

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

CRIXENIA MAGPAYO, individually, and)	
on behalf of all others similarly situated,)	
)	
Plaintiff,)	Case No. 1:16-cv-01176
v.)	
)	Judge Blakey
ADVOCATE HEALTH AND HOSPITALS)	
CORPORATION,)	
)	
Defendant.)	

**PLAINTIFF’S MEMORANDUM OF LAW IN SUPPORT OF HER UNOPPOSED
MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT
AGREEMENT, FOR APPROVAL OF CLASS NOTICE, AND FOR SCHEDULING OF
FINAL APPROVAL HEARING**

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I. INTRODUCTION

Class Representative Crixenia Magpayo (“Class Representative”), on behalf of Opt-in Plaintiffs and Class Members, seeks preliminary approval of the parties’ Class Action Settlement Agreement (“Settlement Agreement” or “Agreement”), attached as Exhibit 1. Under the terms of the Agreement, Defendant Advocate Health and Hospitals Corporation (“Defendant”) will pay \$1,500,000.00 to resolve the overtime and unpaid wage claims brought by Class Representative, Opt-in Plaintiffs, and Class Members under the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 201, *et seq.*, the Illinois Minimum Wage Law (“IMWL”), 820 ILCS 105/1, *et seq.*, and the Illinois Wage Payment and Collection Act (“IWPCA”), 820 ILCS 115/1, *et seq.*¹

Because the proposed Settlement Agreement is “fair, reasonable and adequate,” provides all Class Members with a Settlement Payment without the need to file a claim form, and otherwise satisfies all criteria for preliminary class settlement approval, the Court should grant this motion and enter an order, in the form attached hereto as Exhibit 2, that: (1) grants preliminary approval of the proposed Settlement Agreement; (2) approves the proposed Class Notice and method of distribution; and (3) sets the date for the Final Fairness Hearing.

II. STATEMENT OF FACTS AND SUMMARY OF THE LITIGATION

This is a wage and hour case filed on behalf of nurses who worked in the Emergency Department (“ED”) of Defendant’s Trinity Hospital. Class Representative alleges that Defendant implemented policies and practices that resulted in Defendant’s failure to accurately record all time ED nurses worked and failure to pay ED nurses for all time they worked as a result of Defendant’s meal break policies and practices. Declaration of Maureen A. Salas ¶ 10, attached hereto as Exhibit 3. Class Representative, the Opt-in Plaintiffs, and the Class Members in this case

¹ All capitalized terms are defined in the Parties’ Settlement Agreement for Class and Collective Action Claims.

are nurses who allege they were subjected to the practice of Defendant automatically deducting thirty minutes of pay for an unpaid meal break, without ensuring that the nurses in fact received the full meal break. *Id.*, ¶ 11. Class Representative claims this practice denied nurses their promised hourly wage for work performed during the unpaid thirty-minute meal periods in violation of the IWPCA. *Id.* Moreover, in weeks when the nurses worked more than forty (40) hours, Class Representative claims that Defendant's practices denied ED nurses overtime wages in violation of the IMWL and the FLSA. *Id.*

Defendant twice moved to dismiss the IWPCA claim in this lawsuit for failure to state a claim. *Id.*, ¶ 12. The second motion was fully briefed and argued before District Court Judge Blakey. *Id.* On June 9, 2016, the Court denied the motion. Defendant also filed, and the Court denied in part, Defendant's motion for summary judgment on Plaintiff's IMWL, FLSA, and IWPCA claims. *Id.*

On February 20, 2018, the Court granted Plaintiff's contested motion for certification of Plaintiff's IMWL and IWPCA claims under Rule 23 and of Plaintiff's FLSA claims under 29 U.S.C. § 216(b). *Id.*, ¶ 13. The Court certified the following three classes:

FLSA Class: All persons employed by Advocate Health and Hospitals Corporation as hourly paid nurses in Trinity Hospital's Emergency Department and who were paid for working at least 38.5 hours in an individual work week in the last three years.

IMWL Class: All persons employed by Advocate Health and Hospitals Corporation as hourly paid nurses in Trinity Hospital's Emergency Department and who were paid for working at least 38.5 hours in an individual work week since January 26, 2013.

IWPCA Class: All persons employed by Advocate Health and Hospitals Corporation as hourly paid nurses in Trinity Hospital's Emergency Department since January 26, 2006 and who had a thirty-minute meal period automatically deducted from their scheduled shift.

Mem. Op. and Order at 20, 24, 32 (Feb. 20, 2018), ECF No. 93.

Including the Named Plaintiff, 18 nurses filed consent forms to become plaintiffs in the collective action brought under the FLSA. Ex. 3, Salas Decl. ¶ 14. Two nurses elected to exclude themselves from the Rule 23 claims: Meghan Miskell and Stephanie Spencer Igwebuike. *Id.*

During the lawsuit, the Parties engaged in extensive written and oral discovery, including the production of thousands of pages of documents and ten depositions. *Id.*, ¶ 15. Despite this discovery, the Parties still disagree over a number of critical issues in this lawsuit, including: (1) whether Defendant ensured nurses were relieved of work duties and able to take 30-minute meal breaks; (2) whether Defendant agreed to pay ED nurses an hourly rate of pay for all time they worked or if it only agreed to pay for the time recorded on the time clock; (3) the continued propriety of class certification; (4) whether Defendant could establish a good faith defense to liquidated damages under the FLSA; and (5) whether Defendant's alleged violation of the FLSA was willful. *Id.*

The Parties engaged in two arm's-length mediations with third-party neutrals before reaching a settlement. *Id.*, ¶ 16. On March 20, 2017, the Parties participated in a mediation with the Honorable Stuart Nudelman, but the mediation did not result in a settlement. On September 5, 2018, the Parties reached a settlement of this case through participation in a mediation with third-party neutral mediator Richard Sher. *Id.*

III. SUMMARY OF SETTLEMENT TERMS

A. The Settlement Class and Class Period

This Settlement Agreement is applicable to all "Class Members" as certified by the Court under Fed. R. Civ. P 23(b)(3) and 29 U.S.C. § 216(b) on February 20, 2018, and as further defined below:

All persons employed by Advocate Health and Hospitals Corporation as hourly-paid nurses in Trinity Hospital's Emergency Department between January 26, 2006

and September 5, 2018, who have not excluded themselves from this Action. The term Class Members includes the Class Representative and all Opt-in Plaintiffs.

Ex. 1, Agreement, § I. All Class Members are listed on Attachment A to the Parties' Settlement Agreement. Ex. 1, Agreement, at Attachment A.

B. Gross Settlement Amount

The Gross Settlement Amount is \$1,500,000.00, from which the following payments shall be made: (i) payment of unpaid wages and statutory penalties allegedly owed to Magpayo, Opt-in Plaintiffs, and Class Members as a result of deductions from time related to meal breaks; (ii) payment of unpaid wages and statutory penalties allegedly owed to Magpayo for her individual claim asserting she worked off-the-clock following the conclusion of her shift; (iii) a Service Award for Class Representative; (iv) Service Awards for Class Members who sat for a deposition and who gave a declaration to support Magpayo's Motion for Class Certification; and (v) Class Counsel's attorneys' fees and litigation expenses. Ex. 1, Agreement, §§ III.5.a, III.6. Defendant will pay separate and apart from the Gross Settlement Amount (i) the employer's share of payroll taxes on the amount of the Settlement Awards that are allocated as wages, and (ii) the settlement administration costs incurred by the Settlement Administrator. *Id.*, § III.5.a. Other than the employer's share of payroll taxes and the reasonable settlement administration costs incurred by the Settlement Administrator, Defendant will not be required to pay more than the gross total of \$1,500,000.00. *Id.*

C. Direct Payments to Class Members

Class Members shall not be required to submit a claim form to participate in this Settlement. §III.2. Class Members who do not exclude themselves from the Settlement will be issued checks, which they shall have 180 days to negotiate. Ex. 1, Agreement, §§ III.7.i, III.17.b.

Uncashed checks will be distributed to the *cy pres* recipient, The Barack Obama Foundation, a 501(c)(3) charitable organization. Ex. 1, Agreement, §§ III.7.1, III.8.b.

D. Release of Claims

Class Representative and Defendant have agreed to provide each other a mutual general release of all claims they have against the other. Ex. 1, Agreement, § III.3.b. Class Members who do not exclude themselves from this Settlement will release and discharge Advocate and its former and present officers, directors, agents, employees, attorneys, representatives, insurers, benefit plans, plan fiduciaries and/or administrators, predecessors, successors, parents, subsidiaries, divisions, and affiliated entities (“Released Parties”) from all claims or causes of action they have for unpaid wages or overtime related to meal breaks or deductions from time related to meal breaks while working as a nurse at Advocate’s Trinity Hospital’s ED from January 26, 2006 through the date of Final Approval, except only Class Members who negotiate their settlement checks will release such claims under the Fair Labor Standards Act. *Id.* §§ III.3.a, III.3.c. Opt-in Plaintiffs will also release any unpaid overtime claims related to meal breaks or deductions from time related to meal breaks while working as a nurse in Defendant’s Trinity Hospital’s ED under the Fair Labor Standards Act, irrespective of whether they negotiate a check. *Id.* § III.3.d.

E. Settlement Administration

The Parties have selected Analytics Consulting LLC to act as the Settlement Administrator. Ex. 1, Agreement, § III.4. The duties of the Settlement Administrator are set forth in the Settlement Agreement and include: (1) issuing Class Notice forms to Class Members; (2) receiving requests for exclusion and objections to the Settlement; (3) issuing Settlement Payments; (4) calculating, withholding and remitting to the IRS the employees’ and employer’s shares of applicable payroll taxes; (5) issuing Form W-2s and Form 1099s and any other required state and federal tax forms; and (6) remitting unclaimed funds to the *cy pres* recipient. *Id.* at §§ III.7, III.11, III.12, III.17.c.

The cost of administering the Settlement will be paid by Defendant from outside of the Gross Settlement Amount. *Id.* at § III.5.a. The Parties will cooperate with the Settlement Administrator to ensure that it has all of the information it needs to perform these tasks. *Id.* at § III.18.

F. Notice of Settlement

The Parties' proposed notice program includes a Class Notice to Class Members (Attachment B of the Settlement Agreement) that notifies them of both the Gross Settlement Amount and their estimated recovery. Ex. 1, Agreement, § III.11.d.1, Attachment B. Class Members will receive the Class Notice by first-class mail from the Settlement Administrator, with additional avenues available to them thereafter to obtain more information about the Settlement. *Id.* Prior to mailing the Class Notice, Defendant will provide the Settlement Administrator with a class list that shall contain Class Members' names, phone numbers, social security numbers, and last-known mailing addresses. *Id.* at § III.7.a. Class Counsel will provide the Settlement Administrator with any updated addresses or telephone numbers it has for Class Members. *Id.* A second mailing will go out to any Class Member for whom Notice is returned as undeliverable, provided a forwarding address is given by the U.S. Postal Service or is otherwise located by the Settlement Administrator using an Accurint or comparable database search. *Id.* at § III.11.d.1. The Settlement Administrator will operate a telephone line that will allow Class Members to update their contact information or request more information about the Settlement. *Id.*

G. Payment for Class Representative's Individual Claims

Class Representative raised individual claims under the IMWL, IWPCA, and FLSA, alleging that she was required to perform work after punching out of Defendant's timekeeping system. See Memorandum Opinion and Order, at 11, 14 (Feb. 20, 2018), ECF No. 93. The Settlement Agreement provides that the Class Representative will receive a payment in the

amount of \$6,300, in addition to her *pro rata* Settlement Award as a Class Member, to release her individual claims and in exchange for a general release. Ex. 1, Agreement, § III.6.a-b.

H. Service Awards

The Settlement Agreement provides that Class Representative will apply for Service Awards of \$15,000 for herself, \$1,500 each for the following seven Class Members who sat for depositions (Aona Anderson, Denise Batie, Gina DeFilippo, Ameca Grass, Karim Karim, Christina Lattner, and Michelle Spikes), and \$500 each for the following four Class Members who gave declarations to support Class Representative's Motion for Class Certification (Crystal Jones, Claressa Jones, Nichele Thomas, and Tamara Sahara). Ex. 1, Agreement, § III.9.e. These awards are in addition to the payments each individual will receive as his or her *pro rata* share of the Net Settlement Amount. *Id.* The Class Notice will advise Class Members about the request for Service Awards. Ex. 1, Agreement, Attachment B.

I. Attorneys' Fees and Costs

Class Counsel will apply to the Court for payment of attorneys' fees and costs from the Gross Settlement Fund twenty-eight days following entry of an order granting preliminary approval of the Settlement. Ex. 1, Agreement, § III.16.a. Under the Agreement, the total fees sought shall not exceed \$600,000.00, and litigation costs and expenses sought will not exceed \$22,000.00. *Id.*, III.9.a. Defendant has agreed not to object to Class Counsel's fee and costs petition within these limits. *Id.* The Class Notice will advise Class Members about the request for Class Counsel's fees and costs. Ex. 1, Agreement, Attachment B. Class Members will have the opportunity to review Class Counsel's petition for attorneys' fees and costs during the entire duration of the notice period and prior to the Objection/Exclusion Deadline Date. *Redman v. Radioshack Corp.*, 768 F.3d 622, 637-38 (7th Cir. September 19, 2014) (reversing approval of

class action settlement in part because the petition for attorneys' fees was filed after the deadline for class members to object to the settlement).

