Exhibit A

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

VIRGINIA WOOLFSON and MICHAEL STINSON, *on behalf of themselves and all other employees similarly situated,* *Plaintiffs,* v. CAREGROUP, INC., BETH ISRAEL DEACONESS MEDICAL CENTER, INC., BETH ISRAEL DEACONESS HOSPITAL – NEEDHAM, INC., MOUNT AUBURN HOSPITAL, NEW ENGLAND BAPTIST HOSPITAL, PAUL LEVY, LISA ZANKMAN, CAREGROUP, INC. 401K SAVINGS & INVESTMENT PLAN, and CAREGROUP VOLUNTARY 403B SAVINGS PLAN, *Defendants.*	Civil Action No. 1:09-cv-11464

SETTLEMENT AGREEMENT, RELEASE, & WAIVER

This Settlement Agreement, Release and Waiver ("Agreement") is made this 20th day of May, 2010, by and between Plaintiffs Virginia Woolfson and Michael Stinson, on behalf of themselves, the classes they purport to represent, their agents, representatives, assignees, heirs, executors, beneficiaries and trustees (collectively, "Plaintiffs") and Defendants CareGroup, Inc., Beth Israel Deaconess Medical Center Inc., Beth Israel Deaconess Hospital – Needham, Inc., Mount Auburn Hospital, New England Baptist Hospital, Paul Levy, Lisa Zankman, CareGroup, Inc. 401K Savings & Investment Plan, and CareGroup Voluntary 403B Savings Plan, on behalf of themselves, their parents, divisions, subsidiaries, affiliates,[1] their predecessors and successors, and their directors, officers, members, fiduciaries, insurers, employees, attorneys and agents (collectively "Defendants") (Plaintiffs and Defendants are collectively referred to herein as the "Parties").

WHEREAS, Plaintiffs commenced litigation in the U.S. District Court for the District of Massachusetts (the "Court") with the above caption, Civil Action No. 1:09-cv-11464-JLT (the "Federal Action" or "Action"), in which they asserted claims under the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.* ("FLSA"), the Employee Retirement Income and Security Act, 29 U.S.C. § 1001, *et seq.* ("ERISA"), the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961, *et seq.* ("RICO"), and for estoppel arising out of Defendants' alleged failure to

[1] These affiliates include but are not limited to Cardiovascular Associated Physicians of Harvard Faculty Physicians at BIDMC, HeartCenter of MetroWest, Medical Care of Boston Management Corp. d/b/a Affiliated Physicians Group, Mount Auburn Professional Services, and New England Baptist Medical Associates.

appropriately compensate non-exempt employees (the "Non-Exempt Employees") for all time worked; and

WHEREAS, Plaintiffs also commenced litigation in the Middlesex Superior Court for the Commonwealth of Massachusetts, Civil Action No. 09-3542 (the "State Action") (the Federal and State Actions are jointly referred to as the "Actions"), in which they asserted the same factual circumstances as in the Federal Action but made statutory claims under the Massachusetts General Laws Ch. 149 §§ 148, 150, and Ch. 151 §§ 1A, 1B, and common law claims for breach of contract (failure to pay earned wages), breach of contract (failure to provide and pay for missed and/or interrupted meal breaks), breach of implied contract, money had and received in assumpsit, quantum meruit/unjust enrichment, fraud, negligent misrepresentation, equitable estoppel, promissory estoppel, conversion, and failure to keep accurate records; and

WHEREAS, Plaintiffs and their counsel, the law firm of Thomas & Solomon LLP ("Class Counsel"), purported to bring the FLSA claims asserted in the Federal Action as a collective action pursuant to 29 U.S.C. § 216(b) and all other claims in the Federal and State Actions as a class action pursuant to FED. R. CIV. P. 23 and MASS. R. CIV. P. 23 on behalf of Plaintiffs and other current and former employees who worked for Defendants as Non-Exempt Employees; and

WHEREAS Defendants deny that they have committed any wrongdoing or violated any state or federal law as alleged in the Actions and have vigorously defended the claims asserted in the Actions; and

WHEREAS, in order to avoid the expense and burden of further litigation, the Parties desire to resolve any and all claims that were or could have been asserted under either the Federal Action or State Action;

NOW, THEREFORE, in consideration of the foregoing premises and the mutual promises hereinafter set forth, the Parties agree as follows:

1. No Admission of Liability or Concession as to the Merits.

Defendants expressly deny any wrongdoing or any violation of state or federal law as alleged in the Actions. Nothing contained in this Agreement shall be construed as an admission of any liability or concession as to the merits of any claim by any of the Defendants, and all Parties agree not to offer this Agreement as evidence or otherwise use it in any judicial or administrative proceeding, except that this Agreement may be introduced in any proceeding for the sole purpose of enforcing its terms.

2. Approval of Settlement.

(a) All terms of this Agreement are contingent upon the approval of the Parties' settlement and certification by the Court of the Settlement Classes (as defined in Section 4 below) for settlement purposes only.

(i) For purposes of this Agreement, "Preliminary Approval" shall be deemed to occur upon the issuance of a Court order conditionally certifying the Settlement Classes specified in Section 4 for purposes of providing notice to the affected individuals as described in Section 10(a) (the "Preliminary Approval Order").

(ii) If the Court grants an order fully, finally, and unconditionally (1) granting the Parties' motion for approval of their settlement, (2) extinguishing claims against Defendants as specified in Sections 16 and 17; and (3) dismissing the Action with prejudice ("Final Approval Order"), then the effective date of this Settlement Agreement shall be deemed to occur (A) thirty-five (35) days after the issuance of such order, if no appeal of said order is filed within that 35-day period, or (B) upon the final disposition of any appeal that has the effect of affirming the order in its entirety ("Effective Date").

(iii) The Parties agree to cooperate and take all steps necessary and appropriate to obtain a Preliminary Approval Order and Final Approval Order, and otherwise effectuate all aspects of this Agreement. The Parties also agree that upon the entry by the Court of the Final Approval Order, Paragraph 6 of the November 12, 2009, Stipulation Pending Parties' Attempt to Mediate, tolling the statute of limitations, shall be revoked and shall be rendered null and void. The Parties also agree that upon the entry of the Final Approval Order, Paragraph 6 of the November 12, 2009, Stipulation Pending Parties' Attempt to Mediate shall have no effect and the statute of limitations will again begin to toll for any class members who did not join or who opted-out of the settlement.

(b) Defendants stipulate for settlement purposes only to the certification of the Settlement Classes and Defendants do not waive, and instead expressly reserve, their right to challenge the propriety of conditional or class certification for any purpose as if this Agreement had not been entered into by the Parties in the event that the Court does not approve the settlement or the Effective Date does not occur.

(c) The Parties and their counsel agree that they will, contemporaneously with their execution of this Agreement, execute a copy of the Joint Motion For Preliminary Approval of Class and Collective Action Settlement and Incorporated Memorandum of Law, **attached as Tab A** (the "Joint Motion"), seeking Preliminary Approval of their proposed settlement. Plaintiffs agree that they will file the Joint Motion with the Court within seven (7) days after both Parties have executed this Agreement and the Joint Motion.

(d) The Parties agree that if the Court does not approve any material term in the Parties' Joint Motion or requires as a condition to granting the Joint Motion any term that effects a material change in this Agreement, then this Agreement shall be null and void and of no effect whatsoever, except for Sections 3(b), 4(c), and

15 herein. The Parties further agree that any requirement that Defendants pay any amount greater than the amount specified in Section 5 shall be deemed a material change.

(e) In conjunction with the filing of the Joint Motion, the Parties will jointly request that the Court hold a fairness hearing regarding the Parties' request for approval of their proposed settlement one-hundred (100) days after the filing of the Joint Motion. Counsel for the Parties will communicate with the Clerk of the Court and make any further filings necessary to secure the approval of their request.

3. Amendment to Complaint.

(a) Concurrent with the filing of the Parties' Joint Motion, Class Counsel shall file pursuant to FED. R. CIV. P. 15(a) and with Defendants' written consent an Amended Complaint in the Action in the form **attached as Tab B** to this Agreement. The Parties acknowledge that the Amended Complaint is intended to be identical in substance to the original Complaint filed in the Federal Action, except that it clarifies the Defendants and adds all allegations and claims asserted in the State Action to the Federal Action. Plaintiffs also agree not to re-file their State Action.

(b) The Parties hereby stipulate and agree that Defendants shall not be required to serve or file a responsive pleading in response to the Amended Complaint until after the Court makes a final ruling on the Parties' Joint Motion. If, for any reason, (i) the Court denies the Parties' request for Preliminary Approval, (ii) the Court does not enter the Final Approval Order; or (iii) the Effective Date cannot occur, Class Counsel shall withdraw the Amended Complaint without prejudice. In the event that Class Counsel withdraws the Amended Complaint pursuant to this paragraph, no Party shall argue that Defendants' consent to the filing of the Amended Complaint or Class Counsel's withdrawal of the Amended Complaint has any bearing on the merits of any subsequent litigation of the matters alleged in the Actions.

4. Settlement Classes.

(a) The "Collective Class" shall include all individuals who have filed consents to join the Action (including without limitation all individuals who timely return a Claim Form containing a consent to join the Action) and who worked for any of the Defendants as a Non-Exempt Employee from September 3, 2006 through the date of Final Approval of the Settlement ("Class Period").

(b) The "Rule 23 Class" shall include all individuals who worked for any of the Defendants as a Non-Exempt Employee during the Class Period.

(c) In the event that, for any reason, the Court does not enter a Final Approval Order or the Effective Date does not occur, the Court's certification of the Collective Class and Rule 23 Class (together, "Settlement Classes") shall be void, of no effect, and shall not be used for any purpose whatsoever in any further

proceeding(s) in any of the above-referenced lawsuits or in any other lawsuit asserting the same or similar claims and causes of action and the parties will be returned to their respective positions *nunc pro tunc* as of March 19, 2010, the date on which they reached an agreement in principle to settle this litigation.

5. Settlement Payment.

(a) Defendants agree to pay a total sum not to exceed eight million, five hundred thousand dollars ($8,500,000.00) ("Total Settlement Amount") in order to fully and finally resolve the claims at issue in this litigation in their entirety. The Total Settlement Amount is inclusive of Class Counsel's fees and costs; interest; litigation costs; back wages; liquidated/statutory damages; and premium payments to plaintiffs and individuals who opted-in to the Action prior to March 19, 2010, if any. In addition, the Total Settlement Amount will cover the full cost of administration of the settlement and claims process, the full amount of the participating class members' W-2 withholdings (and state/local withholdings if applicable), any employer share of payroll taxes on back wage payments made to participating claimants, the cost of Plaintiffs' and Defendants' experts' analysis, and the full amount of the mediation fees and costs. The Total Settlement Amount less the items listed in the three sentences directly above is defined as the "Net Settlement Amount." The amount to be funded by the Defendants is defined in Paragraph 12 herein.

(b) The Parties agree that any and all remainder of the Total Settlement Amount, after the claims period has expired and distribution to claimants is made, shall remain the property of the Defendants and/or shall be returned to the Defendants ("Reverter"). The Reverter includes but is not limited to any amount unclaimed by members of the Settlement Classes who have failed to timely return a Claim Form as required by Section 10(b) or failed to cash a check within the time period allotted under Section 13(a). The Parties agree that there is no limitation on the amount of this Reverter.

(c) The Parties agree that there shall be no injunctive relief as part of this Settlement.

6. Attorneys' Fees and Costs.

(a) Class Counsel may petition the Court for an award of attorneys' fees and costs in conjunction with the Parties' settlement. Any such petition shall be filed no later than ten (10) days prior to the date of the final approval hearing.

(b) Any attorneys' fees and costs awarded in conjunction with the Parties' settlement shall be paid from the Total Settlement Amount. Defendants will not oppose any request by Class Counsel for an award of fees and costs that is equal to or less than thirty-three percent (33%) of the Total Settlement Amount. Any amount that the Court reduces the award of attorney's fees and costs sought by Class Counsel shall revert to the Defendants.

7. Service Payments to Named Plaintiffs

(a) Class Counsel may petition for an award of service payments for named plaintiffs Virginia Woolfson and Michael Stinson, as well as any opt-in party plaintiffs who had contacted Class Counsel to join to the Federal Action or State Action prior to March 19, 2010, of up to but not exceeding twenty thousand dollars ($20,000) collectively. Defendants will not oppose such service payments of up to but not exceeding twenty thousand dollars ($20,000), collectively. Any such petition shall be filed no later than ten (10) days prior to the date of the final approval hearing. In the event that any of these individual opt-in party plaintiffs identified above opts-out of, or excludes themselves from, the Settlement, the Parties agree that such individuals, if any, will not receive any service payment.

(b) Any service payments awarded to named plaintiffs and opt-in party plaintiffs shall be in addition to payments that they may be entitled to receive as members of the Settlement Classes. Any such service payments awarded by the Court shall be distributed by the Settlement Administrator in separate checks mailed contemporaneously with the mailing of checks pursuant to Section 13 and shall be reported to state and federal taxing authorities as non-wage income on IRS Form 1099.

8. <u>Settlement Administrator.</u>

(a) The Parties shall jointly retain Rust Consulting, Inc. ("Rust" or "Administrator") to serve as the administrator of the settlement and perform services including, without limitation, dissemination of notices to eligible class members, analysis of claim forms, calculation of payments due, distribution of awards from the Net Settlement Amount to eligible class members, tax reporting, withholdings, and payment of the Defendants' share of any payroll taxes related to settlement, and providing notices of the Parties' settlement to governmental authorities as required by law.

(b) The full amount (100%) of the costs of administering the Parties' settlement, including the full amount (100%) of the fees and costs paid to the Settlement Administrator, shall be paid from the Total Settlement Amount. The Parties shall instruct Rust to prepare a binding estimate of fees and costs for all services to be provided in conjunction with the Parties' settlement and this Agreement ("Administrative Costs") prior to the filing of the Joint Motion. Upon a Final Approval Order, the Parties shall authorize the payment to Rust of the Administrative Costs from the monies on deposit in the Escrow Account.

9. <u>Notices Mandated by Statute.</u>

(a) To the extent required, the Parties will instruct the Administrator to mail notices of the Parties' proposed settlement to an "Appropriate Federal Official" and "Appropriate State Officials" (collectively, "Government Officials") no later than ten (10) days thereafter in accordance with 28 U.S.C. § 1715.

(b) If required, Defendants, with the assistance of the Administrator, shall prepare the notices referenced in the preceding Section, which shall include as exhibits the Joint Motion, this Agreement, and all Complaints filed in the Federal Action and State Action. Such mailings shall also include information regarding the estimated percentage of the Net Settlement Amount that the Parties anticipate would be distributed to individuals living in each state following the Effective Date.

(c) The mailings described in this Section shall not be subject to the non-disclosure obligations in Section 15, and neither Party shall be deemed in breach of those non-disclosure obligations as a result of the Administrator's mailing of such materials to the Government Officials or as a result of any other disclosures made to Government Officials regarding such mailings.

10. Distribution of Net Settlement Amount.

(a) Mailing of Notices.

Within fourteen (14) days after the Court grants Preliminary Approval of the Parties' proposed settlement, the Defendants shall provide the Administrator with the necessary class data to prepare the class notices. This class data will be for the time period from September 3, 2006 through the date of Preliminary Approval. The Parties will then instruct the Settlement Administrator to, within fourteen (14) days of receipt of the class data, compile and mail to members of the Settlement Classes (referenced in Section 4) packets containing a notice of the Parties' proposed settlement in the form **attached as Tab C** ("Notice"), a Consent to Join and Claim Form ("Claim Form") in the form **attached as Tab D**, and any other mutually agreed upon communication (collectively, the "Notice Packet"). The Administrator shall send such packets by certified First Class U.S. Mail to each member of each of the Settlement Classes at such individuals' last known address as provided by Defendants. For any returned Notice Packets, the Settlement Administrator shall conduct reasonable address verification efforts consistent with the customary practices in the settlement administration industry. Through the date of the Final Approval Order, the Defendants shall provide the Administrator with class data for any new hires who fall within the class description on a rolling basis within two (2) weeks of their hire and the Administrator will thereafter send a Notice Packet to that class member.

