing (referred to in the Agreement as the “Fairness Hearing”).
11 More specifically, the Court finds on a preliminary basis that:

12 (a) The Settlement provides for a Gross Settlement Amount of \$90,000 that
13 Defendants will pay into the settlement fund pursuant to the terms and timing specified in the
14 Agreement. The Settlement further provides that the Net Settlement Fund shall be calculated by
15 subtracting the following amounts from the total of the Gross Settlement Amount:

- 16 (1) the Class Counsel Award (estimated at \$29,700 in attorneys’ fees [33% of
17 \$90,000 Gross Settlement Amount] and \$20,000 in attorney costs);
18 (2) all Settlement Administration Costs (estimated not to exceed \$7,500);
19 (3) the Class Representative Enhancement Payment (estimated at \$5,000); and
20 (4) the PAGA Penalty Amount (\$1,000) of which 75% (\$750) is allocated to the
21 California Labor Workforce and Development Agency (“LWDA Payment”) and 25% (\$250) is
22 allocated to the PAGA Group (“PAGA Group Amount”), all under the Private Attorneys General
23 Act of 2004 (“PAGA”)

24 The Net Settlement Fund, to be disbursed to Settlement Class Members (estimated at 54
25 individual class members) who have not excluded themselves from the Settlement, is presently
26 anticipated to be approximately \$26,800. If the Settlement is approved, the full amount of the
27 Net Settlement Fund will be paid out to Settlement Class Members who do not exclude
28 themselves from the Settlement in accordance with the terms of the Agreement.

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

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

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

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

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

14 3. The Court finds that distribution of the Notice of Class Action Settlement,
15 substantially in the form attached hereto as “**Exhibit 1**”, via first class U.S. postal mail to Class
16 Members (a) constitutes the best notice practicable under the circumstances, (b) constitutes valid,
17 due, and sufficient notice to all members of the Class, and (c) complies fully with the
18 requirements of California Code of Civil Procedure section 382, California Rules of Court 3.766
19 and 3.769, the California and United States Constitutions, and other applicable law.

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

26 5. Pursuant to Labor Code section 2699, subdivision (1)(2), the Court notes that
27 Plaintiff provided a copy of the Agreement to the LWDA at the same time that Plaintiff provided
28

1 it to the Court, and the Court has reviewed the Settlement's provisions relating to settlement of
2 claims under PAGA. The Court tentatively finds that the payment of \$1,000 for settlement of any
3 and all claims for which civil penalties under PAGA may be sought or are otherwise available
4 (the "PAGA Penalty Payment"), is fair and adequate. Further, the Court tentatively finds that the
5 PAGA Penalty Payment satisfies the requirements of California Labor Code section 2699,
6 subdivision (i), because \$750 (75%) of the PAGA Penalty Amount is allocated to the LWDA for
7 the enforcement of labor laws and education of employers, and \$250 (25%) is allocated for
8 distribution to the PAGA Group, i.e., the allegedly "aggrieved employees."

9 **IT IS ORDERED THAT:**

10 1. **Settlement Preliminary Approval.** The Settlement Agreement and the Notice of
11 Class Action Settlement are preliminarily approved. The Court further preliminarily approves
12 the predetermined Individual Settlement Payments to the Class Members.

13 1.1 **Provisional Certification.** The Settlement Class is provisionally certified for
14 settlement purposes only as a class of: "All current and former medical assistant float pool
15 employees who physically performed overtime work, and were paid an incorrect overtime rate,
16 for Defendant in the State of California from November 11, 2017 through the date the Court
17 grants preliminary approval of the Settlement." The "Class Period" refers to the period of time
18 from November 11, 2017 through the date the Court grants preliminary approval of the
19 Settlement. Excluded from the Settlement Class are putative Class Members who submit a
20 timely and valid Request for Exclusion (as defined by the Settlement Agreement).

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

5 3. **Appointment of Settlement Administrator.** _____ is hereby appointed as
6 the Settlement Administrator for this case.

7 4. **Provision of Class Notice.** Within thirty (30) calendar days after entry of this
8 Preliminary Approval Order, Defendant shall provide the Class List to the Settlement
9 Administrator. Within seven (7) calendar days after receipt of the Class List, the Settlement
10 Administrator shall mail the Notice of Class Action Settlement (which shall be substantially
11 similar to the form attached hereto as **Exhibit 1**) to all Class Members via regular First-Class
12 U.S. Mail in the manner specified under the Settlement Agreement.

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

17 6. **Objection to Settlement.** Settlement Class Members who have not submitted a
18 timely and valid Request for Exclusion pursuant to the Settlement Agreement and who want to
19 object to the Agreement must sign and submit by U.S. Mail or other delivery service a valid
20 written Objection to the Settlement Administrator on or before the Response Deadline. The
21 Settlement Administrator will provide copies of all such Objections to Class Counsel and
22 Defendant's counsel weekly and will also provide a Final Response Report within five (5)
23 calendar days of the Response Deadline. For an Objection to be valid, it must: (a) state the case
24 name and number of the Action (b) contain the Class Member's name, current mailing address,
25 most current telephone number, and last four digits of his or her Social Security number, (c)
26 state the basis for the objection, (d) be signed by the Class Member, (e) be submitted to the
27 Settlement Administrator at the address specified in the Class Notice; and (f) be submitted with
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1 proof of the submission date (such as a U.S. Postal Service postmark or another delivery
2 service date stamp) on or before the Response Deadline. The date the Objection is sent, as
3 evidenced by the postmark or other delivery service date stamp, shall be the exclusive means to
4 determine whether an Objection has been timely submitted. If a Class Member intends to speak
5 at the Final Approval Hearing, he or she should (although they are not required to) file a
6 “notice of intention to appear” with the Court and provide a copy of this notice and their
7 Objection to counsel for both Parties. Any Settlement Class Member will be permitted to
8 appear and speak at the Final Approval Hearing in order to have an Objection heard by the
9 Court.

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

14 8. **Requesting Exclusion (Opt Out).** Any Class Member wishing to be excluded
15 (aka “opt-out”) from the Class Settlement must sign and submit by U.S. Mail or other delivery
16 service a valid written Request for Exclusion to the Settlement Administrator on or before the
17 Response Deadline containing all the information required by the Agreement. To be valid, the
18 Request for Exclusion must: (a) state the case name and number of the Action; (b) set forth the
19 name, address, and telephone number of the Class Member requesting exclusion; (c) be signed
20 by the Class Member; (d) be addressed to the Settlement Administrator; and (e) be postmarked
21 on or before the Response Deadline. The date the Request for Exclusion is sent, as evidenced
22 by the postmark or other delivery service date stamp, shall be the exclusive means to determine
23 whether a Request for Exclusion has been timely submitted.

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

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

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

13 12. **Final Approval Hearing.** On _____, at _____ am/pm,
14 this Court will hold a Final Approval Hearing to determine whether the Agreement should be
15 finally approved as fair, reasonable, and adequate. Plaintiff’s Motion for Final Approval of the
16 Settlement and all papers supporting the Class Counsel Award and Class Representative
17 Enhancement Payment must be filed by _____.

18 Any additional papers supporting final approval, including the Settlement Administrator
19 declaration and any response to Objections to the Agreement must be filed by no later than
20 _____.

21 13. The Court reserves the right to adjourn or continue the date of the Final Approval
22 Hearing and all dates provided for in the Agreement without further notice to the Class, and
23 retains jurisdiction to consider further applications concerning the Settlement.

24 **IT IS SO ORDERED.**

25
26
27 DATED: _____

28 JUDGE OF THE SUPERIOR COURT