IV. THE COURT SHOULD GRANT PRELIMINARY APPROVAL

A. Settlement of Class Action Litigation is Favored

Federal courts strongly favor and encourage settlements, particularly in class actions and other complex matters, where the inherent costs, delays, and risks of continued litigation might otherwise overwhelm any potential benefit the class could hope to obtain. *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992) (noting that “strong judicial policy . . . favors settlements, particularly where complex class action litigation is concerned”); *see also* 2 Herbert B. Newberg & Alba Conte, *Newberg on Class Actions* § 11.41 (3d ed. 1992) (collecting cases). The traditional means for handling wage claims like those at issue here — individual litigation — would unduly tax the court system, require a massive expenditure of public and private resources and, given the relatively small value of the claims of the individual Class Members, would be impracticable. The proposed Settlement, therefore, is the best vehicle for Class Members to receive the relief to which they are entitled in a prompt and efficient manner.

The *Manual for Complex Litigation* describes a three-step procedure for approval of class action settlements:

- (1) Preliminary approval of the proposed settlement at an informal hearing;
- (2) Dissemination of mailed and/or published notice of the settlement to all affected class members; and
- (3) A “formal fairness hearing” or final settlement approval hearing, at which class members may be heard regarding the settlement, and at which evidence and argument concerning the fairness, adequacy, and reasonableness of the settlement may be presented.

Manual for Complex Lit., at § 21.632–34. This procedure, used by courts in this Circuit and endorsed by the leading class action treatise, safeguards the due process rights of absent class

members and enables the Court to fulfill its role as the guardian of class interests. *See* 2 Newberg & Conte, at § 11.22, *et seq.*

With this Motion for Preliminary Approval, the Parties request that the Court take the first step in the settlement approval process by granting preliminary approval of the proposed Settlement. The purpose of preliminary evaluation of proposed class action settlements is to determine whether the settlement is within the “range of reasonableness,” and thus whether notice to the class of the settlement’s terms and the scheduling of a formal fairness hearing is worthwhile. *Id.*, § 11.25 at 11-36, 11-37.

The Court has discretion to preliminarily approve a proposed settlement. *See Moore v. Nat’l Ass’n of Sec. Dealers, Inc.*, 762 F.2d 1093, 1106 (D.C. Cir. 1985) (“Rule 23 places the determination [to approve or reject a proposed settlement] within the sound discretion of the trial judge who can be sensitive to the dynamics of the situation”); *City of Seattle*, 955 F.2d at 1276 (same). During the preliminary approval stage, the district court decides whether the proposed settlement falls “within the range of possible approval.” *In re AT & T Mobility Wireless Data Servs. Sales Litig.*, 270 F.R.D. 330, 346 (N.D. Ill. 2010) (citing *Armstrong v. Bd. Of School Dir. Of City of Milwaukee*, 616 F. 2d 305, 314 (7th Cir. 1980) *overruled on other grounds by Felzen v. Andreas*, 134 F.3d 873 (7th Cir. 1998)). If so, the court should grant preliminary approval of the settlement, authorize the Parties to give notice of the proposed Settlement to Class Members, and schedule a formal fairness hearing. *In re AT & T*, 270 F.R.D. at 346 (citation omitted). At the formal fairness hearing, Class Members may be heard and further evidence and argument concerning the fairness, adequacy, and reasonableness of the Settlement may be presented. Neither formal notice nor a hearing is required at the preliminary approval stage; the Court may grant such relief upon an informal application by the settling Parties, and may conduct any necessary hearing

in court or in chambers, at the Court's discretion. *See, e.g., In re Trans Union Corp. Privacy Litig.*, No. 00 C 4729, 2008 WL 11358136, at *6 (N.D. Ill. Jan. 3, 2008).

B. The Criteria for Preliminary Settlement Approval of the IMWL and IWPCA Claims Are Satisfied

“Federal Rule of Civil Procedure 23(e) requires court approval of any settlement that effects the dismissal of a class action. The district court must determine that a class action settlement is fair, adequate, and reasonable, and not a product of collusion.” *Reynolds v. Beneficial Nat'l Bank*, 288 F.3d 277, 279 (7th Cir. 2002) (internal citation omitted). At preliminary approval, courts review class action settlements only to determine whether approval is possible. *American Int'l Group, Inc. v. ACE INA Holdings, Inc.*, Nos. 07 C 2898, 09 C 2026, 2011 WL 3290302, at *6 (N.D. Ill. July 26, 2011). “[T]he court's task is merely to determine whether the proposed settlement is within the range of possible approval, not to conduct a full-fledged inquiry into whether the settlement meets Rule 23(e)'s standards.” *Id.* (internal quotations omitted).

In determining whether to finally approve a settlement, the Seventh Circuit has directed courts to assess: (1) the strength of plaintiffs' case compared with the terms of the proposed settlement; (2) the likely complexity, length and expense of continued litigation; (3) the amount of opposition to settlement; (4) the opinion of competent counsel; and (5) the stage of the proceedings and the amount of discovery completed. *Synfuel Techs., Inc. v. DHL Express (USA), Inc.*, 463 F.3d 646, 653 (7th Cir. 2006); *Isby v. Bayh*, 75 F.3d 1191, 1199 (7th Cir. 1996). Although not called for in either the Federal Rules of Civil Procedure or case law, courts in this Circuit typically conduct an abbreviated analysis of the final approval factors at the preliminary approval stage. *American Int'l Group, Inc.*, 2011 WL 3290302, at *6. With the exception of the third factor, which cannot be assessed at this stage, all of these factors warrant preliminary approval of the proposed settlement.

1. Strength of Plaintiffs' Case as Compared to the Amount of the Settlement and Allocation of the Settlement Payment

One of the key considerations in evaluating a proposed settlement is the strength of the plaintiffs' case compared to the amount of the defendants' offer. *See Isby*, 75 F.3d at 1199. However, "district courts have been admonished 'to refrain from resolving the merits of the controversy or making a precise determination of the parties' respective legal rights.'" *Id.* at 1197-98 (*quoting EEOC v. Hiram Walker & Sons, Inc.*, 768 F.2d 884, 889 (7th Cir. 1985)). Accordingly, when deciding whether to approve the Settlement, this Court must focus on fairness and reasonableness, but not on the substantive law governing Plaintiffs' claims. *Id.* at 1197. A settlement is fair "if it gives [plaintiffs] the expected value of their claim if it went to trial, net of the costs of trial." *Mars Steel Corp. v. Continental Ill. Nat'l Bank & Trust*, 834 F.2d 677, 682 (7th Cir. 1987).

Defendant has agreed to pay a substantial sum to Class Members given the considerable risk they face by continued litigation. The Net Settlement Amount, estimated to equal \$844,200, is equivalent to all Class Members receiving an award that compensates them for approximately 65% of the hours deducted on account of meal breaks. Ex. 3, Salas Decl., ¶ 19. The largest Settlement Payment exceeds \$21,000, and the average Settlement Payment is approximately \$3,170. *Id.* This is significant consideration given that Defendant disputes that its meal break policies and practices violated state and federal law. *See Mars Steel Corp. v. Cont'l Ill. Nat'l Bank & Trust*, 834 F.2d 677, 682 (7th Cir.1987) (finding adequate a settlement of 10% of the total sought due to risks and costs of trial).

In addition, the distribution of the Net Settlement Amount is fair to all Class Members, as they will share it on a *pro rata* basis based on the number of 30 minute meal periods deducted from their hours. Ex. 1, Agreement, § III.8.a. Furthermore, the Net Settlement Fund will be

distributed without the requirement of claim filing (*Id.*, § III.2), and Class Members will only release claims they have for unpaid wages or overtime related to meal breaks or deductions from time related to meal breaks while working as a nurse at Advocate's Trinity Hospital's ED. *Id.*, § III.3.c-d. This excellent result supports preliminary approval.

2. Complexity, Length, and Expense of Further Litigation

Absent settlement, Defendant would have continued to vigorously defend the Action. Further litigation holds inherent risks for Class Members, including decertification or failure of their claims on the merits at trial. Additional litigation would only serve to increase the expenses incurred without reducing the risks facing Class Members. *See Isby*, 75 F.3d at 1199; *See also In re Mexico Money Transfer Litigation*, 164 F. Supp. 2d 1002, 1019 (N.D. Ill. 2000). This factor thus favors preliminary approval of the Settlement Agreement.

3. Opinion of Counsel

Courts place significant weight on the endorsement of experienced class counsel. *In re Mexico Money*, 164 F. Supp. 2d at 1020. Class Counsel are experienced in class action litigation and relied on a substantial amount of information to evaluate, negotiate and make well-informed judgments about the adequacy of the Settlement. In Class Counsel's opinion, the Settlement is fair, reasonable and adequate. Ex. 3, Salas Decl. ¶ 21. It is appropriate for the Court to place significant weight on the unanimously strong endorsement of this Settlement by Class Counsel. This factor favors preliminary approval of the Settlement. *Leung v. XPO Logistics, Inc.*, 326 F.R.D. 185, 197 (N.D. Ill. 2018).

4. The Stage of the Proceedings and Discovery Completed

This complex class action was resolved after extended litigation. A significant amount of discovery was completed, including ten depositions, the Court denied Defendant's motion for summary judgment, and the Court granted class and collective action certification. As a result, the

parties had all information that they needed to evaluate the strength of their claims. The advanced stage of the litigation supports granting preliminary approval.

5. The Court Has Already Certified Classes That Are Coextensive With the Settlement Class

When a court is asked to certify a class for settlement-purposes only, Rule 23 requires “undiluted, even heightened, attention in the settlement context.” *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997). But where, as here, the court has previously certified a class before the parties reach settlement and Class Counsel acted as the settlement negotiator for the class, the heightened scrutiny mandated by *Amchem* does not apply. *Nieberding v. Barrette Outdoor Living, Inc.*, No. 12-CV-2353-DDC-TJJ, 2015 WL 1645798, at *3 (D. Kan. Apr. 14, 2015) (citing *In re Integra Realty Res., Inc.*, 354 F.3d 1246, 1262 (10th Cir. 2004)). The Court has already determined that the Classes the Court certified on February 20, 2018, which are coextensive with the Settlement Class, meet the Rule 23(a) requirements of numerosity, commonality, typicality, and adequacy as well as the Rule 23(b)(3) requirements of predominance and superiority. ECF No. 93. Because certification of the Rule 23 classes was not conditional, the Court is not required to revisit its certification decision absent evidence suggesting that reconsideration is necessary. *See Carter v. Anderson Merchandisers, LP*, No. EDCV 08-00025-VAP(OPx), 2010 WL 144067, at *3 (C.D. Cal. Jan. 7, 2010); *Lace v. Fortis Plastics LLC*, Nos. 3:12-CV-363 JD, 3:12-CV-364 JD, 2015 WL 1383806 (N.D. Ind. Mar. 24, 2015). There is no such evidence here.

Additionally, Rule 23(e)(4) provides that, for class actions certified under Rule 23(b)(3), “the court may refuse to approve a settlement unless it affords a new opportunity to request exclusion to individual class members who had an earlier opportunity to request exclusion but did not do so.” Fed. R. Civ. P. 23(e)(4). This notice requirement is met here, where the Settlement Agreement and Notice form provide Class Members with the option to exclude themselves from the settlement. Ex. 1, Agreement, § III.12.b, Attachment B.

C. The Settlement Meets the Standard for Approval Under the FLSA

Courts approve FLSA settlements when they are reached as a result of contested litigation to resolve bona fide disputes. *See Lynn’s Food Stores, Inc. v. United States*, 679 F.2d 1350, 1353 n. 8 (11th Cir. 1982). Typically, courts regard the adversarial nature of a litigated FLSA case to be an adequate indicator of the fairness of the settlement. *Id.* at 1353–54. If the proposed FLSA settlement reflects a reasonable compromise over contested issues, it should be approved. *Id.* at 1354. For the reasons explained above, the Parties’ Settlement meets this standard. Class Counsel and the FLSA release should be approved for Opt-in Plaintiffs and for Class Members who negotiate their Settlement Checks.

D. The Parties’ Proposed Settlement Notice Program

The notice protocol identified in the Settlement Agreement provides proper notice to affected individuals. “Rule 23(e)(1)(B) requires the Court to ‘direct notice in a reasonable manner to all class members who would be bound by a proposed settlement, voluntary dismissal, or compromise regardless of whether the class was certified under Rule 23(b)(1), (b)(2), or (b)(3).’” *Manual for Complex Lit.* at § 21.312. Many of the same considerations govern both certification and settlement notices. In order to protect the rights of absent class members, a court must require the best notice practicable. *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 811–12 (1985).

The mailing of a short, easy to understand notice to class members in wage and hour litigation is the trend in this district and in the Illinois state courts. The principal reason that courts approve notice procedures with short-form, summary documents is comprehension and readability: Rule 23 requires that the court direct the “best notice” that conveys the needed information “clearly and concisely in plain, easily understood language.” Fed. R. Civ. P., 23(c)(2)(B). The Class Notice is more likely to be read by Class Members, and when read, more likely to be understood. The Class Notice summarizes the key terms of the Settlement, and informs

Class Members of ways to obtain additional information, including requesting a copy of the Settlement Agreement or contacting Class Counsel. *See* Ex. 1, Agreement, at Attachment B. The Parties' proposed notice procedure meets the requirements of Rule 23, and Class Representative requests that the Court approve the Notice form and protocol.