(b) Claim Form.

The Claim Form to be distributed as a part of the Notice Packet shall denote that the individual returning the form consents to become a party plaintiff in the Federal Action, and, that upon the Effective Date will release all claims brought, or which could have been brought, against Defendants.

(i) In order to be valid and effective, a Claim Form must be signed, dated, and postmarked or otherwise returned to the Administrator no later than the date set forth in the Notice which shall be forty-five (45) days after the

mailing of the notices and claim forms to class members. Upon receipt of an unsigned, untimely, incomplete or altered form, the Administrator shall promptly apprise the individual who returned the form of its deficiency and provide such individual with a substitute form that the individual may use to cure the deficiency within ten (10) days. A Claim Form that remains unsigned, untimely, incomplete or altered eleven (11) days after a deficiency letter has been mailed by the Administrator shall be void, absent a showing of good cause as determined by the Court. The Parties agree to allow the Administrator to resolve any challenges regarding the validity of any Claim Form made pursuant to this Section, subject to approval by the Court.

(ii) Any member of the Rule 23 Class who (a) does not return a Claim Form to the Settlement Administrator in compliance with the preceding paragraph, and (b) does not seek to be excluded from the Parties' settlement prior to the date set forth in the Notice, shall be deemed to release all claims brought or which could have been brought against Defendants as described in Section 16(b) and shall be deemed to have waived any right to receive a payment in conjunction with the Parties' settlement. Class members shall have 45 days to opt-out of, or exclude themselves from, the Settlement.

(iii) Any member of the Collective Class who (a) has submitted a consent to join the State Action or the Federal Action to Class Counsel prior to Preliminary Approval, and (b) does not return a Claim Form to the Settlement Administrator in compliance with the Section 10(b)(i), shall be deemed to release all claims brought or which could have been brought against Defendants as described in Section 16(a) and 16(b) and shall receive a payment by mail to his or her last known address or an address of Class Counsel's designation, provided that they do not submit a timely and valid opt-out form.

11. <u>Calculation of Individual Awards.</u>

Within twenty-one (21) days of the Final Approval Order, Defendants shall provide the Administrator with supplemental class data for the time period from the date of Preliminary Approval through the date of the Final Approval Order. Upon receipt, the Administrator shall calculate for each individual class member who submits a Claim Form, an amount which they will receive pursuant to the formula below (his or her "Claim Amount"):

(1) Calculate the "Distribution Fund" by subtracting from the Total Settlem ent Amount:

(i) any attorneys' fees and costs awarded to Class Counsel by the Court,

(ii) any Court-approved service/incentive payments awarded to the class representative plaintiffs and/or certain opt-ins by the Court,

(iii) the full amount (100%) of the Notice and Administrative Costs,
(iv) any employer share of payroll taxes on back wage payments made to participating claimants,
(v) the full amount of the mediation fees and costs, and
(vi) the full costs of Plaintiffs' and Defendants' experts' analysis;

(2) Calculate the total wages earned as a Non-Exempt Employee by each individual claimant during the Class Period ("Numerator");

(3) Calculate the total wages earned by all members of the Settlement Classes while working for any of the Defendants as a Non-Exempt Employee during the Class Period ("Denominator");

(4) Divide the Numerator for each individual claimant by the Denominator to get the fraction of the Distribution Fund to which that individual claimant is entitled; and

(5) Multiply the Distribution Fund, (1) above, by the result obtained in (4), above, to get the individual claimant's Claim Amount.

12. Funding of Settlement Account.

Within seven (7) days after the Effective Date, the Administrator shall notify Defendants of the total amount to be paid into a qualified settlement fund as defined by the Internal Revenue Code ("Escrow Account"). This total amount to be paid shall be limited to: (a) the sum of any and all distributions owed to Class Members as calculated by the Administrator based on the submission of valid claim forms, (b) Class Counsel's court approved fees and costs, (c) the full cost of administration of the settlement and claims process, (d) the full amount of the participating Class Members' W-2 withholdings (and state/local withholdings if applicable), (e) the full amount of the employer share of payroll taxes on back wage payments made to Class Members, (f) the full costs of Plaintiffs' and Defendants' experts' analysis, (g) the full amount of the mediation fees and costs, and (h) the Court approved incentive payments. From the date the Administrator provides Defendants with actual notice of the total amount to be paid, Defendants will have seven (7) days to deposit such funds into the Escrow Account.

13. Payments to Class Members.

Following the Effective Date, the completion of the administration process, further order of the Court, payment by Defendants of the distribution funds into the Escrow Account in accordance with Section 12 herein, and provision by Defendants to the Administrator of supplemental class data for the period between Preliminary Approval and Final Approval in accordance with Section 11 herein, within 5 days, the Administrator shall distribute the individual Claim Amounts by mailing checks, less applicable taxes and withholdings, to each member of each of the Settlement Classes who has timely returned a valid Claim Form ("Eligible Claimants").

(a) Checks issued pursuant to the preceding paragraph shall expire sixty (60) days after they are issued, but a failure by any Eligible Claimant to deposit or cash a check within the time period allotted shall have no effect on that individual's release of claims pursuant to Section 16. Subject to good cause shown by the Eligible Claimant, a check may be reissued for up to thirty (30) days following the original sixty (60) day period.

(b) The Administrator shall withhold from payments to Eligible Claimants taxes and other sums the Claimant is required to pay by state or federal law. The Parties agree that fifty percent (50%) of the amount paid to each participating member of the Settlement Classes shall be treated as wages, and the remaining fifty percent (50%) shall be treated as liquidated/statutory damages for tax purposes. The Administrator shall prepare and distribute the appropriate Form 1099s.

(c) The Parties agree that payments made under this Agreement cover any liability Plaintiffs or any Class Members might claim pursuant to any employee benefits plan, but will not: (a) form the basis for additional contributions to, benefits under, or any other monetary entitlement under; (b) count as earnings or compensation with respect to; or (c) be considered to apply to, or be applied for purposes of, any of the Released Party's bonus, pension, and retirement programs, 401(k) plans, or any other benefit plan. The Parties further agree that, to the extent applicable under any employee benefits plan, the amounts paid pursuant to this Agreement are not compensation or wages for hours worked, compensation or wages paid or earned, or any similar measuring term as defined by any plans and programs for purposes of eligibility, vesting, benefit accrual or any other purpose.

(d) The payment to Eligible Claimants is fully dependent upon a full and complete release of all claims as defined in the Claim Form.

14. Transfer of Remainder to Defendants.

One hundred twenty (120) days after distribution of the checks to eligible claimants, the Settlement Administrator shall transfer all remaining funds it holds pertaining to the Parties' settlement or this Agreement to the Defendants as designated in Section 5(b). The funds transferred to the Defendants shall include: (i) the aggregate of all Claim Amounts corresponding to checks that expire pursuant to Section 13(a) and (ii) all interest accrued on the funds deposited into the Escrow Account. The Final Distribution of Funds shall be deemed to have occurred upon the transfer of funds to Defendants pursuant to this paragraph.

15. Non-Disclosure.

(a) Plaintiffs, Defendants, and counsel for the respective Parties agree not to disclose or publicize this settlement or its terms and conditions other than as set forth herein. Any and all public communication of the settlement following the execution of this Agreement (including statements on the website of Plaintiffs'

counsel) must be consistent with prior public statements concerning the settlement. To the extent the Parties are approached by media for public statements, they will only make statements consistent with the prior public statements, the Notice or Claim Form disseminated to members of the Classes, concerning the settlement approval proceedings, or previously agreed to as part of a "script" or "talking points." Nothing in this Agreement shall prohibit any party or counsel for any party from responding with truthful information to any disparaging statement regarding any of the Parties or the settlement made in any print or electronic media outlet. Defendants also may respond to inquiries from media outlets regarding the settlement by stating, in substance, that Defendants deny any liability in the action and settled the case in order to avoid the burden of continued litigation.

(b) No party or counsel for any party shall disclose, acknowledge or make any statement of any kind about any position or statement made during mediation or settlement discussions, except as may be required to secure Preliminary Approval and the Final Approval Order.

(c) This Agreement specifically incorporates the confidentiality provisions of the Stipulation Pending Parties' Attempt to Mediate, in particular Paragraph 8 thereto, which remain in full effect and nothing stated in this Agreement modifies the Parties' obligations thereunder.

(d) Notwithstanding the foregoing, nothing herein shall prevent Class Counsel from communicating with members of the Settlement Class about the Parties' settlement or the Agreement, and nothing herein shall prevent Defendants from communicating with its employees on any subject, provided any communications with Settlement Class members who are employees must be consistent with the statements previously agreed upon by the Parties.

16. <u>Releases.</u>

(a) Upon the Effective Date, all individuals who join the Federal Action as members of the Collective Class shall be deemed to fully, forever, irrevocably and unconditionally release, remise, and discharge all Defendants (as defined above), their successors, assigns, parents, subsidiaries, affiliates, officers, and employees, each in their individual and corporate capacities (collectively referred to as the "Released Parties"), from any and all suits, actions, causes of action, claims, or demands against the Released Parties or any of them based on claims for unpaid wages, overtime pay, interest or liquidated damages or other penalties for unpaid wages, overtime, missed meal periods, missed rest breaks or record keeping violations, amounting to putative violations of federal, state, or local law, including without limitation all claims that were asserted or could have been asserted under the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.*, or based on any allegations raised or which could have been raised in the Amended Complaint in this Action or in any earlier complaints filed in the Federal or State Actions from September 3, 2006 through the date of entry of a Final Approval Order.

This release shall be conspicuously included in the Claim Form immediately before the signature line. In addition, the two named plaintiffs to this Action, Virginia Woolfson and Michael Stinson, agree to execute a separate general release of any and all claims they have or may have ever had against any of the Defendants.

(b) Upon the Effective Date, all members of the Rule 23 Class who do not submit a timely and valid request for exclusion from the Rule 23 Class shall be deemed to fully, forever, irrevocably and unconditionally release, remise, and discharge the Released Parties from any and all suits, actions, causes of action, claims, or demands against the Released Parties or any of them based on claims for unpaid wages, overtime pay, interest or liquidated damages or other penalties for unpaid wages, overtime, missed meal periods, missed rest breaks or record keeping violations, amounting to putative violations of any federal, state, or local law or based on any allegations raised or which could have been raised in the Amended Complaint in this Action or any earlier complaints filed in the Federal or State Actions from September 3, 2006 through the date of entry of a Final Approval Order.

17. Dismissal of Actions.

The Final Approval Order shall provide that upon the Effective Date, the Federal Action shall be dismissed with prejudice and without costs (except as provided herein) with the Court retaining jurisdiction over the case for purpose of ensuring compliance with the terms of this Settlement Agreement and any order of the Court issued in connection with it. Plaintiffs also agree to never re-file the State Action.

18. Termination of Settlement Agreement.

If greater than five percent (5%) of all members of the Settlement Classes, in the aggregate, seek to be excluded from the Parties' settlement, this Agreement shall be voidable at Defendants' option, provided that Defendants exercise this option no later than fourteen (14) days prior to the final approval hearing. If Defendants exercise their option to void the Agreement pursuant to this paragraph, the Agreement shall be null and void and of no effect whatsoever, except for Sections 3(b), 4(c), and 15 above. By signing this Agreement, Plaintiffs agree that they will not seek to be excluded from the Parties' settlement.

19. Non-Waiver.

No delay or omission by either Party in exercising any right under this Agreement shall operate as a waiver of that or any other right. A waiver or consent given by a Party on any one occasion shall be effective only in that instance and shall not be construed as a bar or waiver of any right on any other occasion.

20. Complete Agreement.

The Parties warrant that no representation, promise, or inducement has been offered or made to induce any Party to enter into this Agreement and that they are competent to execute this Agreement and accept full responsibility therefore. Further, other than as stated herein, this Agreement contains and constitutes the entire understanding and agreement between the Parties, incorporates all provisions of the March 19, 2010 Recordation of Essential Terms of Settlement except the time limitations contained in Paragraph 8 thereto, and supersedes all previous oral and written negotiations, agreements, commitments, and writings in connection herewith. This Agreement may not be amended or modified except by a writing signed by authorized representatives of all Parties.

21. Knowing and Voluntary Agreement.

Plaintiffs and Class Counsel each agree that they are entering into this Agreement knowingly, voluntarily, and with full knowledge of its significance. Plaintiffs further affirm that neither of them have been coerced, threatened, or intimidated into signing this Agreement; that they have been advised to consult with an attorney; and that each of them in fact has consulted with an attorney before signing this Agreement. Class Counsel represents that they have conducted a thorough investigation into the facts underlying this settlement and have diligently pursued an investigation of the claims asserted on behalf of members of the Settlement Classes against Defendants. Based on their own independent investigation, analysis of information provided by Defendants, including documents, and the extensive mediation which led to this settlement, Class Counsel state that they are of the opinion that the settlement with the Defendants is fair, reasonable, and adequate and is in the best interest of the members of the Settlement Classes, in light of all known facts and circumstances, including the risks of significant delay and defenses asserted by Defendants.

22. Notices.

Any notices issued pursuant to the terms of this Agreement shall be sent to the Parties at the addresses of their respective counsel as follows:

For Plaintiffs to:

Patrick J. Solomon, Esq.
Thomas & Solomon LLP
693 East Avenue
Rochester, NY 14607
Telephone: 585.272.0540
Facsimile: 585.272.0574
psolomon@theemploymentattorneys.com

For Defendants to:

Ellen C. Kearns, Esq.
Jeffrey M. Rosin, Esq.
Christopher M. Pardo, Esq.
Constangy, Brooks & Smith, LLP
535 Boylston Street, Suite 902
Boston, MA 02116
Telephone: 617.849.7880
Facsimile: 617.849.7870
ekearns@constangy.com
jrosin@constangy.com
cpardo@constangy.com

23. Severability.

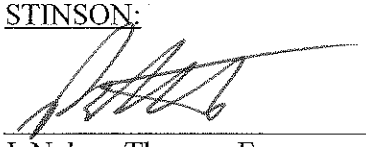
If any part of this Agreement is found to be illegal, invalid, inoperative or unenforceable in law or equity, such finding shall not affect the validity of any other provisions of this Agreement, which shall be construed, reformed and enforced to effect the purposes thereof to the fullest extent permitted by law, other than the provisions in Section 16. If one or more of the provisions contained in the Agreement shall for any reason be held to be excessively broad in scope, subject matter or otherwise, so as to be unenforceable at law, the Parties agree that such provision(s) shall be construed to be limited or reduced so as to be enforceable to the maximum extent under the applicable law. If Section 16 shall be declared illegal, invalid, inoperative or unenforceable for any reason, the Parties will cooperate with best efforts to ensure that Defendants receive the benefit of that bargain hereunder, including, but not limited to, obtaining new releases from all eligible claimants.

24. Governing Law.

This Agreement shall be governed by Massachusetts law, without regard to that state's choice of law provisions. The Parties also hereby submit to the jurisdiction of the Court for all purposes relating to the review, approval and enforcement of the terms of this Agreement.

IN WITNESS WHEREOF, the Parties and Class Counsel each voluntarily and without coercion have caused this Agreement to be signed and entered under seal as of the respective dates written below as their free acts and deeds.