E. Scheduling the Final Approval Hearing Is Appropriate

The last step in the Settlement approval process is a final fairness hearing at which the Court may hear all evidence and argument necessary to make its Settlement evaluation. Class Members, or their counsel, may be heard in support of or in opposition to the Settlement. The Court will determine after the Final Approval Hearing whether the Settlement should be approved, and whether to enter a Final Approval Order and judgment under Rule 23(e).

V. CONCLUSION

For the foregoing reasons, Class Representative requests that the Court: (1) grant preliminary approval of the proposed Settlement Agreement; (2) approve the proposed Class Notice and notice program; and (3) set a date for the Final Fairness Hearing.

Dated: November 15, 2018

Respectfully submitted,

s/Maureen A. Salas
One of Plaintiff's Attorneys

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
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**INDEX OF EXHIBITS TO PLAINTIFF’S MEMORANDUM OF LAW IN SUPPORT OF
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EXHIBIT 1

**IN THE UNITED STATES DISTRICT COURT
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v.)	
)	Judge Blakey
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CORPORATION,)	
)	
Defendant.)	

CLASS ACTION SETTLEMENT AGREEMENT

This Class Action Settlement Agreement (“Settlement” or “Settlement Agreement”) is made by Plaintiff Crixenia Magpayo (“Class Representative”), individually and on behalf of the class members she represents under Rule 23 of the Federal Rules of Civil Procedure (“Class Members,” as defined below) and collective action members she represents under Section 16(b) of the Fair Labor Standards Act (“Opt-In Plaintiffs”), and Defendant Advocate Health and Hospitals Corporation (“Defendant”) (Class Representative, Class Members, Opt-In Plaintiffs, and Defendant are collectively referred to as the “Parties”), in the above-captioned action (“Action”).

I. DEFINITION OF “CLASS MEMBERS”

This Settlement Agreement is applicable to all “Class Members” as certified by the Court under Fed. R. Civ. P. 23(b)(3), and as further defined below:

All persons employed by Advocate Health and Hospitals Corporation as hourly-paid nurses in Trinity Hospital’s Emergency Department between January 26, 2006 and September 5, 2018, who have not excluded themselves from this Action. The term Class Members includes the Class Representative and all Opt-in Plaintiffs.

Class Members are listed on Attachment A.

II. NO ADMISSION OF LIABILITY

Nothing contained herein, nor the consummation of this Settlement Agreement, is to be construed as or deemed an admission of liability, culpability, negligence or wrongdoing on the part of any Party. All Parties have entered into this Settlement Agreement with the intention to avoid further disputes and litigation based on disputed facts and allegations, and to avoid the costs and risks of further litigation to all Parties. This Settlement Agreement, and any communications, papers, or orders related to the Settlement Agreement or prior Memorandum of Understanding for Class Settlement, are settlement documents and shall be inadmissible in evidence in any proceeding. The preceding sentence shall not apply to an action or proceeding to approve, interpret or enforce this Settlement Agreement.

III. SETTLEMENT TERMS

1. Final Approval Date and Effective Date

As used in this Settlement Agreement, “Final Approval” means the date by which the Court enters an order granting final approval of the Settlement and final judgment in the Action (“Final Approval Order”). The term “Effective Date” means the first date on which the Final Approval Order is no longer appealable, or if an appeal is filed, the date on which such appeal is final. Notwithstanding the foregoing, provided that the Final Approval Order is consistent with the terms and conditions of this Settlement Agreement in all material respects, the Class Representative, Class Members, Class Counsel and Defendant all hereby waive any and all rights to appeal from the Final Approval Order. The waiver does not include any waiver of the right to oppose any appeal, appellate proceedings, or post-judgment proceedings. Accordingly, where the Final Approval Order grants full relief sought by the Parties, as set forth in the Settlement Agreement and in the absence of any objection from a Class Member, the Effective Date shall be the date of Final Approval.

2. Direct Payment to Class Members

Class Members shall not be required to submit a claim form to participate in this Settlement. Class Members who do not exclude themselves from the Settlement will be issued checks consistent with Sections III.6, III.7, and III.8 of this Settlement Agreement.

3. Release of Claims

a. Definitions

“Released Parties” means Defendant and its former and present officers, directors, agents, employees, attorneys, representatives, insurers, benefit plans, plan fiduciaries and/or administrators, predecessors, successors, parents, subsidiaries, divisions, and affiliated entities.

“Release Period” refers to the time between January 26, 2006 and the date of Final Approval.

b. The Class Representative’s and Defendant’s General Releases

Upon the Effective Date, the Class Representative, on behalf of herself and her heirs, representatives, successors, assigns, and attorneys, remises, releases and forever discharges all claims, obligations, demands, actions, rights, liabilities and causes of action of every nature and description whatsoever, known or unknown, asserted or that might have been asserted against the Released Parties, whether in common law, tort, contract, or for violation of any local, state or federal statute, rule or regulation arising out of, relating to, or in connection with any act or omission by or on the part of the Released Parties committed or omitted prior to the date of Final Approval, including without limitation all claims for restitution and other equitable relief, liquidated damages, compensatory damages, punitive damages, overtime wages, penalties of any nature whatsoever, attorneys’ fees and costs, whether known or unknown, including, but not limited to, claims under Title VII of the Civil Rights Act of 1964, as amended, the Employee Retirement Income Security Act of 1974, as amended, the Americans with Disabilities Act, the

Family and Medical Leave Act, the Rehabilitation Act of 1973 and the Vietnam Era Veterans Readjustment Adjustment Act of 1974, as amended, the Fair Labor Standards Act, the Illinois Minimum Wage Law, the Illinois Wage Payment and Collection Act, and/or any other local, state or federal law, provided that nothing in this paragraph shall release or preclude any claims that cannot be waived or released as a matter of law, any claims to workers' compensation or unemployment benefits, or any right to file a charge with or participate in an investigation conducted by the United States Equal Employment Opportunity Commission, the National Labor Relations Board, or similar agency, but the Class Representative agrees to forfeit any monetary recovery or other relief should the EEOC, NLRB, or any other agency pursue claims on her behalf ("General Release"). The Class Representative enters into this General Release in consideration of the payments and promises set forth in this Agreement.

Upon the Effective Date, Defendant, its parents, subsidiaries, divisions and affiliated entities remise, release and forever discharge all claims, obligations, demands, actions, rights, liabilities and causes of action of every nature and description whatsoever, known or unknown, asserted or that might have been asserted against the Class Representative, whether in common law, tort, contract, or for violation of any local, state or federal statute, rule or regulation arising out of, relating to, or in connection with any act or omission by or on the part of the Class Representative committed or omitted prior to the date of Final Approval, including without limitation all claims for restitution and other equitable relief, liquidated damages, compensatory damages, punitive damages, penalties of any nature whatsoever, and attorneys' fees and costs, whether known or unknown.

c. Release for Class Members

Upon the Effective Date, the Class Members who have not validly and timely opted-out

and, irrespective of whether or not they negotiate their settlement checks, on behalf of themselves and each of their heirs, representatives, successors, assigns, and attorneys, remise, release and forever discharge all claims, obligations, demands, actions, rights, liabilities and causes of action of every nature and description whatsoever, known or unknown, asserted or that might have been asserted against the Released Parties, whether in common law, tort, contract, or for violation of any local, state or federal statute, rule or regulation arising out of, relating to, or in connection with unpaid wages or overtime related to meal breaks or for deductions from time related to meal breaks while working as a nurse at Defendant's Trinity Hospital's ED through the date of Final Approval, including without limitation all claims for restitution and other equitable relief, liquidated damages, compensatory damages, punitive damages, overtime wages, penalties of any nature whatsoever, attorneys' fees and costs, whether known or unknown including, but not limited to, claims under the Illinois Minimum Wage Law and the Illinois Wage Payment and Collection Act. Provided, however, that only Class Members who negotiate their settlement checks shall also release their claims, obligations, demands, actions, rights, liabilities and causes of action asserted against the Released Parties relating to, or in connection with, unpaid wages or overtime related to meal breaks or for deductions from time related to meal breaks while working as a nurse at Defendant's Trinity Hospital's ED through the date of Final Approval under the Fair Labor Standards Act.

d. Release for Opt-In Plaintiffs

In addition, upon the Effective Date, the Opt-In Plaintiffs, irrespective of whether they negotiate their settlement checks, on behalf of themselves and each of their heirs, representatives, successors, assigns, and attorneys, also remise, release and forever discharge all claims, obligations, demands, actions, rights, liabilities and causes of action of every nature and description whatsoever, known or unknown, asserted or that might have been asserted against the

Released Parties under the Fair Labor Standards Act, arising out of, relating to, or in connection with unpaid wages or overtime related to meal breaks or for deductions from time related to meal breaks while working as a nurse at Defendant's Trinity Hospital's ED through the date of Final Approval, including without limitation all claims for restitution and other equitable relief, liquidated damages, compensatory damages, punitive damages, overtime wages, penalties of any nature whatsoever, attorneys' fees and costs, whether known or unknown.

e. Settlement Check Endorsement

All Class Members who have not already opted-in to the Action and who negotiate settlement checks shall "opt-in" to the FLSA collective action claims in this Action. Class Members' settlement checks shall contain, on the back of the check, the following limited endorsement:

CONSENT TO JOIN AND RELEASE OF CLAIMS:

By negotiating this check, I consent to join the Fair Labor Standards Act claims in the case *Magpayo v. Advocate Health and Hospitals Corporation*, No. 1:16-cv-01176, pending in the United States District Court for the Northern District of Illinois, and I agree to be bound by the Settlement Agreement in that case. I release and discharge Advocate and the Released Parties from all claims or causes of action I have for unpaid wages or overtime related to meal breaks or deductions from time related to meal breaks while working as a nurse at Advocate's Trinity Hospital's ED through the date of Final Approval, as stated in the Notice of Class Action Settlement, including, but not limited to claims under the Fair Labor Standards Act, the Illinois Wage Payment and Collection Act, and the Illinois Minimum Wage Law.

Signature

Dated: _____

4. Settlement Administration

The Parties have selected Analytics Consulting LLC ("Settlement Administrator") to administer this Settlement. The Settlement Administrator will be responsible for administering the entire Settlement, including all applicable tax withholding, and issuing all applicable tax

forms and completing all required tax reporting. The duties of the Settlement Administrator shall be limited to those described in this Agreement, and the Settlement Administrator shall have no discretion beyond that granted by this Agreement. The Settlement Administrator shall be required to agree in writing to treat information it receives or generates as part of the settlement administration process as confidential and to use such information solely for purposes of settlement administration.

5. Gross Settlement Amount and Qualified Settlement Fund

a. Defendant agrees to pay the Gross Settlement Amount of One Million, Five Hundred Thousand Dollars (\$1,500,000.00), which shall fully resolve and satisfy any claims for attorneys' fees and costs approved by the Court, any and all amounts to be paid for the individual claims of the Class Representative, any and all amounts to be paid to Class Members, any Court-approved Service Payments, all payroll taxes and all other applicable taxes (with the sole exception and exclusion of the employer's share of payroll taxes as described in this paragraph), with any unclaimed payments allocated to The Barack Obama Foundation. Other than the employer's share of payroll taxes and the reasonable settlement administration costs incurred by the Settlement Administrator, both described in this paragraph, Defendant will not be required to pay more than the gross total of One Million, Five Hundred Thousand Dollars (\$1,500,000.00) under the terms of this Settlement Agreement. If the Class Representative and/or Class Counsel try to impose additional payments, fees, or expenses on Defendant beyond the Gross Settlement Amount, Defendant shall have the right to rescind the Settlement Agreement. Defendant will pay separate and apart from the Gross Settlement Amount (1) the employer's share of payroll taxes on the amount of the Settlement Awards that are allocated as wages, and (2) the reasonable settlement administration costs incurred by the Settlement Administrator (but excluding the taxes referred to in Section III.5.c below, which for the

avoidance of doubt, shall be satisfied from the Gross Settlement Amount.

b. No later than seven (7) business days after Final Approval, as set forth in Section III.7.f of this Settlement Agreement, Defendant shall deposit the Gross Settlement Amount into an interest-bearing escrow account to be opened, administered, and controlled by the Settlement Administrator. The account shall be opened and administered by the Settlement Administrator as a Qualified Settlement Fund (“QSF”) under Section 468B of the IRC and Treas. Reg. § 1.468B-1 *et seq.* While held in the QSF, the funds in the QSF shall accrue interest at the then-current rate of the interest-bearing FDIC insured checking account. The Settlement Administrator shall be the “administrator” of the QSF within the meaning of Treas. Reg. § 1.468B-2(k)(3). Defendant shall be the “transferor” with respect to the QSF within the meaning of Treas. Reg. § 1.468B-1(d)(1). The Settlement Administrator shall provide to Defendant a properly completed and duly executed IRS Form W-9 of the QSF prior to the deposit of the Gross Settlement Amount to the QSF. The Settlement Administrator shall cooperate as requested by Defendant in the making of any election with respect to the QSF, including a “relation-back election” pursuant to Treas. Reg. § 1.468B-1(j).

c. With respect to the QSF, the Settlement Administrator shall: (1) calculate, withhold, remit and report each Class Member’s share of applicable payroll taxes (including, without limitation, federal state and local income tax withholding, FICA, Medicare and any state or local employment taxes); (2) satisfy all federal, state and local and income and other tax reporting, return and filing requirements with respect to the QSF; and (3) satisfy out of the QSF all (i) taxes (including any estimated taxes, interest or penalties) with respect to the interest or other income earned by the QSF, and (ii) fees, expenses and costs incurred in connection with the opening and administration of the QSF and the performance of its duties and function as

described in this Settlement Agreement., which such fees, costs and expenses shall be treated as and included in the costs of administering the QSF. The Parties will require the Settlement Administrator to indemnify and hold harmless the Parties for and against any claim or liabilities resulting from errors or omissions in its administration of the QSF.

6. Disbursement of the QSF

The Settlement Administrator shall disburse the QSF as follows, subject to Court approval:

- a.** The amount available from the Gross Settlement Amount for the Class Representative's, Opt-In Plaintiffs', and Class Members' pro rata settlement awards ("Net Settlement Amount") shall be the Gross Settlement Amount minus the amounts paid to: (i) the Class Representative for her individual post-shift off-the-clock claim, (ii) for the Class Representative and certain Class Members as Service Awards, and (iii) Class Counsel for attorneys' fees and litigation expenses. The amounts to be deducted from the Gross Settlement Amount are set forth below in subsections (b), (c), and (d).
- b.** An award of \$6,300 to the Class Representative;
- c.** Service Awards of \$15,000 to the Class Representative, \$1,500 each to the seven Class Members who gave depositions, and \$500 each to four Class Members who gave declarations in support of Plaintiff's Motion for Class Certification (as explained in Section III.9.e, below); and
- d.** A sum of not more than \$600,000.00 to be paid to Class Counsel for attorneys' fees and an additional \$22,000 in reasonably incurred litigation expenses (as explained in Sections III.9.a-d, below).

7. Timeline of Settlement Events

The Parties contemplate the following timeline for settlement events. The date of

Preliminary Approval is the base timeline for all actions. The Parties contemplate presenting this Settlement Agreement to the Court for Preliminary Approval on or before November 15, 2018, or as soon as is reasonably possible thereafter.

a. Within fourteen (14) days after Preliminary Approval, Defendant will provide the Settlement Administrator and Class Counsel with a class list that shall contain Class Members' names, phone numbers, social security numbers, and last-known mailing addresses. Class Counsel will provide the Settlement Administrator with any updated addresses or telephone numbers it has in its possession for Class Members within seven (7) days of Defendant's production of the Class List.

b. The Settlement Administrator will mail a Class Notice to Class Members in accordance with Section III.11.d of this Settlement Agreement within fourteen (14) days after receipt of Defendant's production of the Class List.

c. Class Counsel shall file a Petition for Attorneys' Fees and Litigation Expenses no later than twenty-eight (28) days after entry of an order of Preliminary Approval.

d. All objections to the Settlement and requests for exclusion from the Settlement must be postmarked within sixty (60) days from the date of the mailing of the Class Notice to Class Members.

e. Class Counsel shall file a Motion for Final Approval of this Settlement no later than seven (7) days before the Final Approval Hearing or such other date as set by the Court.

f. No later than seven (7) business days after Final Approval, Defendant will deposit the Gross Settlement Amount into the QSF.

g. No later than seven (7) days after Final Approval, the Settlement

Administrator shall determine the employer's share of payroll employment taxes on the settlement awards to be paid to Class Members and shall communicate such amount to Defendant with a detailed explanation of the calculations. No later than fourteen (14) days thereafter, Defendant will deposit the employer's share of applicable payroll taxes into the QSF. In the event of any dispute as to the calculation of employer's share of payroll taxes, the Parties and Settlement Administrator shall meet and confer in good faith in an attempt to resolve the dispute. If the dispute cannot be resolved, it shall be submitted to the Court for a final determination. The Settlement Administrator shall thereafter remit and report the applicable portions of the payroll tax payment to the appropriate taxing authorities on a timely basis pursuant to its duties and undertakings. Defendant agrees to reasonably cooperate with the Settlement Administrator to the extent necessary to determine the amount of the payroll tax payment required under this Section.

h. Within ten (10) days of the Effective Date, the Settlement Administrator will deliver the award of Attorneys' Fees and Litigation Expenses to Class Counsel by wire transfer. Within fourteen (14) days after the later of the Effective Date or the date the Settlement Administrator receives from Defendant the employer's share of payroll employment taxes, the Settlement Administrator (1) shall deliver to Class Counsel, the Class Representative's settlement payment for her individual post-shift off-the-clock claim, the Class Representative's pro rata Settlement Award from the Net Settlement Amount, and the Class Representative's Service Award, and (2) shall mail all Class Members their pro rata Settlement Awards from the Net Settlement Amount and shall mail the Service Awards to the eleven Class Members specified in Section III.9.e, below. The front of the envelopes containing the settlement checks shall be marked with words identifying the contents as important and/or time sensitive.

i. The deadline for recipients to cash checks will be one hundred and eighty (180) days from the date the checks are issued by the Settlement Administrator.

j. Within ten (10) days of the deadline for recipients to cash settlement checks, the Settlement Administrator shall provide copies of all endorsed checks to the Parties in a filing-ready format.

k. Within ten (10) days of receipt of endorsed settlement checks in filing-ready format, Class Counsel shall file them with the Court.

l. Any funds remaining from uncashed settlement checks shall be contributed by the Settlement Administrator to the *cy pres* recipient, The Barack Obama Foundation, a 501(c)(3) charitable organization.

8. Calculation of Settlement Amount and Plan of Allocation for Payment to the Class Representative, Opt-in Plaintiffs and Class Members

a. The Class Representative's, Opt-In Plaintiffs', and Class Members' ratable shares of the Net Settlement Amount, estimated to equal \$844,200, have been calculated as follows:

- (1) For each workweek Class Members worked in Trinity Hospital's ED between January 26, 2006 and May 24, 2008, Class Counsel estimated the hours deducted on account of meal breaks by dividing the hours Defendant paid Class Members in each work week by 12 hours to estimate the number of shifts worked in the work week. Next, Class Counsel multiplied the estimated number of shifts worked per week by 30 minutes. The result equals the estimated amount of time each Class Member was not paid for working ("Unpaid Time"). Class Counsel computed Class

Members' Regular Rates of Pay by adding the regular wages Class Members earned in individual workweeks, as set forth in the payroll data, and dividing that sum by the total number of hours Class Members were paid for working in each workweek ("Regular Rate of Pay"). Class Counsel multiplied each Class Member's Unpaid Time by his or her Regular Rate of Pay in that workweek to get his or her Unpaid Regular Wages for the period between January 26, 2006 and May 24, 2008.

- (2) For each workweek Class Members worked in Trinity Hospital's ED between May 25, 2008 and January 25, 2013, Class Counsel determined the amount of hours deducted on account of meal breaks by subtracting the total hours each Class Member was paid to work, as reflected in Defendant's pay records, from each Class Member's total hours worked, as reflected in Defendant's time records, to calculate the amount of time each Class Member was not paid for working ("Unpaid Time"). Class Counsel computed Class Members' Regular Rates of Pay by adding the regular wages Class Members earned in individual workweeks, as set forth in the payroll data, and by dividing that sum by the total number of hours Class Members were paid for working in each workweek ("Regular Rate of Pay"). Class Counsel multiplied each Class Member's Unpaid Time by his or her Regular Rate of Pay in that workweek to get his or her Unpaid Regular Wages for

the period between May 25, 2008 and January 25, 2013.

- (3) For the period between January 26, 2013 and September 1, 2018, Class Counsel determined the amount of hours deducted on account of meal breaks by subtracting the total hours each Class Member was paid to work, as reflected in Defendant's pay records, from each Class Member's total hours worked, as reflected in Defendant's time records, to calculate the amount of time each Class Member was not paid for working ("Unpaid Time"). Class Counsel computed Class Members' Regular Rates of Pay by adding the regular wages Class Members earned in individual workweeks, as set forth in the payroll data, and by dividing that sum by the total number of hours Class Members were paid for working in each workweek ("Regular Rate of Pay"). For workweeks when Class Members worked forty (40) or fewer hours, Class Counsel multiplied each Class Member's Unpaid Time by his or her Regular Rate of Pay in that workweek to get his or her Unpaid Regular Wages. For hours in a workweek in which Class Members' worked more than forty (40) hours from January 26, 2013 to September 1, 2018, Class Counsel multiplied the Unpaid Time over forty (40) hours by one-and-one-half times the Class Member's Regular Rate of Pay to get his or her Unpaid Overtime Wages.
- (4) The sum of Class Members' Unpaid Regular Wages and Unpaid

Overtime Wages is each Class Member's "Total Value of Unpaid Lunches."

- (5) Each Class Member's ratable share of the Net Settlement Amount will be determined by dividing the sum of his or her "Total Value of Unpaid Lunches" by the total of all "Total Value of Unpaid Lunches" for all Class Members. The Class Representative's, Opt-In Plaintiffs', and Class Members' Settlement Awards will be determined by multiplying the Net Settlement Amount by their respective ratable shares.

b. As provided in Section III.17.c, the funds from settlement checks that are not cashed within one hundred and eighty (180) days from the date the Settlement Administrator issues checks to Class Members shall be contributed to the *cy pres* trust for the benefit of the recipient, The Barack Obama Foundation, a 501(c)(3) charitable organization, consistent with applicable law.

c. For income and payroll tax purposes, the Parties agree that fifty percent (50%) of each Settlement Award shall be allocated as wages and shall be subject to required withholdings and deductions and reported as wage income as required by law. The remaining fifty percent (50%) of each Settlement Award shall be allocated as statutory penalties and shall not be subject to required withholdings and deductions and shall be reported as non-wage income as required by law. The Parties also agree that fifty percent (50%) of the Class Representative's individual post-shift off-the-clock award shall be allocated as wages and shall be subject to required withholdings and deductions and reported as wage income as required by law. The remaining fifty percent (50%) of the Class Representative's individual post-shift off-the-clock award shall be allocated as statutory penalties and shall not be subject to required

withholdings and deductions and shall be reported as non-wage income as required by law. All Service Awards shall be allocated as non-wage income and shall not be subject to required withholdings and deductions and shall be reported as non-wage income as required by law. The Settlement Administrator shall withhold the employee's share of any applicable payroll taxes from the portion of each Settlement Award allocated to wages. The Settlement Administrator shall not withhold any taxes from the portion of each Settlement Award allocated to statutory penalties. The Settlement Administrator shall issue to each Class Member who receives and cashes a settlement check a Form W-2, reporting the portion of the Settlement Award allocated to wages, and as required by IRS regulations, a Form 1099, reporting the portion of the Settlement Award allocated to statutory penalties and/or Service Awards. Other than the withholding and reporting requirements herein, the Class Representative, Opt-In Plaintiffs, and Class Members shall be solely responsible for the reporting and payment of their share of any federal, state and/or local income or other taxes on payments received pursuant to this Settlement Agreement.

9. Fees Award and Service Awards

a. Class Counsel shall seek a portion of the Gross Settlement Amount as Attorneys' Fees and Litigation Expenses. The total Attorneys' Fees award shall not exceed \$600,000.00. The total Litigation Expenses award shall not exceed \$22,000. Defendant will not object to or contest this request by Class Counsel for Court approval of these amounts. The Court's award of a lesser amount than that requested by Class Counsel shall not nullify the Agreement.

b. The Attorneys' Fees and Litigation Expenses approved by the Court shall be paid to Class Counsel from the Gross Settlement Amount as set forth in Sections III.6.d and III.7.h. hereof.

c. Class Counsel may appeal the allocation of Class Counsel's Attorneys' Fees and Litigation Expenses should the sum awarded by the Court fall below the amount requested by Class Counsel, provided that the request Class Counsel makes is consistent with the provision of this Settlement Agreement. If Class Counsel elects not to appeal or if the Court of Appeals affirms the decision, only the reduced amounts will be deemed to be Class Counsel's Attorneys' Fees and Litigation Expenses for purposes of this Settlement Agreement. Any amounts for Class Counsel's Attorneys' Fees and Litigation Expenses not awarded shall be added to the Net Settlement Amount available for distribution to Class Members as Settlement Awards.

d. The payment of the fees and litigation expenses award to Class Counsel shall constitute full satisfaction of the obligation to pay any amounts to any person, attorney or law firm for attorneys' fees, expenses or litigation expenses in the Action incurred by any attorney on behalf of the Class Representative, Opt-in Plaintiffs and the Class Members, and shall relieve Defendant, the Released Parties, the Settlement Administrator, and Defendant's Counsel of any other claims or liability to any other attorney or law firm for any attorneys' fees, expenses and/or costs to which any of them may claim to be entitled on behalf of the Class Representative, Opt-in Plaintiffs, and the Class Members. In exchange for such payment, Class Counsel will release and forever discharge any attorneys' lien on the Gross Settlement Amount.

e. Class Counsel will apply for a "Service Award" in the amount of \$15,000 for the Class Representative, to be paid for her time and effort spent conferring with Class Counsel, filing and pursuing the Action, answering written discovery, producing documents, sitting for a deposition, attending two separate day long mediations, and in recovering wages on behalf of all Class Members. Class Counsel will apply for Service Awards of \$1,500 each for

the seven Class Members who sat for depositions (Aona Anderson, Denise Batie, Gina DeFilippo, Ameca Grass, Karim Karim, Christina Lattner, and Michelle Spikes) and \$500 each for the following Class Members who gave declarations to support the Class Representative's Motion for Class Certification (Crystal Jones, Claressa Jones, Nichele Thomas, and Tamara Sahara). Defendant agrees not to oppose such application, so long as it is consistent with the provisions of this Settlement Agreement. The Service Awards shall be paid from the Gross Settlement Amount, in addition to the Settlement Awards, in the form of a check, and the awards shall be subject to Court approval. Any amounts for Service Awards not awarded shall be added to the Net Settlement Amount available for distribution to Settlement Class Members.