CLASS COUNSEL, FOR AND ON BEHALF OF THE CLASS AND NAMED PLAINTIFFS VIRGINIA WOOLFSON AND MICHAEL STINSON:



J. Nelson Thomas, Esq.
Patrick J. Solomon, Esq.
Thomas & Solomon LLP

DEFENDANTS:

_____
for CareGroup, Inc.

_____
for Beth Israel Deaconess Medical Center Inc.

_____
for Beth Israel Deaconess Hospital – Needham, Inc.

_____
for Mount Auburn Hospital

_____
for New England Baptist Hospital

_____
Paul Levy, Individually

_____
Lisa Zankman, Individually

_____
for CareGroup, Inc. 401K Savings & Investment Plan

_____
for CareGroup Voluntary 403B Savings Plan

Dated: May _____, 2010

IN WITNESS WHEREOF, the Parties and Class Counsel each voluntarily and without coercion have caused this Agreement to be signed and entered under seal as of the respective dates written below as their free acts and deeds.

CLASS COUNSEL, FOR AND ON BEHALF OF THE CLASS AND NAMED PLAINTIFFS VIRGINIA WOOLFSON AND MICHAEL STINSON:

J. Nelson Thomas, Esq.
Patrick J. Solomon, Esq.
Thomas & Solomon LLP

DEFENDANTS:

for CareGroup, Inc.

for Beth Israel Deaconess Medical Center Inc.

for Beth Israel Deaconess Hospital – Needham, Inc.

for Mount Auburn Hospital

for New England Baptist Hospital

Paul Levy, Individually

Lisa Zankman, Individually

for CareGroup, Inc. 401K Savings & Investment Plan

for CareGroup Voluntary 403B Savings Plan

Dated: May 20, 2010

IN WITNESS WHEREOF, the Parties and Class Counsel each voluntarily and without coercion have caused this Agreement to be signed and entered under seal as of the respective dates written below as their free acts and deeds.

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J. Nelson Thomas, Esq.
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Paul Levy, Individually

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Lisa Zankman, Individually

_____
for CareGroup, Inc. 401K Savings & Investment Plan

_____
for CareGroup Voluntary 403B Savings Plan

Dated: May 21, 2010

IN WITNESS WHEREOF, the Parties and Class Counsel each voluntarily and without coercion have caused this Agreement to be signed and entered under seal as of the respective dates written below as their free acts and deeds.

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DEFENDANTS:

for CareGroup, Inc.

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for CareGroup Voluntary 403B Savings Plan

Dated: May _____, 2010

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J. Nelson Thomas, Esq.
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DEFENDANTS:

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for Beth Israel Deaconess Hospital – Needham, Inc.

for Mount Auburn Hospital

for New England Baptist Hospital

Paul Levy, Individually

Lisa Zankman, Individually

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for CareGroup Voluntary 403B Savings Plan

Dated: May _____, 2010

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for Beth Israel Deaconess Hospital – Needham, Inc.

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Dated: May _____, 2010

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for CareGroup, Inc. 401K Savings & Investment Plan

for CareGroup Voluntary 403B Savings Plan

Dated: May 20, 2010

Tab A

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

VIRGINIA WOOLFSON and MICHAEL STINSON, *on behalf of themselves and all other employees similarly situated,* *Plaintiffs,*	)	
v.	)	
CAREGROUP, INC., BETH ISRAEL DEACONESS MEDICAL CENTER, INC., BETH ISRAEL DEACONESS HOSPITAL – NEEDHAM, INC., MOUNT AUBURN HOSPITAL, NEW ENGLAND BAPTIST HOSPITAL, PAUL LEVY, LISA ZANKMAN, CAREGROUP, INC. 401K SAVINGS & INVESTMENT PLAN, and CAREGROUP VOLUNTARY 403B SAVINGS PLAN, *Defendants.*	)	Civil Action No. 1:09-cv-11464

JOINT MOTION FOR PRELIMINARY APPROVAL OF CLASS AND COLLECTIVE ACTION SETTLEMENT AND INCORPORATED MEMORANDUM OF LAW

Plaintiffs Virginia Woolfson and Michael Stinson ("Plaintiffs"), by and through their counsel, and Defendants CareGroup, Inc., Beth Israel Deaconess Medical Center Inc., Beth Israel Deaconess Hospital – Needham, Inc., Mount Auburn Hospital, New England Baptist Hospital, Paul Levy, Lisa Zankman, CareGroup, Inc. 401K Savings & Investment Plan, and CareGroup Voluntary 403B Savings Plan, including their parents, divisions, subsidiaries, and affiliates,[1] (collectively "Defendants"), by and through its counsel, (collectively referred to herein as the "Parties") hereby move the Court for preliminary approval of the proposed class and collective action settlement ("Settlement") set forth in Settlement Agreement, Release, and Waiver

[1] These affiliates include but are not limited to Cardiovascular Associated Physicians of Harvard Faculty Physicians at BIDMC, HeartCenter of MetroWest, Medical Care of Boston Management Corp. d/b/a Affiliated Physicians Group, Mount Auburn Professional Services, and New England Baptist Medical Associates.

("Settlement Agreement"),[2] attached as Exhibit A hereto. Specifically, the Parties respectfully request that the Court enter the proposed Order attached as Exhibit B hereto ("Preliminary Approval Order"), including provisions:

1) authorizing the filing of Plaintiffs' Amended Complaint, attached as Exhibit C hereto;[3]

2) certifying the proposed collective class pursuant to Section 16(b) of the FLSA and state law class pursuant to Rule 23 of the Federal Rules of Civil Procedure, for settlement purposes only, as described in the Amended Complaint and below;

3) granting preliminary approval of the proposed Settlement;

4) appointing Thomas & Solomon LLP as Class Counsel;

5) directing distribution of the proposed Notice of Settlement of Class and Collective Action Lawsuit ("Notice"); and

6) setting the final fairness hearing for a date one-hundred (100) days from the date of this motion, on or as soon as practicable after Wednesday, September 1, 2010, at the District of Massachusetts, Boston Division.

In support of their motion for preliminary approval, the Parties submit the following incorporated memorandum.

I. Introduction

The parties hereby move jointly for preliminary approval of the Settlement, which has been reached after several months of arm's-length and good faith negotiations, culminating in a two-day mediation in Boston before Hunter Hughes, Esq., a mediator with extensive experience mediating wage and hour cases such as this one. The Settlement will provide a fair and reasonable recovery to individuals employed by Defendants as non-exempt employees (the

[2] The exhibits to the Settlement Agreement include the Notice of Settlement of Class and Collective Action Lawsuit, Tab C thereto, and the Consent to Join and Claim Form, Tab D thereto.

[3] To the extent the Court deems it necessary, in conjunction with this Motion for Preliminary Approval, Plaintiffs hereby move for leave to amend the complaint pursuant to FED. R. CIV. P. 15(a). This leave is sought with the full consent of Defendant.

"Non-Exempt Employees") who had potential claims challenging Defendants' pay practices under the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.* ("FLSA"), certain other federal statutes, and under Massachusetts law.

On September 3, 2009, Plaintiffs brought this collective and class action under federal law alleging that Defendants violated wage and hour laws, and, in effect, various other laws, by failing to appropriately compensate Non-Exempt Employees for time worked before and after their scheduled work shifts, time worked during interrupted or missed meal breaks, and time spent attending certain trainings. At the same time, Plaintiffs filed a complaint based on the same facts in Middlesex Superior Court for the Commonwealth of Massachusetts, Civil Action No. 09-3542, which alleged only Massachusetts state law causes of action. This state complaint was subsequently withdrawn upon agreement of the Parties to mediate.[4]

In the nearly nine months since the filing of this lawsuit, the Parties have voluntarily exchanged information needed for mediation and participated in a mediation which involved the exchange of additional information, discovery, and legal arguments on the merits. These negotiations resulted in an agreement to settle the action on the terms set forth in the Settlement Agreement. As this Settlement is the product of arm's-length negotiations by informed counsel, the terms of the Settlement are presumptively fair and deserving of preliminary approval.

II. Summary of the Terms of the Settlement and Relief Presently Sought

The Settlement Agreement provides that, if approved, Defendants will pay up to $8,500,000 in order to resolve the claims as set forth in the Amended Complaint in their entirety. (See Settlement Agreement at § 5(a)) The settlement amount will be administered by an independent and experienced third-party settlement administrator, Rust Consulting, Inc. (the

[4] Plaintiffs have withdrawn the state complaint and consolidated all factual allegations and counts in the Amended Complaint attached hereto at Tab C.

"Settlement Administrator"). This amount is designed to cover all back pay and liquidated/statutory damages available under each applicable law, as well as Class Counsel's attorneys' fees and costs up to thirty-three percent (33%) of the total fund, subject to Court approval. In addition, the settlement provides for service payments to the named Plaintiffs and opt-in party plaintiffs who had joined this litigation prior to the date the settlement was reached in principle, of up to but not exceeding $20,000, cumulatively. (Id. at § 7) In addition, the settlement fund will also be responsible for paying the full amount of the costs of notice and settlement administration, the participating class members' W-2 withholdings (and state/local withholdings if applicable), any employer share of payroll taxes on back wage payments made to participating claimants, and the costs of the Parties expert witnesses. (Id. at §§ 5(a), 8)

In order to most effectively obtain resolution of all the federal and state wage and hour claims, the Settlement encompasses both the FLSA claims, in the form of a collective action resolution (the "Collective Class"), and the remaining claims in the form of a Rule 23 class (the "Rule 23 Class"). Each claimant's payment will vary proportionately, as each claimant will receive a pro rata share of the net settlement amount based upon their wages for the applicable period when compared with the wages of all potential claimants for the applicable period.[5]

The Settlement provides that each individual who is a member of one of the Classes shall be sent a notice by the Settlement Administrator. Upon receipt, in order to receive payment, these individuals must submit a Consent to Join and Claim Form ("Claim Form"). (See Settlement Agreement at Tab D) The requirement of sending in a Claim Form does not apply to

[5] The percentage of the net settlement amount paid to each claimant will be calculated by the Settlement Administrator by dividing the claimant's individual wages earned while working for one of the Defendants as a Non-Exempt Employee during the applicable statutory period by the total wages earned by all potential claimants while working for a Defendant as a Non-Exempt Employee during the applicable statutory period. That number will then be multiplied by the net settlement amount in order to determine the pro rata share to pay the individual claimant.

the named plaintiffs or eligible individuals who joined the action prior to this Settlement. For individuals who send in Claim Forms (or, in the case of those individuals who will be mailed checks directly), Defendants will obtain a release of all claims that could have been asserted against it arising out of these individuals' employment with Defendants during the applicable period. (See id. at § 16) For individuals in the Rule 23 Class who have not timely filed a valid and enforceable request for exclusion, such claims will be barred by the Settlement once it is final.

Using Defendants' payroll data and subsequent computerized address searches when needed, the Settlement Administrator will make all reasonable efforts to best ensure that each potential class member receives full and adequate notice of the Settlement, which shall set forth the material settlement terms; instructions on how to submit objections to the settlement and when and where to appear at the final fairness hearing; and how to opt-out of the Settlement altogether. A copy of the proposed Notice is attached to the Settlement Agreement at Tab C.

After Court approval of the Settlement at or after the fairness hearing, such approval becoming final, the completion of settlement administration, and upon further order of the Court, the Settlement Administrator will ensure distribution of the net settlement funds to the claimants.

The Parties propose that, along with granting preliminarily approval of the Settlement, the Court adopt the schedule set forth below, for the Parties to effectuate the various steps in the settlement approval process under the Settlement Agreement:

	Event	***Timing***
1	Notice Date	No more than 28 days after the entry of the Order preliminarily approving the settlement.
2	Deadline for filing Objections	45 days after Notice sent to the individual class member
3	Deadline for filing Requests for Exclusion	45 days after Notice sent to the individual class member

4	Deadline for filing Claim Forms	45 days after Notice sent to the individual class member
5	Final Fairness Hearing	One-hundred (100) days from the date of this motion, on or as soon as practicable after Wednesday, September 1, 2010.

As set forth below, the parties submit that the Settlement satisfies all the criteria for preliminary settlement approval under federal and state law in that it falls well within the range of reasonableness. Accordingly, the Parties request that the Court grant the requested relief.

III. Procedural History

On September 3, 2009, Plaintiffs Virginia Woolfson and Michael Stinson filed a complaint in the United States District Court for the District of Massachusetts (DE-1). In their complaint, Plaintiffs set forth 5 causes of action, all premised upon the same facts alleging wage and hour violations, including that:

- Defendants violated the Fair Labor Standards Act ("FLSA") by failing to compensate them for (a) time worked during meal breaks, (b) time worked before or after their scheduled shifts, and (c) time spent in trainings;
- Defendants failed to keep accurate records of time worked "sufficient to determine the benefits due or which may become due" under the terms of certain benefit plans as required by the Employee Retirement Income Security Act ("ERISA");
- Defendants breached their fiduciary duties under ERISA;
- Defendants violated the Racketeer Influenced and Corrupt Organizations Act ("RICO") by refusing to pay their regular or statutorily required rate of pay for all hours worked; and
- Defendants should be estopped from asserting statute of limitations defenses against Plaintiffs.

Plaintiffs sought to certify an opt-in collective action with respect to their FLSA claims; and to certify an opt-out class under Rule 23 of the Federal Rules of Civil Procedure with respect to their remaining claims. With respect to damages, Plaintiffs sought the value of Plaintiffs' and

Class Members' unpaid wages, including fringe benefits, and an award of liquidated damages, reasonable attorneys fees, expenses, expert fees, costs, and pre- and post-judgment interest.

At the same time, Plaintiffs also filed a complaint in Massachusetts state court. The state complaint sought class-wide relief based upon the same underlying facts set forth in the federal complaint, but for claims brought under Massachusetts General Laws, chapters 149 and 151 and various common law theories (*i.e.*, Breach of Express or Implied Contract, Assumpsit, Quantum Meruit/Unjust Enrichment, Fraud, Negligent Misrepresentation, Equitable Estoppel, Promissory Estoppel, and Conversion).

Thereafter, counsel for Defendants contacted counsel for plaintiffs, and the Parties agreed to cease all litigation-related activity and attempt to reach full and complete resolution of the claims in the federal and state complaints through mediation.

Over the subsequent months, the Parties exchanged information necessary to meaningfully examine, analyze, and mediate the claims at issue in this litigation. Plaintiffs' counsel specifically requested certain information about the potential class size, pay rates, work schedules, time actually recorded, scope of employment, and other potentially relevant information, all of which Defendants provided to Plaintiffs' counsel prior to the mediation. In turn, both sides utilized expert witnesses and economists to conduct their own analysis regarding the (1) potential liability if the case were to proceed and (2) relative strengths and weaknesses of the legal merits of their respective positions.

The Parties prepared detailed mediation briefs setting forth the merits of their respective cases based upon the relevant law and facts and attended mediation before Hunter Hughes, Esq., who has extensive experience in mediating similar nationwide wage and hour cases with "hybrid" allegations pursuant to both state and federal law.

In preparation for mediation and in the course of this litigation, Class Counsel represents that it conducted significant factual investigation. The investigation included research into the claims and analysis of the actual work performed by the Non-Exempt Employees and the manner in which Defendant compensated those Non-Exempt Employees. (See Exhibit D hereto, Declaration of Patrick J. Solomon ("Solomon Decl.") at ¶ 4) Class Counsel also undertook extensive interviews with Plaintiffs and certain other putative class members with respect to the claims at issue in this litigation. (Id. at ¶ 5) Class Counsel also investigated and analyzed the applicable state and federal law as applied to the facts discovered with regard to the claims asserted and the potential defenses thereto. (Id. at ¶ 6) This included the preparation of a position statement submitted to the mediator and exchanged with counsel for Plaintiffs in order to facilitate the mediation. It also included open discussion and debate at mediation between the Parties and through the mediator regarding the Parties' differing legal positions analyzing the applicable law as applied to Defendants' pay practices. (Id. at ¶ 9)

The mediation itself was conducted over the course of two full days and entirely at arm's-length. The claims and likelihood of their success were debated between the Parties through the mediator, and the two sides also discussed various points outside the presence of the mediator. Matters addressed included the size and scope of the claims, the likelihood of success on the merits, the manner in which damages could be calculated and obtained, and the uncertainty of further litigation and potential outcomes. (Solomon Decl. at ¶ 10)

Both Parties are of the opinion that the Agreement is fair, reasonable, and adequate. Further, Class Counsel believes that the Agreement is in the best interest of the class in light of all known facts and circumstances, including the significant risks and delays of litigation that are presented by the defenses and potential pre-trial and appellate issues Defendants may assert. (Id.

at ¶ 12) A resolution of this litigation at this early stage – rather than following upon lengthy discovery, collective and class action briefing, post-certification further discovery, pretrial proceedings, and potential trial and appellate activities and the costs attendant upon and likely to be incurred through such activities – most certainly greatly inures to the benefit of the Non-Exempt Employees. Such litigation would likely take many years until final resolution, but the proposed Settlement here, being presented to the Court well under a year from the filing of the case, is, accordingly, a result well to the benefit of the class members.