10. Responsibilities of Defendant

Defendant shall:

- a.** Perform all duties as stated in this Settlement Agreement.
- b.** Refrain from initiating communications with Class Members regarding the Settlement. In the event any Class Member communicates with Defendant or its managers regarding the Settlement, Defendant shall refer the individual to the Class Notice.
- c.** Defendant will timely pay the settlement administration fees and costs outside the Gross Settlement Amount to the Settlement Administrator.
- d.** Pursuant to the requirements of the Class Action Fairness Act, 28 U.S.C. §1715, no later than ten (10) days after this proposed class action Settlement is filed in Court, Defendant shall notify the appropriate governmental authorities including, but not limited to, the attorneys general of the United States and Illinois. Defendant also agrees to timely provide documents and information to the appropriate governmental authorities pursuant to Section 1715 ("CAFA Notice").

11. Notice/Approval of Settlement and Settlement Implementation

a. The Settlement Agreement requires the occurrence of all of the following events: (a) execution of the Settlement Agreement by the Parties; (b) submission of the Settlement Agreement by the Parties to the Court for preliminary approval; (c) entry of the Preliminary Approval Order by the Court granting preliminary approval of the Settlement Agreement under Rule 23 of the Federal Rules of Civil Procedure and approval of the Settlement under FLSA Section 216(b); (d) Court approval of the method of distribution and the form and content of the Notice of Settlement; and (e) filing by Class Counsel, on or before the date of the Final Approval Hearing, the Court-approved Settlement Administrator's declaration, in writing, that the Settlement Notice has been disseminated to the Class Members in accordance with the Court's order. The Settlement Agreement will become final and effective only upon the occurrence of the following events: (a) the Court enters the Final Approval Order and Final Judgment; and (b) the Effective Date occurs.

b. If the Effective Date does not occur, the Court does not grant the Final Approval Order and Final Judgment, or this Settlement Agreement is otherwise nullified pursuant to its terms, this Settlement Agreement shall be null and void, and the agreements described above and elsewhere in this Settlement Agreement shall be of no effect and inadmissible in this or any other action or proceeding.

c. Preliminary Approval Hearing. The Class Representative shall move for Preliminary Approval of the Settlement ("Preliminary Approval") after the execution of this Settlement Agreement and by November 15, 2018, or as soon thereafter as practicable. In conjunction with the motion for Preliminary Approval, the Class Representative will submit this Settlement Agreement, which sets forth the terms of this Settlement, and will include a proposed form of Class Notice and other documents as attached hereto necessary to implement the

Settlement Agreement.

d. Notice to Class Members. Notice of the Settlement shall be provided to Class Members, and Class Members shall submit any objections to the Settlement, and/or requests for exclusion from the Class, using the following procedures:

(1) Notice to Class Members. On the timetable specified in Section III.7 of this Settlement Agreement, the Settlement Administrator shall send a copy of the Class Notice, attached hereto as Attachment B, to Class Members via First Class regular U.S. mail. The Class Notice will be mailed using the most current mailing address information, which the Settlement Administrator shall obtain by running each Class Member's name and address through the National Change of Address (NCOA) database or comparable databases. The front of the envelopes containing the Summary Notice will be marked with words identifying the contents as important and/or time sensitive. The Class Notice for each Class Member will include the estimated amount that Class Member will receive in unpaid wages and penalties. The Settlement Administrator shall promptly conduct a second mailing for any Class Member whose Class Notice is returned as undeliverable, provided that a forwarding address is provided by the U.S. Postal Service or is otherwise located by the Settlement Administrator through an Accurint or comparable database search. If after this second mailing, the Class Notice is again returned as undeliverable, and if no other forwarding address is available, the notice mailing process shall end for that Class Member. The Settlement Administrator will operate a telephone line that will allow Class Members to update their contact information or request more information about the Settlement.

(2) Updated Contact Information

Class Members should contact the Settlement Administrator to update their mailing

addresses. Class Counsel will forward any updated contact information it receives from Class Members to the Settlement Administrator. The Settlement Administrator will reissue the Class Notice to any Class Members who provide updated contact information prior to the “Objection/Exclusion Deadline Date,” as defined in Section III.12.

12. Procedure for Objecting to or Requesting Exclusion from Class Action Settlement

a. Procedure for Objecting. The Class Notice shall provide that Class Members who wish to object to the Settlement must mail a written statement objecting to the Settlement to the Clerk of the Court and the Settlement Administrator. Such written statement must be postmarked no later than sixty (60) days after the date the Class Notice is first mailed (the “Objection/Exclusion Deadline Date”). No Class Member shall be entitled to be heard at the Final Approval Hearing (whether individually or through separate counsel) or to object to the Settlement, and no written objections or briefs submitted by any Class Member shall be received or considered by the Court at the Final Approval Hearing, unless written notice of the Class Member’s intention to appear at the Final Approval Hearing (if such Class Member does intend to appear either personally or through counsel), and/or copies of any written objections or briefs, have been mailed to the Clerk of the Court and the Settlement Administrator on or before the Objection/Exclusion Deadline Date. The date of the postmark on the mailing envelope shall be the exclusive means used to determine whether an objection to the Settlement has been timely submitted. No later than ten (10) days after the Objection/Exclusion Deadline Date, the Settlement Administrator shall furnish to Class Counsel and Defendant’s Counsel copies of objections received from Class Members. Class Members who fail to submit timely written objections in the manner specified above shall be deemed to have waived any objections and shall be foreclosed from making any objection (whether by appeal or otherwise) to the

Settlement.

b. Procedure for Requesting Exclusion. The Class Notice shall provide that Class Members who wish to exclude themselves from the Class must submit a written statement requesting exclusion from the Class on or before the Objection/Exclusion Deadline Date. Such written request for exclusion must contain the full name, address, telephone number, and the last four digits of the Social Security number the Class Member used when working for Defendant, and must be returned by mail, fax or electronic mail to the Settlement Administrator before the Objection/Exclusion Deadline Date. The date of the postmark on the return mailing envelope or the timestamp on the electronic submission shall be the exclusive means used to determine whether a request for exclusion has been timely submitted. Any Class Member who excludes himself or herself from the Class will not be entitled to any recovery under the Settlement and will not be bound by the Settlement or have any right to object, appeal or comment thereon. No later than ten (10) days after the Objection/Exclusion Deadline Date, the Settlement Administrator shall furnish to Class Counsel and Defendant's Counsel a complete list of all Class Members who have timely requested exclusion from the Class.

13. No Solicitation of Settlement Objections or Exclusions

The Parties agree to use their best efforts to carry out the terms of this Settlement. At no time shall either Party or their counsel seek to solicit or otherwise encourage Class Members to submit written objections to the Settlement or requests for exclusion from the Class, or appeal from the Court's Final Judgment.

14. Excessive Opt-Outs

Defendant reserves the right to void this Agreement if more than thirty (30) Class Members exclude themselves from the Settlement.

15. Procedure for FLSA Opt-Ins

Pursuant to the FLSA and as set forth in Section III.3.e, all Class Members who negotiate a settlement check shall give his/her consent in writing to become a party plaintiff in the FLSA collective action claims asserted in the lawsuit, in accordance with 29 U.S.C. § 216(b). The Class Notice shall provide that Class Members who endorse any settlement check thereby consent in writing to become a party plaintiff in this action pursuant to 29 U.S.C. § 216(b). Within ten (10) days after the 180-day period for Class Members to cash checks (see Section III.7.i., above) has expired, the Settlement Administrator shall provide copies of endorsed settlement checks to the Parties, which shall include the Consent to Join and Release of Claims endorsement described in Section III.3.e, in filing-ready format. Class Counsel will file such copies with the Court within ten (10) days of receipt from the Settlement Administrator. The Parties agree that the procedures set forth in this paragraph shall constitute compliance with the requirements under 29 U.S.C. § 216(b), that persons opting in to an FLSA collective action consent in writing, and that such consent be filed with the Court.

16. Final Settlement Approval Hearing and Entry of Final Judgment

a. Within twenty-eight (28) days of entry of a Preliminary Approval Order, Class Counsel will file a motion seeking approval of the agreed-upon award of attorneys' fees and costs relating to their representation of the Class Representative, Opt-In Plaintiffs and Class Members. Defendant will not oppose Class Counsel's application so long as it is consistent with the provisions of this Settlement Agreement.

b. At least seven (7) calendar days prior to the Final Approval Hearing, the Class Counsel shall file with the Court: (a) a motion for final approval of settlement; and (b) a copy of the Settlement Administrator's Declaration.

c. At the Final Approval Hearing, the Parties will request that the Court, among other things, enter a Final Approval Order and Final Judgment that:

- (1) states that there is a bona fide legal dispute between the Parties as to whether Class Members were properly compensated with respect to meal breaks and/or Class Members are owed any wages or overtime compensation;
- (2) approves the Settlement Agreement as a final, fair, reasonable, adequate and binding release of all claims as set forth in Sections III.3.c-d by all Class Members who have not timely opted out
- (3) approves the Settlement Agreement as a final, fair, reasonable, adequate and binding General Release of all claims as set forth in Section III.3.b by the Class Representative;
- (4) provides that all Class Members who negotiate a settlement check irrevocably consent to join and opt into the FLSA collective action in this Action, and authorizes Class Counsel to file with the Court their consents to join;
- (5) dismisses the Action with prejudice no earlier than ten (10) days after the date Class Counsel files endorsed settlement checks with the Court as described in Section III.15; and
- (6) retains jurisdiction in connection with the Settlement until dismissal with prejudice.

d. Only counsel for the Parties and Class Members who have filed timely objections to the Settlement Agreement may participate in the Final Approval Hearing.

e. If the Court does not approve any material condition of this Settlement Agreement that effects a fundamental change to the terms of the settlement hereunder, the entire

Settlement Agreement will be voidable and unenforceable.

f. In the event this Settlement Agreement does not become Final and the Notice of Settlement has already been sent to Class Members, the Settlement Administrator will provide notice to the Class Members that the Settlement Agreement did not receive final approval and that, as a result, no payments will be made to Class Members under the Settlement Agreement, in a form jointly agreed upon by the Parties. Such notice shall be mailed by the Settlement Administrator via First Class U.S. Mail, postage prepaid, to the addresses used by the Settlement Administrator in mailing the Notice of Settlement. The costs of such mailing shall be split equally between Class Counsel and Defendant.

17. Undistributed Settlement Awards

a. A Class Member who excludes himself or herself from this Settlement will not receive any payment from the Gross Settlement Amount.

b. Class Members will have one hundred and eighty (180) days after the issuance of the checks by the Settlement Administrator to cash their checks. The Settlement Administrator will issue checks which on their face are not valid more than one hundred and eighty (180) days after their date of issuance. If any Class Member's settlement check is not cashed within that 180-day period, the check will be void. In such event, any Class Member whose check was not cashed will be deemed to have waived irrevocably any right or claim to his or her payment from the Gross Settlement Amount, but the Settlement nevertheless will be binding upon the Class Member.

c. If the Settlement Administrator is unable to deliver a settlement check to a Class Member, or if a check remains uncashed after the one hundred and eighty (180) day period, the amount of such settlement checks shall be contributed to the *cy pres* recipient, The Barack Obama Foundation, a 501(c)(3) charitable organization.

18. Defendant's Legal Fees and Settlement Administration Costs

All of Defendant's own legal fees, costs and expenses incurred in this Action shall be borne by Defendant. The Parties agree to cooperate in the settlement administration process and to make all reasonable efforts to control and minimize the costs and expenses incurred in the administration of the Settlement.

19. Nullification of Settlement Agreement

This Settlement Agreement is contingent upon Final Approval of the Settlement Agreement. If: (i) the Court does not enter the Final Approval Order; (ii) the Court does not finally approve the Settlement as provided herein; (iii) the final judgment in the Action does not become final for any reason; or (iv) the Settlement does not become final for any other reason, this Settlement Agreement shall be null and void, and any order or judgment entered by the Court in furtherance of this Settlement shall be treated as void *ab initio*. In such a case, the Parties and any funds to be awarded under this Settlement shall be returned to their respective statuses as of the date and time immediately prior to the execution of this Settlement Agreement, and the Parties shall proceed in all respects as if this Settlement Agreement had not been executed. In the event an appeal is filed from the Court's Final Approval Order, or any other appellate review is sought prior to the Effective Date, administration of the Settlement shall be stayed pending final resolution of the appeal or other appellate review.

20. Certification of Distribution of Settlement Checks

The Settlement Administrator shall provide Class Counsel with an accounting of the proceeds disbursed and its withholding of every Class Members' share of any applicable payroll taxes from that portion of each Settlement Award allocated to wages, upon request by Class Counsel.

21. Publicity

The Class Representative and Class Counsel will not initiate any press release or contact with the media, nor shall they respond to inquiries from the media with respect to this Settlement with Defendant other than to confirm to the media, if contacted, that information is available through public records. Class Counsel may update their law firm website by adding the Action case name, case number, the summary of claims alleged from the Court-approved notice, and may indicate the case was “resolved” or “settled” without specifying the Gross Settlement Amount or any individual amount on their law firm website.

22. No Effect on Employee Benefits

The Settlement Awards and Service Awards paid to the Class Representative and Class Members shall be deemed not to be pensionable earnings and shall not have any effect on the eligibility for, or calculation of, any of the employee benefits (*e.g.*, 401(k) plans, retirement plans, etc.) of the Class Representative, Opt-in Plaintiffs and Class Members. The Parties agree that any Settlement Awards and Service Awards paid to the Class Representative and Class Members under the terms of this Settlement Agreement do not represent any modification of their previously credited hours of service or other eligibility criteria under any employee pension benefit plan or employee welfare benefit plan sponsored by Defendant. Further, any Settlement Awards and Service Awards paid to former employees hereunder shall not be considered “compensation” in any year for purposes of determining eligibility for, or benefit accrual within, an employee pension benefit plan or employee welfare benefit plan sponsored by Defendant.

23. Attachments and Headings

The terms of this Settlement Agreement include the terms set forth in the attached Attachments, which are incorporated by this reference as though fully set forth herein. Any Attachments to this Settlement Agreement are an integral part of the Settlement. The descriptive headings of any paragraphs or sections of this Agreement are inserted for convenience of

reference only and do not constitute a part of this Settlement Agreement.

24. Amendment or Modification

This Settlement Agreement may be amended or modified only by a written instrument signed by counsel for all Parties or their successors in interest.

25. Entire Agreement

This Settlement Agreement and any Attachments constitute the entire agreement among these Parties relating to any and all matters addressed in the Settlement Agreement, and all prior or contemporaneous negotiations, agreements, understandings, representations, and statements, whether oral or written and whether by one of the Parties or such Parties' legal counsel, including the terms of the Memorandum of Understanding for Class Settlement executed by the Parties, shall be deemed merged into this Settlement Agreement. No rights hereunder may be waived or modified except in a writing signed by all Parties and approved by the Court.

26. Authorization to Enter into Settlement Agreement

Counsel for all Parties warrant and represent they are expressly authorized by the Parties whom they represent to negotiate this Settlement Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant to this Settlement Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Settlement Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to affect the implementation of the Settlement. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement the Settlement, or on any supplemental provisions that may become necessary to effectuate the terms of this Settlement, the Parties may seek the assistance of the Court to resolve such disagreement.

27. Binding on Successors and Assigns

This Settlement Agreement shall be binding upon, and inure to the benefit of, the

successors or assigns of the Parties hereto, as previously defined.

28. Illinois Law Governs

All terms of this Settlement Agreement and the Attachments hereto shall be governed by and interpreted according to the laws of the State of Illinois.

29. Counterparts

This Settlement Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument. Electronic signatures compliant with the ESIGN Act and signatures transmitted by fax or .pdf shall have the same effect as an original ink signature.

30. This Settlement is Fair, Adequate and Reasonable

The Parties warrant and represent they have conducted a thorough investigation of the facts and allegations in the Action. The Parties further represent and warrant that they believe this Settlement Agreement represents a fair, adequate and reasonable Settlement of this action and that they have arrived at this Settlement Agreement through extensive arms-length negotiations, taking into account all relevant factors, present and potential.

31. Jurisdiction

Any claim concerning enforcement of the Settlement Agreement, or the subject matter hereof, will be resolved solely and exclusively by the United States District Court for the Northern District of Illinois.

32. Cooperation and Drafting

Each of the Parties has cooperated in the drafting and preparation of this Settlement Agreement. Hence, in any construction made to this Settlement Agreement, the same shall not be construed against any of the Parties.

33. Invalidity of Any Provision

Before declaring any provision of this Settlement Agreement invalid, the Court shall first attempt to construe the provisions valid to the fullest extent possible consistent with applicable precedents so as to define all provisions of this Settlement Agreement valid and enforceable.

34. Circular 230 Disclaimer

Each Party to this Settlement Agreement acknowledges and agrees that (1) no provision of this Settlement Agreement, and no written communication or disclosure between or among the Parties or their attorneys and other advisers regarding this Settlement Agreement, is or was intended to be, nor shall any such communication or disclosure constitute or be construed or be relied upon as, tax advice within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended); (2) each Party (A) has relied exclusively upon his, her or its own, independent legal and tax advisers for advice (including tax advice) in connection with this Settlement Agreement, (B) has not entered into this Settlement Agreement based upon the recommendation of any Party or any attorney or advisor to any other Party, and (C) is not entitled to rely upon any communication or disclosure by any attorney or advisor to any other Party to avoid any tax penalty that may be imposed on that Party; and (3) no attorney or adviser to any other Party has imposed any limitation that protects the confidentiality of any such attorney's or adviser's tax strategies (regardless of whether such limitation is legally binding) upon disclosure by the acknowledging party of the tax treatment or tax structure of any transaction, including any transaction contemplated by this Settlement Agreement.

35. Stay of Lawsuit

The Parties agree to request a stay of the lawsuit pending efforts to obtain preliminary and final approval of the Settlement. The Parties further agree not to litigate any discovery issues pending efforts to obtain approval of the Settlement.

36. Notice to the Parties

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Unless otherwise stated herein, any notice to the Parties required or provided for under this Settlement Agreement will be in writing and may be sent by electronic mail, hand delivery, or U.S. mail, postage prepaid, as follows:

If to Class Counsel:
Maureen A. Salas, Esq.
Douglas M. Werman, Esq.
Werman Salas P.C.
77 W. Washington St., Suite 1402
Chicago, IL 60602

If to Defense Counsel:
Michael J. Gray, Esq.
Efrat R. Schulman, Esq.
Jones Day
77 W. Wacker Dr., Suite 3500
Chicago, IL 60601

DATED: November 15, 2018. WERMAN SALAS P.C.

By: Maureen A Salas
MAUREEN A. SALAS
One of the Attorneys for the Class Representative, the
Opt-in Plaintiffs and the Class Members

DATED: November 15, 2018, 2018. CRIXENIA MAGPAYO

By: Crixenia Magpayo
Class Representative

DATED: _____, 2018. ADVOCATE HEALTH AND HOSPITALS CORPORATION

By: _____

Its: _____

Unless otherwise stated herein, any notice to the Parties required or provided for under this Settlement Agreement will be in writing and may be sent by electronic mail, hand delivery, or U.S. mail, postage prepaid, as follows:

If to Class Counsel:
Maureen A. Salas, Esq.
Douglas M. Werman, Esq.
Werman Salas P.C.
77 W. Washington St., Suite 1402
Chicago, IL 60602

If to Defense Counsel:
Michael J. Gray, Esq.
Efrat R. Schulman, Esq.
Jones Day
77 W. Wacker Dr., Suite 3500
Chicago, IL 60601

DATED: _____, 2018. WERMAN SALAS P.C.

By: _____
MAUREEN A. SALAS
One of the Attorneys for the Class Representative, the
Opt-in Plaintiffs and the Class Members

DATED: _____, 2018. CRIXENIA MAGPAYO

By: _____
Class Representative

DATED: November 15, 2018. ADVOCATE HEALTH AND HOSPITALS
CORPORATION

By: Kristi Landin
Its: Executive Director, HR

ATTACHMENT

A

Magpayo v. Advocate Health
Class Action Settlement Agreement
Attachment A

	Employee Code	Last Name	First Name
1	3481908	Allen	Michelle
2	3485353	Allen	Traycee
3	3510324	Ambers	Delilah
4	3500325	Anderson	Aona
5	3510753	Armstrong	Detonya
6	3386356	Aubert	Hayward
7	3511048	Barakat	Elham
8	3508247	Batie-Howard	Denise
9	3522853	Beard	Robert
10	3520039	Bey	Ravanna
11	3515712	Bostic	Josephine
12	3527864	Boyd	Brandin
13	3527456	Branch	Alicia
14	3422649	Brewer	Dianara R
15	3525381	Brimmer	Paradise
16	3511490	Brown	Alicia
17	3468055	Brown	Lisa
18	3478426	Brown	Monique
19	3512443	Brown	Nicole
20	3486467	Brown-Goodson	Keona
21	3480294	Burke	Rhonda
22	3479400	Butler	Jovan
23	3511428	Carpenter (Brown)	Taletha
24	3485415	Carrington	Carmesha
25	3364452	Carter	Margaret
26	3493780	Carter	Stephanie
27	3519601	Cavallo	Christina M
28	3503161	Clark	Lashawnda
29	3534869	Clay	Christina
30	3535452	Cole	Melissa
31	3492424	Coleman	Dionne
32	3480898	Collins	Julie-Ann
33	3501055	Collins	Robbin
34	3482215	Compton	Howe
35	3524416	Conley	Kiesha
36	120527	Cooper	Karyn
37	3509872	Cowley	Philip
38	3486004	Crenshaw Jackson	Sonya
39	3527430	Crowden	Elizabeth
40	3537051	Curtis	Lisa
41	3483460	Daniels	Tosca
42	3493320	Davis	Nahsis

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	Employee Code	Last Name	First Name
43	3515726	Davis	Nneka
44	3522000	Defilippo	Gina
45	3479128	Demus	Karshena
46	3492243	Dickey	Beverly
47	3485072	Dunbar	Keea
48	3483118	Duncan	Latoya
49	3493942	Enge	Sonja
50	509018	Fair	Tahnee
51	3532697	Field	Elisabeth
52	3503644	Fitts-Cowley	April
53	3360302	Flores	Elizabeth
54	3439676	Foglietta	Douglas
55	3483967	Ford	Deborah
56	146829	Fox	Teresa
57	3479591	Franklin	Valorie
58	3481245	Freeman	Paula
59	3523263	Frith	Jessica
60	3490886	Galera	Kimberly
61	3509075	Gamble	Kimberly
62	3500913	Garmon	Mia
63	3537139	Gayden	Calease
64	3517172	Gelsomino	Jessica
65	3521991	Golden	Daniel
66	3500264	Gordon	Bianca
67	3495153	Gordon	Latoshia
68	3525383	Grant	Caiphia
69	3509196	Grass	Ameca
70	3541277	Grimes	Michael
71	3485087	Hale	Chikira
72	3508031	Hall	Lavita
73	3525385	Halverson	Ricky
74	3484459	Hamer	Kathryn
75	3510340	Hamlin	Shelly
76	3486002	Hammond	Cynthia
77	3493762	Harmon	Lenneal
78	3494098	Harper	Francesca
79	266809	Harris	Aretha
80	3485349	Harvey	Latoska
81	3485911	Hawkins-Massey	Yvonne
82	3493836	Hayes	Brittany
83	3485800	Haynes	Ginah
84	3479695	Haywood	Melissa

**Magpayo v. Advocate Health
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Attachment A**

	Employee Code	Last Name	First Name
85	3501183	Haywood-Scott	Alfreda
86	302851	Henry	Drueada
87	3529579	Higgins	Andel
88	3540780	Hirales	Alexandra
89	3517167	Holliman	Olivia
90	3503954	Hollis	Lareese
91	3432978	Horton	Qiana
92	3364072	Houser	Cynthia
93	3477518	Howard	Angenita
94	3417771	Howard	Karen
95	3519119	Howard	Tamika
96	115634	Irvine	Candice
97	3508943	Jackson	Debra
98	3507245	Jackson	Natasha
99	3533458	Jackson	Nicole
100	3488379	Jackson	Tanagra
101	3517063	Jamison	Edrienna
102	3516212	Jimonu	Chijioke R
103	3516556	Johnson	Aaron
104	3440682	Johnson	Patrice
105	3482387	Johnson	Shalisa
106	3483954	Johnson	Sophia
107	3495966	Johnson	Tiffanie
108	3482566	Johnson-Baxter	Bobbie
109	3479893	Johnson-Boyd	Sherron
110	3516716	Jones	Benita
111	3503688	Jones	Claressa
112	3486003	Jones	Dawn
113	3479855	Jones	Diane
114	3425410	Jones	Jesse
115	3535520	Jones	Takeshia
116	3517169	Karim	Karim
117	3457785	Kelley	Nanette
118	3541134	Kiany	Naveed
119	3488771	Kiarie	Veronica
120	3353976	Kill-O'Neill	Kimberly
121	3508930	King	Justin
122	477778	Kirin	Jennifer
123	3499906	Kooistra	Scott
124	3486558	Lattner	Christina M
125	3523772	Lauer	Lisa M
126	3483586	Lawson	Alberta

Magpayo v. Advocate Health
Class Action Settlement Agreement
Attachment A

	Employee Code	Last Name	First Name
127	3495310	Lenoir	Dahmeisheia
128	3492108	Lewis	Jammie
129	3374303	Ligue	Michael
130	3526791	Lisek	Ashley
131	116558	Lizcano	Sylvia
132	3369980	Lloyd-Jackson	Apryll
133	3437076	Lopez	Julie
134	3527190	Lopez	Zuily
135	3483456	Lozano	Jaton
136	3509450	Luckett	Tanya
137	3372885	Mabodu	Abiola
138	3485657	Maclin	Twaniqua
139	115865	Madden	Patricia
140	3508829	Magpayo	Crixenia
141	3503011	Manual	Krystal
142	3486162	Marcelle	Erva
143	3541120	Mariano Perez	Erick
144	118240	Martello	Michele
145	3506150	Mauldin	Tamika
146	3519607	Mccoach	Renee
147	3500781	Mccoy	Renee
148	3486525	Mcgarr	Carrie
149	3503796	Mcintosh	Natcole
150	3484447	Mcintyre	Kimberly
151	3501607	Mckinnor	Latresha
152	3527213	Mclaughlin-Shoults	Cheryl
153	3499409	Mclaurin	Leslie
154	116731	Miksich	Roseann
155	3515947	Miller	Beverly
156	3525380	Misner	Brent
157	3499454	Moghadam	Maryam
158	3527180	Monroe (Abren)	Tracee
159	281535	Moore	Michelin
160	3529323	Morales Hernandez	Saendy Michelle
161	3527865	Mosley	Michelle
162	3485780	Motes Johnson	Martha
163	3492444	Moy	Vicki
164	3525119	Muhammad	Akilah
165	3511486	Muhammad	Melissa
166	3541684	Munyasya	Jacqueline
167	3492456	Netter	Molly
168	3499249	Ogbeide	Ernest