In addition, Class Counsel has fully advised the representative Plaintiffs of the Settlement Agreement, who approve of the settlement. (Solomon Decl. at ¶ 13)

Defendants have asserted and continue to assert defenses to this action and have expressly denied and continue to deny any wrongdoing or legal liability arising out of the action. Neither the Settlement Agreement nor any action taken to carry out the Settlement Agreement is, may be construed as, or may be used as an admission, concession, indication by or against Defendants or anyone else of any fault, wrongdoing, or liability whatsoever, or as a concession by Plaintiffs as to the merits of their claims.

The Parties desire fully, finally, and forever to settle, compromise, and discharge all individual and class claims that were asserted or could have been asserted in this or any related actions.

IV. Legal Argument

A. The Settlement Agreement Should Be Preliminarily Approved By the Court

By this Motion, the Parties seek preliminary approval of the Settlement Agreement. "Compromises of disputed claims are favored by the courts." Williams v. First Nat'l Bank, 216 U.S. 582, 595 (1910); see also Durett v. Housing Auth. of Providence, 896 F.2d 600, 604 (1st Cir. 1990); In re Viatron Computer Sys. Corp., 614 F.2d 11, 15 (1st Cir. 1980); In re Prudential

Ins. Co. Am. Sales Practice Litig. Agent Actions, 148 F.3d 283, 317 (3d Cir. 1998) ("Prudential II"). Settlement spares the litigants the uncertainty, delay and expense of a trial, while simultaneously reducing the burden on judicial resources. Federal Rule 23(e) provides that the Court must approve any settlement of a class action. In a class action, the "court plays the important role of protector of the [absent members'] interests, in a sort of fiduciary capacity." In re Gen. Motors Corp. Pick-up Truck Fuel Tank Prods. Liab. Litig., 55 F.3d 768, 785 (3rd Cir. 1995) ("GM Trucks"). The ultimate determination whether a proposed class action settlement warrants approval resides in the Court's discretion. Protective Comm. for Indep. S'holders of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 424-25 (1968). As discussed more fully below, at this stage of preliminary approval, there is clear evidence that the Settlement Agreement is well within the range of possible approval and thus should be preliminarily approved.

1. The standards and procedures for preliminary approval

Rule 23(e) of the Federal Rules of Civil Procedure provides the mechanism for settling a class action, including, as here, through a class certified for settlement purposes:

> The claims, issues, or defenses of a certified class may be settled, voluntarily dismissed, or compromised only with the court's approval. The following procedures apply to a proposed settlement, voluntary dismissal, or compromise:
>
> > (1) The court must direct notice in a reasonable manner to all class members who would be bound by the proposal.
> >
> > (2) If the proposal would bind class members, the court may approve it only after a hearing and on finding that it is fair, reasonable, and adequate.
> >
> > (3) The parties seeking approval must file a statement identifying any agreement made in connection with the proposal.
> >
> > (4) If the class action was previously 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.
>
> (5) Any class member may object to the proposal if it requires court approval under this subdivision (e); the objection may be withdrawn only with the court's approval.

FED. R. CIV. P. 23(e); Amchem Prods. v. Windsor, 521 U.S. 591, 617 (1997); Durett, 896 F.2d at 604.

In determining whether preliminary approval is warranted, the primary issue before the Court is whether the proposed settlement is within the range of what might be found fair, reasonable and adequate, so that notice of the proposed settlement should be given to class members, and a hearing scheduled to determine final approval. See MANUAL FOR COMPLEX LITIGATION, FOURTH, § 13.14, at 172-73 (2004) ("MANUAL FOURTH") (at the preliminary approval stage, "The judge must make a preliminary determination on the fairness, reasonableness, and adequacy of the settlement terms and must direct the preparation of notice of the certification, proposed settlement, and date of the final fairness hearing."). Preliminary approval permits notice of the hearing on final settlement approval to be given to the class members, at which time class members and the settling parties may be heard with respect to final approval. Id. at 322. Preliminary approval is therefore the first step in a two-step process required before a class action may be finally settled. Id. at 320. In some cases, this initial assessment can be made on the basis of information already known to the court and then supplemented by briefs, motions and an informal presentation from the settling parties. Id. at 320-21.

In deciding whether a settlement should be preliminarily approved under Rule 23, courts look to whether there is a basis to believe that the more rigorous final approval standard will be satisfied. See MANUAL FOURTH at § 21.633, at 321 ("Once the judge is satisfied as to the

certifiability of the class and the results of the initial inquiry into the fairness, reasonableness, and adequacy of the settlement, notice of a formal Rule 23(e) fairness hearing is given to the class members.") The standard for final approval of a settlement consists of showing that the settlement is fair, reasonable, and adequate. See, e.g., Durett, 896 F.2d at 604; Prudential II, 148 F.3d at 316-17; GM Trucks, 55 F.3d at 785.

2. There is a strong basis to believe that this Settlement is fair, reasonable and adequate

Before granting final approval of a proposed class action settlement, the Court must find that the settlement is fair, reasonable, and adequate. See, e.g., FED. R. CIV. P. 23(e); MASS. R. CIV. P. 23(c); Durett, 896 F.2d at 604; Sniffin v. Prudential Ins. Corp., 395 Mass. 415 (1985).

A "strong initial presumption" of fairness arises where the parties can show that "the settlement was reached after arm's-length negotiations, that the proponents' attorneys have experience in similar cases, that there has been sufficient discovery to enable counsel to act intelligently, and that the number of objectors or their relative interest is small." Rolland v. Cellucci, 191 F.R.D. 3, 6 (D. Mass. 2000); see also City P'ship Co. v. Atlantic Acquisition Ltd. P'ship, 100 F. 3d 1041, 1043 (1st Cir. 1996).

"[T]here is no single test in the First Circuit for determining the fairness, reasonableness and adequacy of a proposed class action settlement." In re Relafen Antitrust Litig., 231 F.R.D. 52, 71-72 (D. Mass. 2005) (internal quotations omitted). As a result, the courts of the First Circuit rely variously on a number of factors, the most common of which include: (1) the complexity, expense, and duration of litigation, if the agreement is denied; (2) the amount of the proposed settlement compared to the amount at issue; (3) reaction of the class to the settlement; (4) the stage of proceedings and the amount of discovery completed; (5) the plaintiffs' likelihood of success on the merits and recovering damages on their claims; (6) whether the agreement

provides benefits which the plaintiffs could not achieve through protracted litigation; (7) good faith dealings and the absence of collusion; (8) the settlement's terms and conditions. See, e.g., Rolland v. Patrick, 562 F. Supp. 2d 176 (D. Mass. 2008); In re Relafen Antitrust Litig., 231 F.R.D. at 72; In re Lupron Mktg. & Sales Practices Litig., 228 F.R.D. 75, 93 (D. Mass. 2005); Celluci, 191 F.R.D. at 8-9; M. Berenson Co. v. Faneuil Hall Marketplace, Inc., 671 F. Supp. 819, 822-833 (D. Mass. 1987).

In the case at bar, an examination of each of the factors that can be reviewed at this stage demonstrates that there is a strong basis to conclude that the proposed settlement is fair, reasonable, and adequate to the members of the class.

First, with respect to complexity, expense, and duration of litigation, it is clear that the prosecution of this case would be lengthy and expensive. If this Settlement is not approved, the Parties face an extended and costly battle, first regarding conditional and class certification, and then summary judgment on the merits of whether the Non-Exempt Employees were properly compensated.[6] If Defendants' summary judgment motion is denied, the Parties would have to conduct expensive expert discovery and prepare for a trial, that would likely be a lengthy and costly class action trial. Further, if this case does not settle, it would likely take years and result in the expenditure of substantial legal fees before reaching final resolution, including exhaustion of all appeals.

[6] Litigating Plaintiffs' claims would require substantial additional preparation and discovery. It ultimately would involve the deposition and presentation of numerous witnesses; the consideration, preparation and presentation of documentary evidence; and the preparation and analysis of expert reports and oppositions to such reports. In addition, because Defendants deny that any violations of law have occurred or are occurring and given the state of the law, Defendants would possibly appeal any adverse ruling on the validity of its pay practices with respect to non-exempt employees. In contrast, the Settlement Agreement will yield a prompt, certain, and very substantial recovery for the class. Such a result will benefit the Parties and the court system.

Second, with respect to the amount of the proposed settlement compared to the amount potentially at issue, the Parties agree that the value of the settlement is fair and reasonable given the various challenges facing Plaintiffs. Specifically, based upon the multiple legal and factual risks continued litigation would entail, and the risk that Plaintiffs and the putative class could recover nothing if this litigation were to proceed, the Parties agree that this settlement amount is entirely appropriate and very favorable to the Plaintiffs and the class they purport to represent. See In re Lupron Mktg. & Sales Practices Litig., 345 F. Supp. 2d 135, 138 (D. Mass 2004) (finding the proposed settlement warranted preliminary approval because, inter alia, "the proposed settlement amount is sufficiently within the range of reasonableness").

Third, with respect to the reaction of the class to the settlement, the Court will only be able to evaluate this factor after the notice period.

Fourth, with respect to the stage of proceedings and the amount of discovery completed, Class Counsel conducted a sufficient investigation of the claims asserted as well as the recoverable damages, thus allowing them to assess the fairness of the Settlement. Likewise, Defendants conducted an extensive internal review in order to assess potential exposure. Also, while the Parties are in a relatively early stage in the case, the Parties submitted substantial briefs to the mediator setting forth the facts and relevant legal analysis in the case and argued to each other numerous points as to the strengths and weaknesses of each side's positions. The forthright nature of the mediation process and the back-and-forths between the sides, as well as the views of an extremely respected and experienced mediator as to those strengths and weaknesses focused for the Parties the legal and factual issues presented by this case, and this Settlement will resolve the legal risks which the Parties fully appreciate at this point in the litigation.

Fifth, with respect to the Plaintiffs' likelihood of success in obtaining class certification and in recovering on the merits of the case, Plaintiffs recognize that obtaining a "CareGroup-wide" class of Non-Exempt Employees who had held greatly varying positions in a variety of situations and varying locations could have been challenging. The number of positions at issue reached well into the hundreds, and medical facilities and departments varied widely in their pay and time-keeping practices. As a factual matter, either (1) proving "willfulness" in order to get a third year of statute of limitations under the FLSA or (2) an absence of "due care" by Defendants in order to get liquidated damages are difficult burdens of plaintiffs in wage and hour cases. Such is the case here and Plaintiffs recognize as such, understanding that there are substantial risks as well as time-consuming, fact-intensive, and burdensome work that needs to be undertaken to make these showings. In addition, Plaintiffs recognized that obtaining class certification and surviving partial or complete summary judgment or a motion to decertify a collective class would also have presented significant hurdles. Notably, Plaintiffs are litigating similar cases throughout the country and those cases demonstrate the risks posed by continued litigation compared to the full recovery proposed here.[7]

Sixth, with respect to whether the agreement provides benefits which Plaintiffs could not achieve through protracted litigation, the Settlement provides the benefit of a prompt and fair resolution to all claims in the Amended Complaint, and the avoidance of delay of the class members' receiving their portion of the settlement amount.

Seventh, the Settlement was reached as the result of good faith dealings and the absence of collusion. Both Plaintiffs and Defendants are represented by highly experienced and

[7] See, e.g., Hintergerger v. Catholic Health System, No. 08-CV-380S, 2009 WL 3464134 (W.D.N.Y. Oct. 21, 2009) (limiting conditional certification to employees involved in "patient care"); Kuznyetsov v. West Penn. Allegheny Health Sys., Inc., No. 9-379, 2010 WL 597475 (W.D. Pa. Feb. 16, 2010) (dismissing ERISA claims for failure to keep accurate records and for breach of fiduciary duty).

competent counsel recognized as national experts in class action wage and hour litigation, who have litigated wage and hour cases aggressively and successfully on behalf of their respective clients. Class Counsel has also obtained other significant court approved settlements of class action wage and hour cases in the medical care industry, in particular. (See Solomon Decl. at ¶ 14 at Ex. A (Plaintiffs' Counsel Resumes)) Likewise, Defendants' lead counsel is among the country's leading experts on wage and hour law, including regarding the compensability of work time. (See Solomon Decl. at 17 at Ex. B (Defense Counsel Resumes)) The experience and reputation of counsel is paramount. See, e.g., Cotton v. Hinton, 559 F.2d 1326 (5th Cir. 1977); In re Coordinated Pretrial Proceedings in Antibiotic Antitrust Actions, 410 F.Supp. 659 (D. Minn. 1974) ("The recommendation of experienced antitrust counsel is entitled to great weight."); Fisher Brothers v. Phelps Dodge Industries, Inc., 604 F. Supp. 446 (E.D. Pa. 1985) ("The professional judgment of counsel involved in the litigation is entitled to significant weight.").

Further, not only was the Settlement Agreement the result of protracted, good faith, arm's-length negotiations between experienced and informed counsel on both sides, but the Settlement Agreement and its material terms were negotiated with the substantial assistance of an experienced mediator well-versed in the nuances of wage and hour class actions. The Settlement was therefore not the product of collusive dealings, but, rather, was informed by the vigorous prosecution of the case by the experienced and qualified counsel.

The $8.5 million settlement is a substantial result for an "off-the-clock" wage and hour class and will result in a meaningful payment to each settlement class member. Significantly, the amount that class members will receive will be determined based upon wages earned while

working for any of the Defendants as a Non-Exempt Employee during the applicable statutory period so that fairness in payments will result.

This result is well within the reasonable standard. Plaintiffs' counsel also believe that the result is appropriate when considering the difficulty and risks of litigating class claims that involve the alleged uncompensated time worked by non-exempt employees under the FLSA and applicable state laws.

Accordingly, the standards for preliminary approval of the Settlement are met in this case and the Court should grant the present motion.

B. Provisional Certification of the Settlement Classes is Appropriate

Pursuant to the Settlement Agreement, and in accordance with the model of other similar wage and hour cases that counsel have settled in the federal courts, the Parties have stipulated, for settlement purposes only, to the following two classes:

a. **COLLECTIVE CLASS** – all individuals who have filed consents to join the Woolfson action (including without limitation all individuals who timely return a Claim Form containing a consent to join the Action) and who worked for any of the Defendants as a Non-Exempt Employee from September 3, 2006 through the date of Final Approval of the Settlement; and

b. **RULE 23 CLASS –** all individuals who worked for any of the Defendants as a Non-Exempt Employee from September 3, 2006 through the date of Final Approval of the Settlement.

Both the Supreme Court and various circuit courts have recognized that the benefits of a proposed settlement can only be realized through the certification of a settlement class. See, e.g., Amchem, 521 U.S. at 591; In re Lupron Marketing and Sales Practices Litigation, 345 F. Supp. 2d 135, 137 (D. Mass. 2004) (citing MANUAL FOURTH); see also Hanlon v. Chrysler Corp., 150 F.3d 1011 (9th Cir. 1998); Prudential II, 148 F.3d at 283.

Specifically, the First Circuit has established that where there is a "common disputed issue," courts should "view the issue . . . in favor of class action status." Tardiff v. Knox County,

365 F.3d 1, 5 (1st Cir. 2004); see also In re New Motor Vehicles Canadian Export Antitrust Litigation, 522 F.3d 6, 23 (1st Cir. 2008) (noting "existence of a common disputed issue weighs in favor of class certification, not against it). This is also the case in other circuits. See, e.g., Eisenberg v. Gagnon, 766 F.2d 770 (3d Cir. 1985) ("[t]he interests of justice require that in a doubtful case . . . any error, if there is to be one, should be committed in favor of allowing a class action"). Here, as set forth below, all the elements of Section 16(b) of the FLSA and Rule 23 are met with respect to the proposed settlement, which, accordingly, merits collective class and Rule 23 class certification.

1. The Elements of Rule 23(a) are Satisfied in the Present Case[8]

In order for a lawsuit to be maintained as a class action under Rule 23 of the Federal Rules of Civil Procedure, a named plaintiff must establish each of the four threshold requirements of subsection (a) of the Rule, which provides:

> One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the

[8] The prerequisites for a conditional certification of a FLSA collective action class are recognized to be more lenient than those under Rule 23 of the Federal Rules of Civil Procedure. *See*, *e.g.*, *Poreda v. Boise Cascade, L.L.C.*, 532 F. Supp. 2d 234, 239 (D. Mass. 2008) (explaining that conditional certification is regularly determined under a "fairly lenient" standard which "typically results in conditional certification of the representative class") (citing to *Trezvant v. Fidelity Employer Servs. Corp.*, 434 F. Supp. 2d 40, 43 (D. Mass. 2006)); *see also Baas v. Dollar Tree Stores, Inc.*, No. C 07-03108 JSW2009, 2009 WL 1765759, at *5 (N.D. Cal. June 18, 2009) (recognizing that "the standard to grant conditional certification of a collective action under the FLSA is more lenient than the standard to certify a class pursuant to Rule 23 [but noting that] Plaintiffs must still demonstrate that they are 'similarly situated' to the other members of the proposed collective action"); *Burk v. Contemporary Home Services, Inc.*, No. C06-1459RSM, 2007 WL 2220279, at *3 (W.D. Wash. Aug. 1, 2007) (recognizing that the FLSA "sets a more lenient standard for conditional certification of a representative class than does Rule 23 of the Federal Rules of Civil Procedure [and noting that c]ollective actions are not subject to the numerosity, commonality, and typicality rules of a class action suit under Rule 23") This memorandum, therefore, will not specifically address the standards for certifying the settlement collective action class inasmuch as it would follow *a fortiori* from meeting the Rule 23 prerequisites.

> representative parties will fairly and adequately protect the interests of the class.

FED. R CIV. P. 23(a). See, e.g., Key v. Gillette Co., 782 F.2d 5, 7 (1st Cir. 1986) ("all four requirements of Rule 23(a) must be met in order for certification of a class to be proper"); Barnes v. American Tobacco Co., 161 F.3d 127 (3d Cir. 1998); Prudential II, 148 F.3d at 308-09. Here, all four elements are easily satisfied.

2. Numerosity Under Rule 23(a)(1)

Rule 23(a)(1) requires that the class be "so numerous that joinder of all members is impracticable." Plaintiff is not required to come before the Court and detail, to the person, the exact size of the class or to demonstrate that joinder of all class members is impossible. "'Impracticability' does not mean 'impossibility,' but only the difficulty or inconvenience of joining all members of the class." Advertising Special. Nat. Ass'n v. Federal Trade Comm'n, 238 F.2d 108, 119 (1st Cir. 1956) (citing 3 MOORE'S FEDERAL PRACTICE 3423 (2d ed. 1948).; see also Liberty Lincoln Mercury, Inc. v. Ford Mktg. Corp., 149 F.RD. 65, 73 (D.N.J. 1993) (stating that "[i]mpracticability does not mean impossibility" and "precise enumeration of the members of a class is not necessary"). Numerosity is indisputable here as Defendants currently employ thousands of Non-Exempt Employees, and the proposed settlement classes also include all individuals who worked as Non-Exempt Employees since September 3, 2006, even if they no longer are employed by Defendants. Thus, numerosity is met.

3. Commonality Under Rule 23(a)(2)

Rule 23(a)(2) requires that there be "questions of law or fact common to the class." The commonality requirement is met if the plaintiff's grievances demonstrate "that there are common questions of law or fact in the case." So. States Police Benevolent Ass'n, Inc. v. First Choice Armor & Equip., Inc., 241 F.R.D. 85, 87 (D. Mass. 2007) (characterizing commonality

requirement as a "low hurdle" that "can be met by even a single common legal or factual issue").[9]

Here, commonality is met insofar as the claims of the class representatives and the members of the Rule 23 Class are all predicated on the core common issue as to whether the Defendants failed to compensate them for all compensable time worked. Specifically, (a) whether non-exempt employees actually worked before or after their scheduled shifts or during their meal breaks without compensation and with the knowledge of their employer; (b) whether such time was in fact compensable time or *de minimis* and therefore not compensable; and (c) whether the meal period interruptions in this case rise to the level of destroying the "bona fide" meal period under the "predominant benefit" test. See Kirby v. Cullinet Software, Inc., 116 F.R.D. 303, 306 (D. Mass. 1987) (stating evidence of commonality need not be "exhaustive," but only "illustrative" (quoting Berenson v. Fanueil Hall, 100 F.R.D. 468, 470 (D. Mass. 1984)); see also Ford v. Townsends of Ark., Inc., No. 4:08cv00509 BSM, 2010 WL 1433455, at *7-9 (E.D. Ark. Apr. 9, 2010) (finding commonality because purported class members were not paid for similar pre- and post-work activities, and the common question of law was whether such

[9] Rather than requiring that all questions of law or fact be common, Rule 23 only requires that "the questions of law or fact common to the members of the class predominate over any questions affecting only individual members." FED. R. CIV. P. 23(b)(3). Plaintiff is not required to show that all class members' claims are identical to each other as long as there are common questions at the heart of the case; "despite some factual differences between the members of the class, commonality can still exist for purposes of 23(a)(2)." In re Dehon, Inc., 298 B.R. 206, 214 (Bankr. D. Mass. 2003) (holding that because one "can reasonably infer that certain defenses of the individual members of the putative class to Dehon's subordination strategy will be available to every other member . . . . commonality is established").

Indeed, only a single common question is sufficient to satisfy the requirements of Rule 23(a)(2). See, e.g., 1 Robert Newberg, NEWBERG ON CLASS ACTIONS, § 3.10; accord So. States Police Benevolent Ass'n, 241 F.R.D. at 87. "The test or standard for meeting the Rule 23(a)(2) prerequisite is qualitative rather than quantitative; that is, there need be only a *single issue common* to all members of the class. Therefore, this requirement is easily met in most cases." Natchitoches Parish Hosp. Servs. Dist. v. Tyco Int'l., Ltd., 247 F.R.D. 253, 264 (D. Mass. 2008) (quoting 1 Newberg, NEWBERG ON CLASS ACTIONS, § 3.10) (emphasis added).

activities were compensable); Morales v. Greater Omaha Packing Co., Inc., No. 8:08CV88, 2010 WL 1049277, at *7-8 (D. Neb. Mar. 17, 2010) (finding commonality because "[w]hether the employees are engaging in compensable pre- and post-shift activities [depends upon] non-unique general allegations that particular categories of activities are compensable, yet the defendant fails to compensate for these activities"); Prasker v. Asia Five Eight LLC, No. 08 Civ. 5811(MGC), 2010 WL 476009, at *2 (S.D.N.Y. Jan. 6, 2010) (granting final approval of certification of class and class action settlement after finding the proposed class also satisfied commonality prong based on common legal issues about the way class members were compensated despite differences in positions).

This is the paradigm, particularly in a settlement context, of a common issue sufficient to meet the 23(a)(2) standard.

4. Typicality Under Rule 23(a)(3)

Rule 23(a)(3) requires that a representative plaintiff's claims be "typical" of those of other class members.[10] The typicality requirement is satisfied when the class members' claims "arise[ ] from the same event or practice or course of conduct that gives rise to the claims of other class members, and . . . are based on the same legal theory." Garcia-Rubiera v. Calderon, 570 F.3d 443, 460 (1st Cir. 2009) (quoting In re Am. Med. Sys., Inc., 75 F.3d 1069, 1082 (6th Cir. 1996); see also Marisol A. v. Giuliani, 126 F.3d 372 (2d Cir. 1997) (typicality requirement "is satisfied when each class member's claim arises from the same course of events, and each

[10] The commonality and typicality requirements of Rule 23(a) "tend to merge." Gen.Tel. Co. of Southwest v. Falcon, 457 U.S. 147, 157 n. l3 (1982). The requirement of this subdivision of the rule, along with the adequacy of representation requirement set forth in subsection (a)(4), is designed to assure that the interests of unnamed class members will be protected adequately by the named class representative. See, e.g., id.; In re Screws Antitrust Litigation, 91 F.R.D. 52, 56 (D. Mass. 1981) (highlighting requirement that class interests be adequately protected); Prudential II, 148 F.3d at 311; Bogosian v. Gulf Oil Corp., 561 F.2d 434 (3d Cir. 1977); Asbestos School Litig., 104 F.R.D. at 429-30.

class member makes similar legal arguments to prove the defendant's liability"). Notably, a "finding of typicality will generally not be precluded even if there are 'pronounced factual differences' where there is a strong similarity of legal theories." In re Carbon Black Antitrust Litig., No. Civ.A.03-10191-DPW, 2005 WL 102966, *12 (D. Mass. Jan. 18, 2005) (quoting In re Linerboard Antitrust Litig., 203 F.R.D. 197, 207 (E.D. Pa. 2001)); see also Hayworth v. Blondery Robinson & Co., 980 F.2d 912, 923 (3d Cir. 1992) ("Factual differences will not render a claim atypical if the claim arises from the same event or practice of course of conduct that gives rise to the claims of the class members, and it is based on the same legal theory.").[11]

This requirement is also met by the Rule 23 Class which is based on the same claims. Thus, Plaintiffs' claims are "typical" with regard to the entire class. Further, this requirement is met by the proposed Rule 23 settlement class as Plaintiffs' claims allegedly all arise from a common course of conduct by Defendants in failing to compensate non-exempt employees for all time worked. Thus, for the purpose of settlement, Plaintiffs contend that the case each member of the Rule 23 Class would put on would be essentially the same case (hence, commonality) and the named class representatives would, themselves put on that case (hence, their claims are typical).

5. Adequacy Under Rule 23(a)(4)

The final requirement of Rule 23(a) is set forth in subsection (a)(4), which requires that "the representative parties will fairly and adequately protect the interests of the class." In the First Circuit, "[t]he requirement of adequate representation is met [where] [1] the named plaintiffs' interests are not antagonistic with those of the rest of the class but rather involve the

[11] In other words, "[t]he 'typicality' requirement focuses less on the relative strengths of the named and unnamed plaintiffs' case than on the similarity of the legal and remedial theories behind their claims." In re Relafen Antitrust Litig., 231 F.R.D. 52, 69 (D. Mass. 2005) (quoting Jenkins v. Raymark Indus., 782 F.2d 468, 472 (5th Cir. 1986)); Weiss v. York Hosp., 745 F.2d 786, 809-10 (3d Cir. 1984).

identical legal issue, and [2] the plaintiffs' attorneys are qualified to conduct the litigation." Bouchard v. Sec. of Health & Human Servs., No. Civ.A. 78-0632-F, 1982 WL 594675, at *7 (D. Mass. Jan. 11, 1982); see also Andrews v. Bechtel Power Co., 780 F.2d 124, 130 (1st Cir. 1985) (stating Rule 23(a)(4) requires "that counsel chosen by the representative party is qualified, experienced and able to vigorously conduct the proposed litigation"). These two components are designed to ensure that absentee class members' interests are fully pursued.

Adequacy is easily met here – Plaintiffs' attorneys, proposed Class Counsel, are experienced and competent in complex litigation and have an established track record in employment law, including, specifically, the litigation and settlement of wage and hour cases in the medical care industry. (See Solomon Decl. at 16 & Ex. A). In turn, the class representatives of the Rule 23 Class have no interests whatever antagonistic to the class and have demonstrated their allegiance to this litigation through their patience and participation in the settlement process on behalf of all of these putative class members.

Having demonstrated that each of the mandatory requirements of Rule 23(a) are satisfied here, the Parties now turn to consideration of the factors which, independently, justify certification of the Rule 23 Class under subdivision 23(b)(3) of the rule.

6. The Requirements of Rule 23(b)(3) Are Met in the Settlement Context

Plaintiffs' proposed State Law Class also meets the requirements of Rule 23(b)(3). Under 23(b)(3) a class action may be maintained if:

> the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include: (A) the interest of members of the class in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular

> forum; (D) the difficulties likely to be encountered in the management of a class action.

FED. R CIV. P. 23(b)(3).

"The Rule 23(b)(3) predominance inquiry tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation." Amchem, 521 U.S. at 623. Although Rule 23(b)(3) requires that common issues of law and fact predominate, it does not require that there be an absence of individual issues. Smilow v. Sw. Bell Mobile Sys., Inc., 323 F.3d 32, 39 (1st Cir. 2003) (noting "courts have usually certified Rule 23(b)(3) classes even though individual issues were present"); In re Sugar Ind. Antitrust Litig., 73 F.R.D. 322, 344 (E.D. Pa. 1976).

The Court must find that "the group for which certification is sought seeks to remedy a common legal grievance." Hochschuler v. G.D. Searle & Co., 82 F.R.D. 339 (N.D. Ill. 1978); see also In re TJX Cos. Retail Sec. Breach Litig., 246 F.R.D. 389, 398 (D. Mass. 2007) ("Need for individualized damages decisions does not ordinarily defeat predominance requirement for class certification where there are disputed common issues as to liability."); Dietrich, 192 F.R.D. 119 (in determining whether common issues of fact predominate, "a court's inquiry is directed primarily toward whether the issue of liability is common to members of the class"). Rule 23(b)(3) does not require that all questions of law or fact be common. See, e.g., Smilow, 323 F.3d at 39 (1st Cir. 2003) (pointing out Rule 23(b)(3) "requires merely that common issues predominate"); In re Telectronics Pacing Sys., 172 F.R.D. 271, 287-88 (S.D. Ohio 1997). In this regard, courts generally focus on the liability issues and whether these issues are common to the class. If so, particularly in the settlement context, common questions are held to predominate over individual questions. See id.

Plaintiffs assert that common questions of law and fact predominate. All of the claims of the members of the Rule 23 Class arise out of general compensation practices affecting the pay

of non-exempt employees. As a result, Plaintiffs allege that class members all suffered the same harms (*i.e.*, uncompensated pre- or post-shift work, missed or interrupted meal breaks, and/or uncompensated trainings). Likewise, all of the alleged harms occurred in Massachusetts, and all class members' claims are subject to Massachusetts and federal law. Therefore, the Rule 23 Class presents common operative facts and common questions of law which predominate over any legal or factual variations in the application of the Defendants' compensation policies to certain Non-Exempt Employees.

These common questions of law and fact referred to above, specifically in Part IV.B.3, suffice in this settlement class to present a predominance of common issues.

The Parties further stipulate for settlement purposes that superiority is likewise met in the settlement context because this settlement will resolve the pending lawsuit against all Defendants in a single, consolidated proceeding – obviating the need for multiple, parallel lawsuits. Further, given the commonality of claims relating to Defendants' compensation practices and the plethora of complex legal issues relating to the claims raised in this litigation, there would be little or no interest for each class member to proceed with a "single plaintiff" case.

Accordingly, strictly for the purposes of settlement, the Parties agree that there is no danger that individual variations, type or magnitude of damage suffered by individual class members will affect predominance, as the class representatives allege the same type of damages – and seeks the same type of relief – as all members of the proposed class.