**Magpayo v. Advocate Health
Class Action Settlement Agreement
Attachment A**

	Employee Code	Last Name	First Name
169	3515523	Ogugua	Jude
170	3520761	Oguntoba	Segun
171	3516740	Ohaja	Amaechi
172	3528655	Oliveira	Caroline
173	3518776	Oliver	Angie
174	3077898	Oliver	Warren
175	3495989	Omelogu	Enyinnaya
176	3509675	Orellana	Julisa
177	3510997	Oropallo Jones	Crystal
178	3518809	Osinowo	Oluseun
179	3501716	Owens	Teresa M
180	3521890	Parayao	Raphael
181	3520740	Patterson	Melanie
182	3349925	Peppers	Bridgette
183	3516439	Phagan	Sharnae
184	3500286	Pieroni	David
185	3375953	Porter	Mildred
186	3516724	Posey	Tiffany
187	3493965	Price	Crystal
188	3533557	Price	Tianna
189	3526132	Pustz	Kevin
190	3417391	Quintero	Faith
191	3486777	Qureshi	Uzma
192	3433190	Rafe	Latonya
193	515247	Raines	Willie
194	3481247	Rathbone	Paige
195	3516433	Reyna	Maria C
196	3187218	Rhodes	Dorothy
197	3368222	Rideaux	Yvette
198	3520081	Ristau	Ashlie
199	3518347	Roach	Lashanna
200	3358082	Roberts	Duane
201	3507857	Robertson	Sherise
202	3112851	Robinson	Vernetta
203	3523078	Rood	Molly
204	3501847	Sahara	Tamara
205	3527749	Saini	Vikas
206	3517474	Salazar	Juan
207	3526947	Sanders	Jawana
208	3540085	Sandoval	Jessica
209	3374089	Santos	Michelle
210	3524800	Schroeder	Emma

Magpayo v. Advocate Health
Class Action Settlement Agreement
Attachment A

	Employee Code	Last Name	First Name
211	3529007	Semmel	Alana
212	3501732	Shasi	Bairat
213	3541552	Shtoyko	Iryna
214	3526936	Shybetska	Olha
215	3485086	Siegel	Stacey
216	3520701	Silva	Cynthia
217	3531002	Silverberg	Daniel
218	3489053	Smart	Jacqueline D
219	3510991	Smith	Jason
220	3477678	Smith	Wendell
221	3536979	Smith	Wendy
222	3484246	Sneed	Tekoa
223	3517170	Snyder	Elizabeth J
224	3482284	Somodi	Christine
225	3493098	Soto	Melissa
226	3499771	Spikes	Michele
227	3478234	Spurlark	Roxanne
228	3482247	Spurlock	Willard
229	3541786	Staudacher	Nicholas
230	3508828	Swain	Marvin
231	3484356	Swiney	Delaina
232	3523112	Sykes	Jameese
233	3479330	Thomas	Nichele
234	3467107	Thomas	Tycee
235	419713	Thomas-Russell	Carla
236	115956	Tomaka	Phillip
237	3518859	Townsend	Kelley
238	3483707	Trammell	April
239	3519204	Triana	David
240	3500041	Umbriaco	Francesco
241	3524842	Uwadiale	Aigbe
242	3481518	Velazquez	Carlos
243	3484946	Wade	Lorraine
244	3487152	Watkins	Neah
245	3523264	Watson (Abren)	Shawanda
246	3362134	Webb	Donna
247	3520820	White	Frederica J
248	3521935	Whiting	Eryn
249	3493866	Wildon	Mickey
250	3365574	Williams	Sharon
251	3521972	Willis-Jackson	India
252	3508809	Wilson	Alisha

**Magpayo v. Advocate Health
Class Action Settlement Agreement
Attachment A**

	Employee Code	Last Name	First Name
253	3525488	Wilson	Cekhana
254	3477938	Wilson	Monica
255	3500881	Wojas	Iwona
256	3483738	Woods	Latoria
257	3537089	Woodward	Jason
258	3510191	Wright	Angela
259	3511483	Wright	Kimberly
260	3484105	Wyatt	Tytrea
261	3432820	Yager	Lindsay A
262	3483713	Yochem	Robyn

ATTACHMENT B

NOTICE OF CLASS ACTION SETTLEMENT

Magpayo v. Advocate Health and Hospitals Corporation, Case No. 1:16-cv-01176

The parties have reached a settlement in *Magpayo v. Advocate Health and Hospitals Corporation*, Case No. 1:16-cv-01176 (the “lawsuit”), a class action lawsuit against Advocate Health and Hospitals Corporation (“Advocate”) on behalf of Advocate Trinity Hospital’s Emergency Department (“ED”) nurses. You are receiving this notice because records show that you worked at Advocate Trinity Hospital’s ED as a nurse during the time period covered by the lawsuit. Advocate has agreed to pay \$1,500,000.00 to settle the lawsuit. This notice explains your options. You may: (i) do nothing and get a settlement payment; (ii) exclude yourself from the settlement and not receive a share; or (iii) object to the settlement. The U.S. District Court for the Northern District of Illinois has authorized this notice. Before any money is paid, the Court will hold a hearing to decide whether to approve the settlement.

Who Is Included in the Settlement?

The settlement includes all hourly paid nurses who were employed by Advocate and worked in Trinity Hospital’s ED at any time between January 26, 2006 and September 5, 2018.

What Is this Lawsuit About?

The lawsuit alleges that Advocate violated federal and state wage and hour laws by allegedly automatically deducting thirty minutes of pay for nurses’ unpaid meal breaks, without ensuring that the nurses in fact received full meal breaks. The lawsuit alleges that this practice denied nurses their promised hourly wage for work performed during their unpaid thirty minute periods in violation of the Illinois Wage Payment and Collection Act. The lawsuit also alleges that for all time ED nurses worked more than forty (40) hours per workweek, Defendant’s meal break practices denied ED nurses overtime wages in violation of the Illinois Minimum Wage Law and the Fair Labor Standards Act. Advocate has denied and continues to deny any wrongdoing and denies any and all liability and damages to anyone with respect to the alleged facts or causes of action asserted in the lawsuit. The Court did not decide whether Advocate violated the law. Instead, both sides agreed to the settlement to resolve the case in order to avoid the time, expense, and uncertainty of continued litigation.

You can learn more about the lawsuit or review the Settlement Agreement by contacting the Settlement Administrator, Analytics Consulting LLC at **1-xxx-xxx-xxxx**, or Class Counsel, Werman Salas P.C., at (312) 419-1008.

What does the Settlement Provide?

Your estimated recovery in this settlement is \$ **.** Half your award will be allocated as unpaid wages, subject to required tax withholdings, and the other half of your award will be allocated as statutory penalties. The Settlement Administrator will issue to you a Form W-2, reporting the portion of your award allocated to wages, and if required by IRS rules, the Settlement Administrator will issue you a Form 1099, reporting the portion of your award allocated to statutory penalties. Your settlement award was calculated based on the time and pay records Advocate provided for you. For a full explanation of how the payments were calculated, please see the Settlement Agreement, which is available by contacting the Settlement Administrator or Class Counsel.

Unless you exclude yourself from the settlement as explained below, you will release and discharge Advocate and its former and present officers, directors, agents, employees, attorneys, representatives, insurers, benefit plans, plan fiduciaries and/or administrators, predecessors, successors, parents, subsidiaries, divisions, and affiliated entities (“Released Parties”) from all claims or causes of action you have for unpaid wages or overtime related to meal breaks or deductions from time related to meal breaks while working as a nurse at Advocate’s Trinity Hospital’s ED through the date of Final

Approval, including claims under the Illinois Wage Payment and Collection Act and the Illinois Minimum Wage Law. If you negotiate a settlement check, or if you previously filed a consent form to join the lawsuit, you also will release any unpaid overtime claims related to meal breaks or deductions from time related to meal breaks while working as a nurse in Defendant's Trinity Hospital's ED under the Fair Labor Standards Act.

What Are Your Options?

- (1) If you want to participate in the settlement and receive a settlement payment, do nothing. A check will be mailed to you if the Court grants Final Approval of the settlement.
- (2) If you do not want to be legally bound by the settlement, you must exclude yourself by [REDACTED], 2018. To do so, you must mail your written request for exclusion to the Settlement Administrator at the address below. Your written request for exclusion must include your full name, address, telephone number, the last four digits of your Social Security Number, a statement that you wish to be excluded from the settlement, and it must be personally signed by you. If you exclude yourself, you will **not** receive money from this settlement, but you will retain your legal rights regarding any claims that you may have against Advocate.
- (3) You may object to the settlement by [REDACTED], 2019 if you have not already excluded yourself from the settlement. If you want to object to the settlement, you must mail a written statement to the Clerk of the Court and the Settlement Administrator by [REDACTED], 2019. No class member will be entitled to speak at the Final Approval hearing or to object to the settlement unless written notice of the class member's intention to appear has been mailed to the Clerk of the Court at Everett McKinley Dirksen United States Courthouse, 219 South Dearborn Street, Chicago, IL 60604, and the Settlement Administrator by [REDACTED], 2019.

How do I update my Contact Information?

You must notify the Settlement Administrator of any changes in your mailing address so that your settlement award will be sent to the correct address. To update your address, contact the Settlement Administrator, listed below.

Does The Law Protect Me From Retaliation If I Participate?

Yes. It is illegal for Advocate to retaliate or discriminate against you based on your decision to participate in the Settlement. Advocate will not discriminate or retaliate against you in any way because of your decision to participate in the Settlement or cash your settlement check.

When is the Final Approval Hearing?

The Court will hold a hearing in this case on [Date], 2019, in Courtroom 1203, United States Court, 219 S. Dearborn St., Chicago, Illinois 60604 at [Time], to consider, among other things, (1) whether to approve the settlement; (2) a request by the lawyers representing all class members to an award of no more than \$600,000 in attorneys' fees and \$22,000 in costs; (3) a request for service awards of \$15,000 for Class Representative Crixenia Magpayo, \$1,500 each for seven Class Members who gave depositions, and \$500 each for four Class Members who gave declarations in support of class certification; and (4) a request for an award of \$6,300 to resolve the Class Representative's individual claims. Plaintiff is requesting these service awards in recognition for work these individuals performed that helped recover money for the nurses included in this settlement. You may appear at the hearing, but you are not required to do so.

If you have any questions or for more information, contact the Settlement Administrator or Class Counsel at:

Settlement Administrator

Analytics Consulting LLC

Address Line 1

Address Line 2

Telephone Number

Class Counsel

Maureen A. Salas-msalas@flsalaw.com

Douglas M. Werman-dwerman@flsalaw.com

Werman Salas P.C.

77 W. Washington St., Suite 1402

Chicago, IL 60602

(312) 419-1008

EXHIBIT 2

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

CRIXENIA MAGPAYO, individually, and)	
on behalf of all others similarly situated,)	
)	
Plaintiff,)	Case No. 1:16-cv-01176
v.)	
)	Judge Blakey
ADVOCATE HEALTH AND HOSPITALS)	
CORPORATION,)	
)	
Defendant.)	

**[PROPOSED] ORDER PRELIMINARILY APPROVING CLASS ACTION
SETTLEMENT AGREEMENT, APPROVING FORM OF CLASS NOTICE, AND
SCHEDULING HEARING FOR FINAL APPROVAL**

WHEREAS, Plaintiff has filed a motion for an order preliminarily approving the settlement of this Action¹ as stated in the Class Action Settlement Agreement (“Settlement” or “Settlement Agreement”), which, together with the exhibits attached thereto, set forth the terms and conditions for a proposed settlement of the Action;

WHEREAS, Defendant does not oppose preliminary approval of the Settlement;

WHEREAS, the Court has read and considered the Settlement Agreement, the exhibits attached thereto, and the briefing submitted in support of preliminary approval of the Settlement;

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. The Court hereby preliminarily approves the Settlement Agreement and the Settlement of the Illinois Wage Payment and Collection Act and Illinois Minimum Wage Law class action claims as fair, reasonable and adequate. In addition, the Settlement of the Fair Labor

¹ Capitalized terms are used in this order as defined in the Parties’ Class Action Settlement Agreement.

Standards Act collective action is approved as a fair and reasonable resolution of a *bona fide* dispute in this contested litigation.

2. The formula for allocation of Settlement Awards set forth in the Settlement Agreement, based on the hours deducted on account of meal breaks and the regular rates paid to nurses, is approved as a fair, equitable, and reasonable measure for calculating and distributing the settlement payments to the Class Representative, Class Members, and Opt-in Plaintiffs.

3. The Settlement Agreement is the result of mediation with a third-party neutral mediator and arm's-length negotiations between experienced attorneys who are familiar with class action litigation in general and with the legal and factual issues of this case in particular.

4. The Court has considered the pleadings and arguments in support of the motion for preliminary settlement approval and finds that the proposed settlement class is proper and coextensive with the classes that were previously certified pursuant to Rule 23 on February 20, 2018. The settlement class includes:

All persons employed by Advocate Health and Hospitals Corporation as hourly-paid nurses in Trinity Hospital's Emergency Department between January 26, 2006 and September 5, 2018, who have not excluded themselves from this Action. The term Class Members includes the Class Representative and all Opt-in Plaintiffs.

5. Class Members shall not be required to submit a claim form to participate in the Settlement and receive a monetary award.

6. The Court approves, as to form and content, the Class Notice attached as Attachment B to the Settlement Agreement, and finds that the distribution of the Class Notice as set forth in Section III.11 of the Settlement Agreement: (1) meets the requirements of federal law and due process; (2) is the best notice practicable under the circumstances; and (3) shall constitute due and sufficient notice to all individuals entitled thereto.

7. The Parties and the Settlement Administrator shall have the following pre-Class Notice deadlines. The parties may, by mutual agreement, agree upon a reasonable extension of time for the deadlines in this paragraph, without further notice to the Court.

a. Within fourteen (14) days of the Court entering this Order on the docket, Defendant shall provide the Settlement Administrator and Class Counsel with a complete listing of all Class Members (“Class List”). That Class List shall contain Class Members’ names, phone numbers, social security numbers, and last-known mailing addresses.

b. Within seven (7) days of Defendant providing the Settlement Administrator and Class Counsel with the Class List, Class Counsel will provide the Settlement Administrator with any updated addresses or telephone numbers it has in its possession for Class Members.

c. Within fourteen (14) days of receipt of the complete Class List from Defendant, the Settlement Administrator shall mail a Class Notice to Class Members in accordance with Section III.11 of the Settlement Agreement.

8. Within twenty-eight (28) days of the Court entering this Order on the docket, Class Counsel shall file a Petition for Attorneys’ Fees and Litigation Expenses.

9. Within sixty (60) days of the initial mailing of the Class Notice, Class Members objecting to the terms of the settlement must submit a written statement objecting to the Settlement, and it must be sent to the Clerk of the Court and the Settlement Administrator, postmarked on or before no later than sixty (60) days after the date the Class Notice is first mailed by the Settlement Administrator.

10. Within sixty (60) days of the initial mailing of the Class Notice, Class Members who wish to exclude themselves from the Settlement Class and not participate in the proposed

Settlement must submit a written request for exclusion to the Settlement Administrator. Such written request for exclusion must contain the full name, address, telephone number, and the last four digits of the social security number the Class Member used when working for Defendant. No later than ten (10) days after the objection and exclusion deadline, the Settlement Administrator shall furnish to Class Counsel and Defendant's Counsel a complete list of all Class Members who have timely excluded themselves from the Class.

11. A Final Approval Hearing, for purposes of determining whether the Settlement should be finally approved, shall be held before this Court on [insert date approximately 120 days from entry of preliminary approval order], 2019, at [] a.m., in Room 1203 of the U.S. District Court, 219 S. Dearborn, Chicago, Illinois. At the hearing, the Court will hear final arguments concerning whether the proposed Settlement of the Action on the terms and conditions provided for in the Settlement Agreement is fair, reasonable and adequate and should be approved by the Court. The Court will also hear at that time any objections submitted by Class Members. The Court also will consider Class Counsel's request for an award of attorneys' fees and costs and for Service Awards to be made to the Class Representative and certain Class Members.

12. Any Class Member may enter an appearance in the Litigation, at his or her own expense, individually or through counsel of his or her own choice. Any Class Member who does not enter an appearance or exclude himself or herself from the Settlement Class will be represented by Class Counsel.

13. Any Class Member may appear at the Final Approval Hearing and show cause, if any, why: (1) the proposed Settlement of the Action should or should not be approved as fair, reasonable, and adequate; (2) why a judgment should or should not be entered thereon; (3) why attorneys' fees should or should not be awarded to Class Counsel; and/or (4) why the Class

Representative and Class Members who sat for depositions or provided declarations in support of Plaintiff's Motion for Class Certification should or should not receive extra compensation in the form of Service Awards. However, no Class Member or any other person shall be heard or entitled to contest the approval of the terms and conditions of the proposed Settlement, or, if approved, the Judgment to be entered thereon approving the same, or, if awarded, Service Awards to the Class Representative or certain Class Members, or the attorneys' fees and costs awarded to Class Counsel, unless that person has, no later than sixty (60) days after the initial mailing of Class Notice to Class Members, served by first class mail on the Settlement Administrator, written notice of his or her intention to appear at the Final Approval Hearing and written objections and copies of any papers and briefs in support thereof, explaining the basis of the objection. A person must also timely file his or her written notice of his or her intention to appear at the Final Approval Hearing and written objections and copies of any papers and briefs in support thereof, with the Clerk of the Court. The Court will consider and rule upon all timely filed objections at the Final Approval Hearing. Any Class Member who does not timely file and serve his or her objection in the manner provided above shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to the fairness or adequacy of the proposed Settlement as incorporated in the Settlement Agreement and any Service Award awarded to the Class Representative and certain Class Members and the Attorneys' Fees and Litigation Expenses awarded to Class Counsel, unless otherwise ordered by the Court.

14. As provided for in the Settlement Agreement, if this Court does not grant final approval of the proposed settlement set forth in the Settlement Agreement, then the Settlement Agreement will be vacated, any funds to be awarded under the Settlement Agreement shall be

returned to their respective status as of the date and time immediately prior to the execution of the Settlement Agreement, and the Litigation shall proceed without prejudice to any party.

15. All papers in support of the Settlement shall be filed no later than seven (7) days before the Final Approval Hearing.

16. At the Final Approval Hearing, the Court shall determine whether the proposed Settlement, and any application for Service Awards, Attorneys' Fees and Litigation Expenses, shall be approved.

17. The Court reserves the right to adjourn the date of the Final Approval Hearing without further notice to the Class Members and retains jurisdiction to consider all further applications arising out of or connected with the proposed Settlement.

DATED: _____

THE HONORABLE JOHN ROBERT BLAKEY
United States District Judge

EXHIBIT 3

the Fair Labor Standards Act (“FLSA”), Illinois Minimum Wage Law (“IMWL”), and the Illinois Wage Payment and Collection Act (“IWPCA”).

5. Over 95% of my legal work involves federal and state court litigation of wage and hour cases in which employees seek to collect unpaid compensation or other owed employment benefits.

6. Since I became admitted in 2006, I have practiced primarily in representing employees in cases arising under federal and state wage and hour laws, including the FLSA, IMWL, and IWPCA. I have been counsel in over four hundred and twenty-five (425) cases filed in state and federal court, the majority of which involved claims alleging the non-payment of overtime pay, minimum wages, and other owed compensation. The majority of these cases were filed as collective actions under § 216(b) of the FLSA and/or set forth class action claims under the IMWL and/or IWPCA.

7. On January 1, 2013, I became a shareholder in the law firm Werman Salas P.C.

8. I have been a speaker on wage and hour matters. In October 2011, I was a speaker at the National Employment Lawyers Association’s meeting on “Representing Workers in Individual & Collective Actions Under the FLSA.” In August 2012, I was a speaker at the American Bar Association’s Section of Labor and Employment Law’s Annual Conference. In October 2012 and October 2013, I was a speaker for continuing legal education “Wage & Hour Law” programs hosted by Bridgeport Legal Conferences. On March 9, 2013, I was a speaker at the National Employment Lawyers Association meeting on “Preventing Wage Theft: A Two-Day Guide to Litigation Cases Involving Wages, Hours and Work.” On March 23, 2016, I was a speaker for an Illinois State Bar Association continuing legal education program “Tips for Negotiating Parental Leave for Attorneys.” On April 28, 2016, I was a speaker for a Chicago

Bar Association continuing legal education program “Hot Topics in Wage & Hour Law.” On November 10, 2017, I was a speaker for the American Bar Association’s Section of Labor and Employment Law’s Annual Conference.

9. I am a Contributing Editor to Chapter 19, “Collective Actions,” of the leading treatise on the Fair Labor Standards Act, entitled, “Kearns, *The Fair Labor Standards Act*.”

The Litigation

10. On January 26, 2016, Crixenia Magpayo filed this Action in the United States District Court for the Northern District of Illinois, on behalf of herself and others similarly situated, alleging that Defendant violated the FLSA, IMWL, and IWPCA by implementing policies and practices that resulted in Defendant’s failure to accurately record all time ED nurses worked and failure to pay ED nurses for all time they worked as a result of Defendant’s meal break policies and practices.

11. Plaintiff, the Opt-in Plaintiffs, and the Class Members in this case are nurses who allege they were subjected to the practice of Defendant automatically deducting thirty minutes of pay for an unpaid meal break, without ensuring that the nurses in fact received the full meal break. Plaintiff claims this practice denied nurses their promised hourly wage for work performed during the unpaid thirty-minute meal periods in violation of the IWPCA. Moreover, in weeks when the nurses worked more than forty (40) hours, Plaintiff claims that Defendant’s practices denied ED nurses overtime wages in violation of the IMWL the FLSA.

12. Defendant twice moved to dismiss the IWPCA claim in this lawsuit for failure to state a claim. The second motion was fully briefed and argued before District Court Judge Blakey. On June 9, 2016, the Court denied the motion. Defendant also filed, and the Court

denied in part, Defendant's motion for summary judgment on Plaintiff's IMWL, FLSA, and IWPCA claims.

13. On February 20, 2018, the Court granted Plaintiff's contested motion for certification of Plaintiff's IMWL and IWPCA claims under Rule 23 and of Plaintiff's FLSA claims under 29 U.S.C. § 216(b).

14. Including the Named Plaintiff, 18 nurses filed consent forms to become plaintiffs in the collective action brought under the FLSA. Two nurses elected to exclude themselves from the Rule 23 claims: Meghan Miskell and Stephanie Spencer Igwebuike.

15. During the lawsuit, the Parties engaged in extensive written and oral discovery, including the production of thousands of pages of documents and ten depositions. Despite this discovery, the Parties still disagree over a number of critical issues in this lawsuit, including: (1) whether Defendant ensured nurses were relieved of work duties and able to take 30-minute meal breaks; (2) whether Defendant agreed to pay ED nurses an hourly rate of pay for all time they worked or if it only agreed to pay for the time recorded on the time clock; (3) the continued propriety of class certification; (4) whether Defendant could establish a good faith defense to liquidated damages under the FLSA; and (5) whether Defendant's alleged violation of the FLSA was willful.

16. The Parties engaged in two arm's-length mediations with third-party neutrals before reaching a settlement. On March 20, 2017, the Parties participated in a mediation with the Honorable Stuart Nudelman, but the mediation did not result in a settlement. On September 5, 2018, the Parties reached a settlement of this case through participation in a mediation with third-party neutral mediator Richard Sher.

Settlement Administration

17. The Parties have selected Analytics Consulting LLC to act as Settlement Administrator. The duties of the Settlement Administrator are set forth in the Settlement Agreement and include: (1) issuing Class Notice forms to Class Members; (2) receiving requests for exclusion and objections to the Settlement; (3) issuing Settlement Payments; (4) calculating, withholding and remitting to the IRS the employees' and employer's shares of applicable payroll taxes; (5) issuing Form W-2s and Form 1099s and any other required state and federal tax forms; and (6) remitting unclaimed funds to the *cy pres* recipient. The Parties will cooperate with the Settlement Administrator to ensure that it has all of the information it needs to perform these tasks.

18. The Parties' proposed notice program provides that all Class Members will receive the Class Notice by first-class mail, with the ability to call the Settlement Administrator or Class Counsel to obtain additional information. Prior to mailing the Class Notice, the Settlement Administrator will verify the most recent mailing address for Class Members by the United States Postal Service's National Change of Address ("NCOA") database, or a comparable database. The Settlement Administrator shall promptly conduct a second mailing for any Class Member whose Class Notice is returned as undeliverable provided that a forwarding address is provided by the U.S. Postal Service or otherwise located by the Settlement Administrator.

Payments to Class Members

19. The consideration to be paid by Defendants to the Settlement Class is substantial given the considerable risk Plaintiffs face by continued litigation, and the plan of allocation is reasonable. The Net Settlement Amount, estimated to equal \$844,200, is equivalent to all Class Members receiving approximately 65% of the hours deducted on account of meal breaks. Each

Class Member's *pro rata* settlement share will be calculated as set forth in Section III.8 of the Settlement Agreement. The largest Settlement Payment exceeds \$21,000, and the average Settlement Payment amounts to approximately \$3,170.

20. The distribution of the Settlement Fund is fair to Class Members, as they will share in the Fund on a *pro rata* basis based the number of hours that were deducted on account of 30 minute meal periods for the period between January 26, 2006 and September 1, 2018. Furthermore, the entire Gross Settlement Amount will be distributed without the requirement of claim filing, and Class Members will only release the wage and hour claims related to meal breaks or for deductions from time related to meal breaks while working as a nurse at Defendant's Trinity Hospital's ED. This is an excellent result by any measure and militates in favor of preliminary approval.

Class Counsel Support the Settlement

21. Class Counsel have gained a comprehensive knowledge of the facts and legal issues relating to the respective claims and defenses and has ample evidence on which to base an informed assessment of the proposed Settlement. Based on Class Counsel's knowledge of the case and the applicable law, as well as their experience in numerous similar wage and hour collective and class actions, Class Counsel believes the settlement is fair, reasonable and adequate.

Dated: November 15, 2018

s/Maureen A. Salas
Maureen A. Salas