Finally, resolution of the claims asserted in this litigation by class settlement is superior to the individual adjudication of class members' claims for compensatory relief. In particular, the settlement provides class members with an ability to obtain prompt, predictable and certain relief, whereas individualized litigation carries with it great uncertainty, risk and costs, and

provides no guarantee that the allegedly injured parties will obtain necessary and timely relief at the conclusion of the litigation process. Settlement also would relieve judicial burdens that would be caused by adjudication of the same issues in multiple trials, including trials in each of the lawsuits being settled herein.

Accordingly, strictly in the settlement posture in which the case now stands, the Rule 23 Class is appropriate and should be certified for settlement purposes.

C. The Proposed Notice Provides Adequate Notice To The Members of the Classes

1. The Notice Satisfies Due Process

The Parties propose that the Settlement Administrator send, by first class mail, to each member of the settlement classes, as defined above and in the Settlement Agreement (see Settlement Agreement at § 10(a)), a Notice (attached as Tab C to the Settlement Agreement) and a Claim Form (in the form as attached as Tab D to the Settlement Agreement).

The Parties propose that the Notice and Claim Form be sent to all known and reasonably ascertainable members of the classes based on Defendants' records. The Settlement Agreement provides that the Claims Administrator will ensure that all members of the classes receive notice by taking all reasonable steps to trace the addresses of any member of the classes for whom a Notice or Claim Form is returned by the post office as undeliverable, including tracking of all undelivered mail and performing additional address searches. The Settlement Administrator will then promptly re-mail the Notices and Claim Forms to members of the classes for whom new addresses are found.

This notice plan is consistent with class certification notices approved by numerous state and federal courts, and is, under the circumstances of this case, the best notice practicable. See, e.g., Wright v. Linkus Enters., Inc., No. 2:07-cv-01347-MCE-CMK, 2009 WL 2365436, at *7-8

(E.D. Cal. July 29, 2009) (holding notice involving same mail procedures as here meets both Rule 23(e) requirement that "proposed settlement is fundamentally fair, adequate, and reasonable" and "Rule 23(c)(2)(B) requirement that the Court direct 'best notice that is practicable under the circumstances'") (quoting FED. R. CIV. P. 23(c)(2)(B), (e)); Davis v. Abercrombie & Fitch Co., No. 08 CV 01859(PKC)(AJP), 2009 WL 1542552, at *1-4 (S.D.N.Y. June 2, 2009) (approving issuance of notice to class using same method as applied here); In re M.L. Stern Overtime Litig., No. 07-CV-0118-BTM (JMA), 2009 WL 995864, at *6-7 (S.D. Cal. Apr. 13, 2009) (finding same mail procedure as applied here to be the "best notice practicable"); Adams v. Inter-Con Security Sys., Inc., No. C-06-5428 MHP, 2007 WL 3225466, at *3-4 (N.D. Cal. Oct. 30, 2007) (finding that notice using same mail procedure as here "satisfies the notice requirements of Rule 23(e), and . . . all other legal and due process requirements").

2. The Proposed Class Notice is Accurate, Informative and Easy to Understand

Under FED. R. CIV. P. 23(e), class members are entitled to notice of any proposed settlement before it is ultimately approved by the Court. Under Rule 23(e) and the relevant due process considerations, adequate notice must be given to all absent class members and potential class members to enable them to make an intelligent choice as to whether to opt-in to the Collective Class or opt-out of the Rule 23 Class. See, e.g., Weinberger v. Great Northern Nekoosa Corp., 925 F.2d 518, 523 (1st Cir. 1991) (stating "the court's power to approve or reject a settlement under Rule 23(e) enables the court to ensure fairness for the class members" (quoting 3B MOORE'S FEDERAL PRACTICE ¶ 23.91 at 23-533 to 23-534)); Prudential II, 148 F.3d at 326-27; Valentino v. Carter-Wallace, Inc., 97 F.3d 1227 (9th Cir. 1996). Similarly, pursuant to Section 16(b) of the FLSA, class members are entitled to notice to afford them with an adequate opportunity to opt-into the Action. See 29 U.S.C. § 216(b).

Here, the proposed Notice provides clear and accurate information as to the nature and principal terms of the Settlement (as well as an explanation of the method of allocating and paying net settlement amount monies to class members who submit a valid and timely Claim Form and of the claims process), the procedures and deadlines for opting-in to the Collective Class or opting-out of the Rule 23 Class and submitting objections, the consequences of taking or foregoing the various options available to members of the classes, and the date, time and place of the final settlement approval hearing. See MANUAL FOURTH at § 21.312. Pursuant to FED. R. CIV. P. 23(h), the proposed class notice also sets forth the maximum amount of attorneys' fees and costs which may be sought by present party plaintiffs and their counsel.

Accordingly, the Notice complies with the standards of fairness, completeness, and neutrality required of a settlement class notice disseminated under authority of the Court. See, e.g., 4 NEWBERG ON CLASS ACTIONS at §§ 8.21, 8.39; MANUAL FOURTH at §§ 21.311-21.312.

D. A Final Fairness Hearing Should be Scheduled

The Court should schedule a final fairness hearing to determine that final approval of the Settlement is proper. The fairness hearing will provide a forum to explain, describe or challenge the terms and conditions of the Settlement, including the fairness, adequacy and reasonableness of the Settlement. At that time, moreover, Class Counsel will present their application for their fees and expenses pursuant to Rule 23(h) as well as for the award to the named class representatives. Accordingly, the Parties request that the Court schedule the final fairness hearing one-hundred (100) days from the date of this motion, on or as soon as practicable after Wednesday, September 1, 2010, at the District of Massachusetts, Boston Division.

V. Conclusion

For the foregoing reasons, the Parties respectfully request that this Court enter the Preliminary Approval Order, attached as Exhibit B hereto, which, inter alia: (1) authorizes the

filing of Plaintiffs' Amended Complaint; (2) certifies the Collective Class and Rule 23 Class for settlement purposes only; (3) grants preliminary approval of the Settlement; (4) appoints Thomas & Solomon LLP as Class Counsel; (5) directs distribution of the proposed Notice to all members of the Classes regarding settlement of the claims against Defendants on a final and complete basis, in accordance with this motion and the Parties' Settlement Agreement; and (6) sets a date for the final fairness hearing one-hundred (100) days from the date of this motion, on or as soon as practicable after Wednesday, September 1, 2010, at the District of Massachusetts, Boston Division.

Respectfully submitted,

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Dated: May 24, 2010

Tab B

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

VIRGINIA WOOLFSON AND MICHAEL STINSON, *on behalf of themselves and all other employees similarly situated,* *Plaintiffs,* v. CAREGROUP, INC., BETH ISRAEL DEACONESS MEDICAL CENTER, INC., BETH ISRAEL DEACONESS HOSPITAL – NEEDHAM, INC., MOUNT AUBURN HOSPITAL, NEW ENGLAND BAPTIST HOSPITAL, PAUL LEVY, LISA ZANKMAN, CAREGROUP, INC. 401K SAVINGS & INVESTMENT PLAN AND CAREGROUP VOLUNTARY 403B SAVINGS PLAN, *Defendants.*	AMENDED COMPLAINT- CLASS ACTION AND DEMAND FOR JURY TRIAL Civil Action No. 1:09-cv-11464

NATURE OF CLAIM

1. This is a proceeding for injunctive and declaratory relief and monetary damages to redress the deprivation of rights secured to plaintiffs, Virginia Woolfson and Michael Stinson individually, as well as all other employees similarly situated ("Class Members") under the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 201 *et seq*. ("FLSA"); under the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1001 *et seq*.; under the Racketeer Influenced and Corrupt Organizations ("RICO") Act, 18 U.S.C. § 1961 *et seq*.; and under Massachusetts statutory and common law.

JURISDICTION AND VENUE

2. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1331, 28 U.S.C. §1343 (3) and (4) conferring original jurisdiction upon this Court of any civil action to recover damages or to secure equitable relief under any Act of Congress providing for the protection of

civil rights; under 28 U.S.C. § 1337 conferring jurisdiction of any civil action arising under any Act of Congress regulating interstate commerce; under the Declaratory Judgment Statute, 28 U.S.C. § 2201; under 29 U.S.C. §216 (b); and under 18 U.S.C. § 1964(a) and (c).

3. This Court's supplemental jurisdiction of claims arising under Massachusetts law is also invoked.

4. Venue is appropriate in the District of Massachusetts since the allegations arose in this district and the Plaintiffs reside in this district.

CLASS ACTION ALLEGATIONS

5. The claims arising under ERISA and RICO and Massachusetts law are properly maintainable as a class action under Federal Rule of Civil Procedure 23.

6. The class action is maintainable under subsections (1), (2) and (3) of Rule 23(b).

7. The class consists of current and former employees of defendants whose 401(k) and 403B plans were not credited with their non-reduced weekly wages and correct overtime compensation. Additionally, the class consists of current and former employees of defendants who were injured by defendants' scheme to cheat employees out of their property and to convert the employees' property, including their wages and/or overtime pay, by misleading employees about their rights under the FLSA.

8. The class size is believed to be over 9,000 employees.

9. The Plaintiffs will adequately represent the interests of the Class Members because they are similarly situated to the Class members and their claims are typical of, and concurrent to, the claims of the other Class Members.

10. There are no known conflicts of interest between the Plaintiffs and the other Class Members.

11. The class counsel, Dwyer & Collara, LLP and Thomas & Solomon LLP, are qualified and able to litigate the Plaintiffs' and Class Members' claims.

12. The class counsel practice in employment litigation, and their attorneys are experienced in class action litigation, including class actions arising under federal wage and hour laws.

13. Common questions of law and fact predominate in this action because the claims of all Plaintiffs and Class Members are based on whether defendants' policy of not crediting employees with their non-reduced weekly wages and correct overtime compensation is a violation of ERISA or was part of a scheme to defraud Plaintiffs in violation of RICO.

14. Common questions of law and fact predominate in this action because the claims of all Plaintiffs and Class Members are also based on defendants' policies and practice of not properly paying employees for all hours worked including applicable premium pay in violation of the laws of Massachusetts.

15. The class action is maintainable under subsections (2) and (3) of Rule 23(b) because the Plaintiffs seek injunctive relief, common questions of law and fact predominate among the Plaintiffs and Class Members and the class action is superior to other available methods for the fair and efficient adjudication of the controversy.

PARTIES

A. Defendants

16. Collectively, defendants CareGroup, Inc., Beth Israel Deaconess Hospital – Needham, Inc., Beth Israel Deaconess Medical Center, Inc., Mount Auburn Hospital, New England Baptist Hospital, Paul Levy, Lisa Zankman, CareGroup, Inc. 401K Savings & Investment Plan and CareGroup Voluntary 403B Savings Plan (collectively, "Named

Defendants") are related organizations through, for example, common membership, governing bodies, trustees and/or officers and benefit plans.

17. Named Defendants health care facilities and centers include the following: Beth Israel Deaconess Hospital Needham Campus, Beth Israel Deaconess Medical Center, Mount Auburn and New England Baptist Hospital (collectively "Health Centers").

18. Named Defendants affiliated health care facilities and centers include but are not limited to: Cardiovascular Associated Physicians of Harvard Faculty Physicians at BIDMC, HeartCenter of Metro West, Medical Care of Boston Management Corp. d/b/a Affiliated Physicians Group, Mount Auburn Professional Services, and New England Baptist Medical Associates. (collectively, "Affiliates").

19. Together the Named Defendants, the Health Centers and the Affiliates are referred to as "CareGroup" or "defendants".

20. CareGroup is an enterprise engaged in the operation of a hospital and/or the care of the sick and is a healthcare consortium.

21. Defendants operate 4 health care facilities and centers and employ approximately 9,000 individuals.

22. Defendants constitute an integrated, comprehensive, consolidated health care delivery system, offering a wide range of services.

23. For example, defendants have centralized computer, payroll and health records systems that are integrated throughout their locations.

24. Further, upon information and belief, defendants' labor relations and human resources are centrally organized and controlled, including the maintenance of system-wide policies and certain employee benefit plans.

25. Upon information and belief, defendants share common management, including oversight and management by an executive team.

26. Upon information and belief, defendants have common ownership.

27. As such, defendants are the employer (single, joint or otherwise) of the Plaintiffs and Class Members and/or alter egos of each other.

28. Paul Levy is a CEO within CareGroup.

29. Upon information and belief, including defendants' admissions, Mr. Levy's responsibilities include actively managing employees of CareGroup.

30. Upon information and belief, in concert with others, Mr. Levy has the authority to, and does, make decisions that concern the policies that defendants adopt and the implementation of those policies.

31. Upon information and belief, in concert with others, Mr. Levy has the authority to, and does, make decisions that concern defendants' operations, including functions related to employment, human resources, training, payroll, and benefits.

32. Upon information and belief, due in part to his role as a Chief Executive Officer, Mr. Levy is actively involved in the creation of the illegal policies complained of in this case.

33. Upon information and belief, due in part to his role as a Chief Executive Officer, Mr. Levy actively advises defendants' agents on the enforcement of the illegal policies complained of in this case.

34. Upon information and belief, due in part to his role as a Chief Executive Officer, Mr. Levy actively ensures defendants' compliance or non-compliance with federal law, including the requirements of the FLSA, ERISA and RICO.

35. Upon information and belief, due in part to his role as a Chief Executive Officer,

Mr. Levy actively ensures defendants' compliance or non-compliance with Massachusetts law including the requirements of Mass. Gen. Law Ch. 149 §§ 148, 150 and Mass. Gen. Law Ch. 151 §§ 1A, 1B.

36. Upon information and belief, in concert with others, Mr. Levy has the authority to, and does, make decisions that concern the reviewing and counseling of defendants regarding employment decisions, including hiring and firing of Plaintiffs.

37. Upon information and belief, in concert with others, Mr. Levy has the authority to, and does, make decisions that concern employees' schedules, hours and standard benefit levels.

38. Upon information and belief, Mr. Levy has the authority to, and does, make decisions that concern standard pay scales.

39. Upon information and belief, Mr. Levy has the authority to, and does, make decisions that concern defendants' human resources policies, the resolution issues and disputes regarding policies and their applications, the counsel locations receive regarding human resources issues, and communications with employees about human resources issues and policies.

40. Upon information and belief, Mr. Levy has the authority to, and does, make decisions that concern defendants' employment and human resources records, including the systems for keeping and maintaining those records.

41. Upon information and belief, Mr. Levy has the authority to, and does, make decisions that concern training and education functions within CareGroup.

42. Upon information and belief, Mr. Levy has the authority to, and does, make decisions that concern the type and scope of training employees must attend as well as any

compensation they receive for attending training.

43. Upon information and belief, Mr. Levy has the authority to, and does, make decisions that concern payroll functions within CareGroup.

44. Upon information and belief, Mr. Levy has the authority to, and does, make decisions that concern the system for keeping and maintaining employees' payroll records, the timing and method with which payment is conveyed to employees, and the manner and method in which employees receive payroll information including their payroll checks.

45. Upon information and belief, Mr. Levy has the authority to, and does, make decisions that concern the type and scope of benefits available to employees, the method and manner in which information regarding those plans is conveyed to employees, and the system for keeping and maintaining records related to employees' benefits.

46. Because Paul Levy has authority to hire or fire employees, provide and direct support regarding human resources issues, including the hiring and firing of Plaintiffs, and control the drafting and enforcement of the policies which govern the hiring and firing of employees, Mr. Levy has the power to hire and fire employees.

47. Because Mr. Levy has authority to establish work schedules and/or conditions of employment, provide and direct support regarding human resources issues, including work schedules and/or conditions of employment, control the drafting and enforcement of the policies which govern employees' schedules and/or conditions of employment, establish the type and scope of training employees receive, and administer employees' benefit programs, including standard benefit levels and the type and scope of benefits available to employees, Mr. Levy supervises and controls employees' work schedules and/or conditions of employment.

48. Because Mr. Levy has authority to establish employees' rate and method of

payment and centrally control pa yroll functions, including standa rd pay scales, the provision of payroll inform ation, and the tim ing of paym ent, Mr. Levy determ ines the rate and m ethod o f employees' payment.

49. Because Mr. Levy has authority with resp ect to defendants' system s for keeping and m aintaining payroll, benefits, and other employment-related record s, Mr. Levy m aintains employees' employment records.

50. Because Mr. Levy provides day-to-day support regarding human resources issues, including employees' work schedules and/or conditions of employment, controls the drafting and enforcement of the policies which govern e mployees' schedules and/or co nditions of employment, and adm inisters em ployees' benefit programs, he is affirm atively, directly, and actively involved in operations of the defendants' business functions, particularly in regards to the employment of Plaintiffs.

51. Because M r. Levy is actively invo lved in the creation of the illegal polic ies complained of in this ca se, actively advises def endants' agents on the e nforcement of the illeg al policies co mplained o f in this c ase and ac tively en sures def endants' com pliance or non - compliance with f ederal law, inc luding the re quirements of the FLSA, ERISA and RICO, he actively participates in the violations complained of in this action.

52. Because Mr. Levy is actively invo lved in the creation of the illegal polic ies complained of in this ca se, actively advises def endants' agents on the e nforcement of the illeg al policies co mplained o f in this c ase and ac tively en sures def endants' com pliance or non - compliance with Massachusetts law including re quirements of Mass. Gen. Law Ch. 149 §§ 148, 150 and Mass. Gen. Law Ch. 151 §§ 1A, 1B, he ac tively participates in the violations complained of in this action.

53. Based upon the forego ing, Mr. Lev y is liab le to Plain tiffs because of his activ e role in operating the business, his status as an employer, and/or according to federal law and state law.

54. Lisa Zankman is a Senior Vice President of Human Resources within CareGroup.

55. Upon information and belief, Ms. Zankm an is responsible for, provides direction and control over, and is authorized to direct aspects of hum an res ources functions within CareGroup.

56. Upon inform ation and belief, due in pa rt to her role of overseeing hum an resources, training and education, and payroll and comm ission servıces, in concert with others, Ms. Zankman is actively involved in the creation of the illegal policies co mplained of in this case.

57. Upon inform ation and belief, due in pa rt to her role of overseeing hum an resources, training and education, and payroll and comm ission servıces, in concert with others, Ms. Zankman actively advises defendants' agents on the enforcem ent of the illegal policies complained of in this case.

58. Upon inform ation and belief, due in pa rt to her role of overseeing hum an resources, training and education, and payroll and comm ission servıces, in concert with others, Ms. Zankman actively ensures defendants' comp liance or non-com pliance with federal law, including the requirements of the FLSA, ERISA and RICO.

59. Upon inform ation and belief, due in pa rt to her role of overseeing hum an resources, training and educati on, and payroll and comm ission services, Ms. Zankman actively ensures defendants' compliance or non-com pliance w ith Massachusetts state law including requirements of Mass. Gen. Law Ch. 149 §§ 148, 150 and Mass. Gen. Law Ch. 151 §§ 1A, 1B.

60. Upon information and belief, Ms. Zankman, is actively involved in reviewing and counseling defendants regarding employment decisions, including hiring and firing of Plaintiffs.

61. Upon information and belief, Ms. Zankman, is actively involved in decisions that set employees' schedules, hours and standard benefit levels.

62. Upon information and belief, Ms. Zankman, is actively involved in decisions that set standard pay scales.

63. Upon information and belief, Ms. Zankman, is actively involved in the determination and drafting of human resources policies, the resolution of issues and disputes regarding policies and their application, the counseling locations receive regarding human resources issues, and communications with employees about human resources issues and policies.

64. Upon information and belief, Ms. Zankman, is actively involved in defendants' employment and human resources records, including the systems for keeping and maintaining those records.

65. Upon information and belief, Ms. Zankman, is actively involved in training and education functions within CareGroup.

66. Upon information and belief, Ms. Zankman, is actively involved in determining the type and scope of training employees must attend as well as any compensation they receive for attending training.

67. Upon information and belief, Ms. Zankman, is actively involved in payroll functions within CareGroup.

68. Upon information and belief, Ms. Zankman is actively involved in the system for keeping and maintaining employees' payroll records, the timing and method with which payment

is conveyed to employees, and the manner and method in which employees receive payroll information including their payroll checks.

69. Upon information and belief, Ms. Zankman, is actively involved in benefit plans within CareGroup.

70. Upon information and belief, Ms. Zankman, is actively involved in determining the type and scope of benefits available to employees, the method and manner in which information regarding those plans is conveyed to employees, and the system for keeping and maintaining records related to employees' benefits.

71. Because Ms. Zankman has authority to hire or fire employees, provide and direct support regarding human resources issues, including the hiring and firing of employees, and control the drafting and enforcement of the policies which govern the hiring and firing of employees, Ms. Zankman has the power to hire and fire employees.

72. Because Lisa Zankman has authority to establish work schedules and/or conditions of employment, provide and direct support regarding human resources issues, including work schedules and/or conditions of employment, control the drafting and enforcement of the policies which govern employees' schedules and/or conditions of employment, establish the type and scope of training employees receive, and administer employees' benefit programs, including standard benefit levels and the type and scope of benefits available to employees, Ms. Zankman supervises and controls employees' work schedules and/or conditions of employment.

73. Because Ms. Zankman has authority to establish employees' rate and method of payment and control payroll functions, including standard pay scales, the provision of payroll information, and the timing of payment, Ms. Zankman determines the rate and method of employees' payment.

74. Because Ms. Zankman has authority with respect to defendants' systems for keeping and maintaining payroll, benefits, and other employment-related records, Ms. Zankman maintains employees' employment records.

75. Because Ms. Zankman provides day-to-day support regarding human resources issues, including employees' work schedules and/or conditions of employment, controls the drafting and enforcement of the policies which govern employees' schedules and/or conditions of employment, and administers employees' benefit programs, she is affirmatively, directly, and actively involved in operations of defendants' business functions, particularly in regards to the employment of Plaintiffs.

76. Because Ms. Zankman is actively involved in the creation of the illegal policies complained of in this case, actively advises defendants' agents on the enforcement of the illegal policies complained of in this case and actively ensures defendants' compliance or non-compliance with federal law, including the requirements of the FLSA, ERISA and RICO, Ms. Zankman actively participates in the violations complained of in this action.

77. Because Ms. Zankman is actively involved in the creation of the illegal policies complained of in this case, actively advises defendants' agents on the enforcement of the illegal policies complained of in this case and actively ensures defendants' compliance or non-compliance with Massachusetts law including requirements of Mass. Gen. Law Ch. 149 §§ 148, 150 and Mass. Gen. Law Ch. 151 §§ 1A, 1B, Ms. Zankman actively participates in the violations complained of in this action.

78. Based upon the foregoing, Ms. Zankman is liable to Plaintiffs because of her active role in operating the business, her role in the violations complained of in this action, her status as an employer, and/or otherwise according to federal and state law.

79. Upon information and belief, defendants maintain ERISA plans known as the CareGroup, Inc., 401K Savings & Investment Plan and CareGroup Voluntary 403B Savings Plan.

B. Plaintiffs

Named Plaintiffs

80. At all relevant times, Virginia Woolfson and Michael Stinson ("Plaintiffs") were employees under the FLSA, employed within this District and reside within this District.

Class Members

81. The Class Members are those employees of defendants who were suffered or permitted to work by defendants and not paid for all the time they worked including their regular or statutorily required rate of pay for all hours worked ("Class Members").

FACTUAL BACKGROUND

82. CareGroup is one of the largest health care providers in Massachusetts.

83. As discussed below, defendants maintained several illegal pay policies that denied Plaintiffs and Class Members compensation for all hours worked, including applicable premium pay rates.

Meal Break Deduction Policy

84. Pursuant to defendants' "Meal Break Deduction Policy," defendant's time-keeping system automatically deducts one half-hour from employees' paychecks each day for a meal break even though defendants fail to ensure that employees were relieved from duty for a meal break and employees did in fact perform work during those breaks and were not paid for that time.

85. Defendants maintain the Meal Break Deduction Policy throughout its facilities and centers.

86. Plaintiffs and Class Members allow defendants to operate on a 24/7 basis, and in doing so, Plaintiffs and Class Members often perform compensable work for defendants during their uncompensated meal breaks.

87. Defendants do not prohibit Plaintiffs and Class Members from working during their meal breaks and do not have rules against such work.

88. Although the defendants' policy deducts 30 minutes of pay each shift, defendants expect Plaintiffs and Class Members to be available to work throughout their shifts and consistently requires its employees to work during their unpaid meal breaks.

89. Plaintiffs and Class Members are not relieved by another employee when their break comes, or asked to leave their work location.

90. Plaintiffs and Class Members are expected to eat without any change in demands from patients or relief by additional staff.

91. Further, all defendants' employees are required to respond to pages whether on break or not, as well as requests by patients, co-workers and management.

92. Further, defendants for years have been reducing staffing which imposes larger and larger burdens on Plaintiffs and Class Members to immediately respond to the defendants' needs regardless of whether Plaintiffs and Class Members are on a "meal break."

93. Defendants know that Plaintiffs and Class Members perform work during their meal breaks.

94. For example, Plaintiffs and Class Members perform the work for the defendants, on defendants' premises, in plain sight, and at management's request.

95. Defendants' management have repeatedly observed Plaintiffs and Class Members working though their unpaid meal breaks. Defendants' management has gone so far as to direct Plaintiffs and Class Members to work during their unpaid meal breaks even though defendants' management knew that they would not be able to have a full meal break.

96. Plaintiffs and Class Members had conversations with defendants' managers in which they discussed how they were working through their meal periods and were not getting paid for such work.

97. When questioned by employees about the Meal Break Deduction Policy, the defendants affirmatively stated that the employees were being fully paid for the worktime for which they were entitled to be paid, even though defendants knew compensable worktime was being excluded from the employees' pay.

98. Further, given the demands of the health care industry and short staffing, defendants' management knew that to get the tasks done they assigned to Plaintiffs and Class Members, when they needed to get done, Plaintiffs and Class Members had to work through their meal breaks even during times they were not paid for their meal breaks.

99. Even though defendants know its employees are performing such work, defendants fail to compensate their employees for such work.

100. All Plaintiffs and Class Members are subject to the Meal Break Deduction Policy and are not fully compensated for work they perform during breaks, including, without limitation, hourly employees working at CareGroups' facilities and centers, such as secretaries, housekeepers, custodians, clerks, porters, food service hosts, registered nurses, licensed practical nurses, nurses' aides, administrative assistants, anesthetists, clinicians, medical coders, medical underwriters nurse case managers, nurse interns, nurse practitioners, practice supervisors,

professional staff nurses, quality coordinators, resource pool nurses, respiratory therapists, senior research associates, operating room coordinators, surgical specialists, admissions officers, student nurse techs, trainers, transcriptionists, occupational therapists, occupational therapy assistants, physical therapists, physical therapy assistants, radiation therapists, staff therapists, angiotechnologists, x-ray technicians, CAT scan technicians, mammographers, MRI technologists, sleep technologists, surgical technologists, radiographers, phlebotomists, and other health care workers.

101. Employees are entitled to compensation for all time they performed work for defendants, including during their meal breaks.

102. In addition, if Plaintiffs' and Class Members' hours had been properly calculated, the time spent working during meal breaks often would include work that should have been calculated at applicable premium pay rates.

103. All Plaintiffs and Class Members subject to the Meal Break Deduction Policy are members of Subclass 1.

Unpaid Preliminary and Postliminary Work Policy

104. CareGroup suffered or permitted Plaintiffs and Class Members to perform work before and/or after the end of their scheduled shift and failed to ensure that employees were relieved from their duties before and/or after the end of their scheduled shift.

105. However defendants failed to pay Plaintiffs and Class Members for all time spent performing such work as a result of defendants' policies, practices and/or time recording system (the "Unpaid Preliminary and Postliminary Work Policy").

106. In addition, if Plaintiffs' and Class Members' hours had been properly calculated, the time spent, performing work before and/or after their shifts often would have

included work that should have been calculated at applicable premium pay rates.

107. All Plaintiffs and Class Members subject to the Unpaid Preliminary and Postliminary Work Policy are members of Subclass 2.

Unpaid Training Policy

108. Defendants also suffered or permitted Class Members to attend compensable training programs.

109. However, defendants fail to pay employees for all time spent attending such training sessions (the "Unpaid Training Policy").

110. In addition, if Class Members hours had been properly calculated, the time spent attending training often would have included work that should have been calculated at applicable premium pay rates.

111. All Class Members subject to the Unpaid Training Policy are members of Subclass 3.

112. Collectively, the Meal Break Deduction Policy, the Unpaid Preliminary and Postliminary Work Policy, and the Unpaid Training Policy are referred to herein as the "Unpaid Work Policies."

Additional Allegations

113. Plaintiffs and Class Members were subject to defendants' time keeping policies which fail to ensure that employees are compensated for all hours worked, including pursuant to the Unpaid Work Policies.

114. Even though CareGroup knows its employees are performing such work, CareGroup fails to compensate its employees for such work.

115. Defendants' practice is to be deliberately indifferent to these violations of the statutory wage and overtime requirements.

116. Through the paystubs and payroll information it provided to employees, CareGroup deliberately concealed from its employees that they did not receive compensation for all the work they performed and misled them into believing they were being paid properly.

117. Further, by maintaining and propagating the illegal Unpaid Work Policies, defendants deliberately misrepresented to Plaintiffs and Class Members that they were being properly paid for all compensable time, even though Plaintiffs and Class Members were not receiving pay for all compensable time including applicable premium pay.

118. The defendants engaged in such conduct and made such statements to conceal from the Plaintiffs and Class Members their rights and to frustrate the vindication of the employees' federal rights.

119. As a result, employees were unaware of their claims.

120. This failure to pay overtime as required by the FLSA is willful.

121. Defendants, however, at all times intended to violate applicable federal laws by failing to pay Plaintiffs and Class Members their regular or statutorily required rate of pay for all hours worked including applicable premium pay.

122. Among the relief sought, Plaintiffs and Class Members seek injunctive relief to prevent CareGroup from continuing the illegal policies and practices perpetuated pursuant to the Unpaid Work Policies.

123. Defendants sponsor pension plans including the CareGroup, Inc. 401K Savings & Investment Plan and Caregroup Voluntary 403B Savings Plan (the "Plans") for its employees.

124. Plaintiffs and Class Members participated in the Plans as plan participants and

beneficiaries pursuant to 29 U.S.C. § 1132(a)(1).(A)(3).

125. Defendants failed to keep accurate records of all time worked by Class Members. By failing to keep such records, defendants' records are legally insufficient to determine benefits.

126. Defendants failed to credit or even investigate crediting overtime pay as compensation used to determine benefits to the extent overtime may be included as compensation under the Plans. Defendants, while acting as fiduciaries exercising discretion over the administration of the Plans, breached their duties to act prudently and solely in the interests of Plans' participants by failing to credit them with all of the hours of service for which they were entitled to be paid, including overtime to the extent overtime may be included as compensation under than Plans, or to investigate whether such hours should be credited. Under ERISA, crediting hours is a fiduciary function, independent of the payment of wages, necessary to determine participant's participation vesting and accrual of rights.

127. As used in this Complaint, "mailed" means: (1) placing in any post office or authorized depository for mailed matter, any matter or thing to be delivered by the United States Postal Service; (2) causing to be deposited any matter or thing to be delivered by any private or commercial interstate carrier; (3) taking or receiving therefrom any such matter or thing; and/or (4) knowingly causing to be delivered by any such means any such matter.

128. Plaintiffs and Class Members allege that Defendants devised, intended to devise, and carried out a scheme to cheat Plaintiffs and Class Members out of their property and to convert Plaintiffs' and Class Members' property, including their wages and/or overtime pay (the "Scheme"). Defendants' Scheme consisted of illegally, willfully and systematically withholding or refusing to pay Plaintiffs and Class Members their regular or statutoril y required rate of pay

for all hours worked in violation of federal law, as described previously in this Complaint.

129. Defendants' Scheme involved the employment of material misrepresentations and/or omissions and other deceptive practices reasonably calculated to deceive Plaintiffs and Class Members. The Scheme involved depriving Plaintiffs and Class Members of their lawful entitlement to wages and overtime.

130. In executing or attempting to execute the Scheme and to receive the financial benefits of the Scheme, defendants repeatedly mailed payroll checks, either directly to Plaintiffs and Class Members or between defendants' business locations. These mailings occurred on a regular basis and more than 100 such mailings occurred in the last 10 years.

131. The payroll checks were false and deceptive because they misled Plaintiffs and Class Members about the amount of wages to which they were entitled, as well as their status and rights under the FLSA. Plaintiffs and Class Members relied to their detriment on the misleading payroll checks that defendants mailed and those misleading documents were a proximate cause of Plaintiffs' and Class Members' injuries.

132. Defendants' predicate acts of mailing the misleading payroll checks in furtherance of their Scheme constitute a pattern of conduct unlawful pursuant to 18 U.S.C. § 1961(5) based upon both the relationship between the acts and continuity over the period of time of the acts. The relationship was reflected because the acts were connected to each other in furtherance of the Scheme. Continuity was reflected by both the repeated nature of the mailings during and in furtherance of the Scheme and the threat of similar acts occurring in the future. The threat was reflected by the continuing and ongoing nature of the acts.

133. Defendants' predicate acts were related, because they reflected the same purpose or goal (to retain wages and overtime pay due to Plaintiffs and Class Members for the economic

benefit of defendants and members of the enterprise); results (retention of wages and overtime pay); participants (defendants and other members of the enterprise); victims (Plaintiffs and Class Members); and methods of commission (the Scheme and other acts described in the Complaint). The acts were interrelated and not isolated events, since they were carried out for the same purposes in a continuous manner over a substantial period of time.

134. At all relevant times, in connection with the Scheme, defendants acted with malice, intent, knowledge, and in reckless disregard of Plaintiffs' and Class Members' rights.

135. Each of the Plaintiffs and Class Members is a "person" within the meaning of 18 U.S.C. §§ 1961(3) and 1964.

136. Each defendant is a "person" within the meaning of 18 U.S.C. §§ 1961(3) and 1962(c).

137. Defendants were members of an "enterprise" under 18 U.S.C. §§ 1961(4) and 1962(a), which was engaged in or the activities of which affected interstate and foreign commerce.

138. Each defendant received income from a pattern of conduct unlawful under RICO, in which defendants participated through continuous instances of providing Plaintiffs and Class Members with misleading documents which defendants mailed and upon which Plaintiffs and Class Members relied to their detriment.

139. Plaintiffs and Class Members were injured in their business and property under 18 U.S.C. § 1964(c) by reason of defendants' commission of conduct which was unlawful under RICO.

140. Every wage payment that the defendants mailed to the Plaintiffs and Class Members as part of the Scheme constituted a new legal injury to the Plaintiffs and Class

Members.

141. Therefore, each and every improper payment within the relevant statute of limitation period constitutes a new legal injury and the Plaintiffs and Class Members are entitled to recover based on the reduction in each improper payment.

142. Additionally, as set forth in the allegations above, the defendants fraudulently concealed from the Plaintiffs and Class Members the facts that are the basis for their claims. Further, such conduct by the defendants equitably tolls the statute of limitations covering Plaintiffs' and Class Members' claims.

143. Because of such conduct, the Plaintiffs and Class Members did not discover in the relevant statute of limitations period that the defendants were not paying them properly.

144. The Plaintiffs and Class Members exercised due diligence, but still were unaware of their rights.

145. The Plaintiffs and Class Members are not experts in proper payment under federal labor laws, and more specifically are not aware of what time is compensable for interrupted and missed meal breaks, nor how the defendants' internal computer systems were determining the amount they were being paid.

146. Further, when questioned, the defendants falsely assured Plaintiffs and Class Members that the defendants understood federal and state labor laws and that based on that knowledge, the defendants were ensuring that they were properly paying the Plaintiffs and Class Members.

147. The defendants made this representation despite the fact that such claims were false, fully knowing that Plaintiffs and Class Members were relying on the defendants' "expertise" and assurances.

148. Further, these assurances were not contradicted by the information in legal postings required by state or federal law to be displayed prominently at places of work to which Plaintiffs and Class Members had access.

149. Prior to seeking legal advice from Class Counsel, the Plaintiffs were never alerted to the defendants' concealment of its violation of the law by failing to pay the Class Members properly.

150. Further, not until the commencement of this action were Class Members made aware that the defendants' conduct in fact violated the law.

151. Plaintiffs and Class Members were not classified as exempt employees because hourly employees do not fall under one of the enumerated exemptions under the FLSA.

152. Plaintiffs and Class Members were subject to defendants' time keeping policies which fail to ensure that employees are compensated for all hours worked, including pursuant to the Unpaid Work Policies.

153. Defendants' failure to pay all wages and overtime as required by Mass. Gen. Law Ch. 149 §§ 148, 150 and Mass. Gen. Law Ch. 151 §§ 1A, 1B was in reckless disregard of Plaintiffs' and Class Members' rights.

154. As a direct and proximate cause of defendants' failure to pay all wages and overtime as required by law, defendants violated Mass. Gen. Law Ch. 149 §§ 148, 150 and Mass. Gen. Law Ch. 151 §§ 1A, 1B, and Plaintiffs and Class Members have suffered damages.

155. Among the relief sought, Plaintiffs seek injunctive relief to prevent CareGroup from continuing the illegal policies and practices perpetuated pursuant to the Unpaid Work Policies.

156. By entering into an employment relationship, defendants and Plaintiffs and Class

Members entered into a contract for employment, including implied contracts and express contracts.

157. Defendants entered into an express contract with Plaintiffs and Class Members that was explicitly intended to order and govern the employment relationship between defendants and Plaintiffs and Class Members.

158. This binding express contract provided that Plaintiffs and Class Members would provide services and labor to defendants in return for compensation under the provisions of the contract.

159. This express contract provided that defendants promised to compensate Plaintiffs and Class Members for "all hours worked" during their employment period.

160. In addition, defendants' express contract with Plaintiffs and Class Members embodied all binding legal requirements concerning the payment of such wages to the Plaintiffs and Class Members that were in force at the time of that contract.

161. As alleged herein, Plaintiffs and Class Members regularly worked hours both under and in excess of forty per week and were not paid for all of those hours.

162. The defendants failed to pay for time that Plaintiffs and Class Members worked including, but not limited to, during their meal breaks, time that Plaintiffs and Class Members spent in required, job-related training, and time that Plaintiffs and Class Members spent before and after their regular work hours performing work-related tasks.

163. Defendants have received financial gain at the expense of Plaintiffs and Class Members because they did not pay Plaintiffs and Class Members for all hours worked and Defendants kept monies owed to the Plaintiffs and Class Members.

164. Defendants have received that financial gain under such circumstances that in

equity and good conscience Defendants ought not to be allowed to profit at the expense of Plaintiffs and Class Members.

165. Pursuant to their on-going dealings and course of conduct, Plaintiffs and Class Members agreed with defendants that, among other things, defendants would pay Plaintiffs and Class Members for all hours worked.

166. Specifically, defendants contracted to hire Plaintiffs and Class Members at a set rate of pay, with a set work schedule for a particular position, under set terms of employment.

167. In addition, defendants implied contract with Plaintiffs and Class Members embodied all binding legal requirements concerning the payment of such wages to Plaintiffs and Class Members that were in force at the time of that contract.

168. Defendants failed to compensate Plaintiffs and Class Members in compliance with this implied contract by failing to compensate Plaintiffs and Class Members for time that they worked, including pursuant to the Unpaid Work Policies.

169. Each such contract also included an implied or express term that defendants agreed to fulfill all of their obligations pursuant to applicable Massachusetts law, including payment for all time worked including applicable premium pay.

170. Defendants failed to act in good faith and breached the express and/or implied contract terms by failing to pay Class Members for all of the time Class Members worked and by failing to pay Class Members all time worked including applicable premium pay. As a result of defendants' breach of express and implied contracts, Plaintiffs and Class Members have been harmed and as a direct and proximate result have suffered damages including all amounts they should have been paid for all time worked including applicable premium pay.

171. The contracts between Plaintiffs/Class Members and defendants contained an

implied covenant of good faith and fair dealing, which obligated defendants to perform the terms and conditions of the employment contract fairly and in good faith and to refrain from doing any act that would violate any state law governing the employment relationship or any act that would deprive Class Members of the benefits of the contract.

172. Defendants breached their duty of good faith and fair dealing by failing to compensate Plaintiffs and Class Members in accordance with the applicable Massachusetts laws for all the time worked, including applicable premium pay.

173. As a result of defendants' breach of duty of good faith and fair dealing, Plaintiffs and Class Members have been harmed and as a direct and proximate result have suffered damages including all amounts they should have been paid for all the time worked, including applicable premium pay.

174. Defendants made clear, definite promises to Plaintiffs and Class Members that they would be paid for all hours worked including applicable premium pay in accordance with the applicable Massachusetts laws.

175. Defendants made these promises with the clear understanding that Plaintiffs and Class Members were seeking employment and therefore were seeking assurances that they would be paid for all hours worked. Plaintiffs and Class Members relied on this promise. Without such a promise of being paid for all hours worked, Plaintiffs and Class Members would not have worked for CareGroup.

176. Plaintiffs and Class Members acted to their substantial detriment in reasonable reliance on defendants' promise to pay them for wages and benefits earned. Injustice can only be avoided only if this Court mandates that defendants pay its employees for all hours worked.

177. At all relevant times, defendants had and continued to have a legal obligation to

pay Plaintiffs and Class Members all earnings and overtime due. The wages belong to Plaintiffs and Class Members as of the time the labor and services were provided to defendants and, accordingly, the wages for services performed are the property of the Plaintiffs and Class Members.

178. In refusing to pay wages and applicable premium pay to Plaintiffs and Class Members, defendants knowingly, unlawfully and intentionally took, appropriated and converted the wages and overtime earned by Plaintiffs and Class Members for defendants' own use, purpose and benefit. At the time the conversion took place, Plaintiffs and Class Members were entitled to immediate possession of the amount of wages and overtime earned. As a result, Plaintiffs and Class Members have been denied the use and enjoyment of their property and have been otherwise damaged in an amount to be proven at trial. This conversion was done in bad faith, oppressive, malicious, and fraudulent and/or done with conscious disregard of the rights of the Plaintiffs and Class Members. This conversion was concealed from Plaintiffs and Class Members.

179. Defendants' failure to compensate Plaintiffs and Class Members for all the time they worked, including applicable premium pay, constitutes the conversion of the monies of Plaintiffs and the Class Members.

180. As a direct and proximate result of the conversion by defendants of monies belonging to Plaintiffs and Class Members, Plaintiffs and Class Members have suffered damages including all amounts they should have been paid at regular or premium rates for time worked.

181. Plaintiffs and Class Members conferred a measurable benefit upon defendants by working on defendants' behalf without receiving compensation, including premium overtime compensation.

182. As detailed herein, rather than incur additional labor costs by paying non-exempt hourly-paid employees for all of the hours that they worked, defendants accepted the services provided by Plaintiffs and Class Members and required Plaintiffs and Class Members to work hours under and in excess of forty without receiving any compensation for those hours. Plaintiffs and Class Members provided their services with the reasonable expectation of receiving compensation from the defendants.

183. Defendants failed to compensate Plaintiffs and Class Members for all hours worked, pursuant to the Unpaid Work Policies.

184. Defendants had an appreciation or knowledge of the benefit conferred by these Plaintiffs and Class Members. For example, defendants' management has: observed Plaintiffs and Class Members working through their unpaid meal breaks, directed Plaintiffs and Class Members to work during their unpaid meal breaks, and affirmatively told Plaintiffs and Class Members that they could not be paid for such time.

185. Defendants have received financial gain at the expense of Plaintiffs and Class Members because they did not pay Plaintiffs and Class Members for all hours worked and defendants kept the monies and benefits owed to the Plaintiffs and Class Members.

186. Defendants have received that financial gain under such circumstances that, in equity and good conscience, defendants ought not to be allowed to profit and retain the benefits without payment of its value.

187. Defendants enjoyed the benefit of the monies rightfully belonging to the Plaintiffs and Class Members at the expense of the Plaintiffs and Class Members.

188. Defendants failed to act in good faith by failing to pay for all the hours worked including applicable premium pay, which has unjustly enriched defendants to the detriment of

Plaintiffs and Class Members.

189. Defendants failed to act in good faith and violated their obligations by failing to pay Plaintiffs and Class Members for the reasonable value of the services performed by Plaintiffs and Class Members for defendants.

190. As a direct and proximate result of defendants' unjust enrichment, Plaintiffs and Class Members have suffered injuries and are entitled to reimbursement, restitution and disgorgement from defendants of the benefits conferred by Plaintiffs' and the Class Members' work without compensation as required by Mass. Gen. Law Ch. 149 §§ 148, 150 and Mass. Gen. Law Ch. 151 §§ 1A, 1B and Massachusetts common law.

191. The defendants engaged in such conduct and made statements to conceal from the Plaintiffs their rights and to frustrate the vindication of the employees' rights under Massachusetts law.

192. As a result, employees were unaware of their claims.

193. Through the paystubs and payroll information it provided to employees, CareGroup deliberately concealed from its employees that they did not receive compensation for all compensable time and misled them into believing they were being paid properly.

194. Plaintiffs and Class Members are under no duty to inquire of defendants that they were paid for all hours worked including applicable premium pay. As a direct and proximate cause of defendants affirmatively misleading Plaintiffs and Class Members regarding the fact that they were to be paid for all compensable time, defendants are estopped from asserting statute of limitations defenses against Plaintiffs and Class Members.

195. Further, in the course of their business, by maintaining and propagating the illegal policies, defendants deliberately misrepresented to Plaintiffs and Class Members that they were

being properly paid for compensable time, even though Plaintiffs were not receiving pay for all compensable time.

196. Defendants, in the course of their business, through their corporate publications and through statements of their agents, represented that wages would be paid legally and in accordance with defendants' obligations pursuant to applicable Massachusetts laws. Defendants failed to exercise reasonable care in communicating to Plaintiffs and Class Members that they would be paid for all compensable time.

197. In the course of their business, defendants misrepresented in their employee manuals and policy manuals to Plaintiffs and Class Members that they would be paid for all compensable time including those worked both under and in excess of forty in a work week.

198. Defendants intended for Plaintiffs and Class Members to rely upon defendants misrepresentations that they would be paid for all compensable time, including applicable premium pay.

199. Defendants, however, at all times intended to violate applicable Massachusetts laws by failing to pay Plaintiffs and Class Members for all compensable time, including applicable premium pay.

200. These misrepresentations were material to the terms of Plaintiffs' and Class Members' employment contracts (express and implied), and Plaintiffs and Class Members justifiably relied on the misrepresentations in agreeing to accept and continue employment with defendants. This reliance was reasonable, as Plaintiffs and Class Members had every right to believe that defendants would abide by their obligations pursuant to applicable Massachusetts law.

201. When defendants hired Plaintiffs and Class Members, they represented to Plaintiffs

and Class Members that they would be fully compensated for all services performed.

202. Defendants affirmatively misled Plaintiffs and Class Members regarding the fact that defendants failed to pay Plaintiffs and Class Members for all compensable time.

203. Defendants induced Plaintiffs and Class Members to accept employment with defendants by misrepresenting to Plaintiffs and Class Members that they would be fully paid for all compensable time.

204. There was no reasonable basis for defendants to believe these representations because defendants had a continuing practice and policy of failing to pay their employees for all compensable time, including applicable premium pay. Defendants concealed the fact that they did not pay Plaintiffs and Class Members for all compensable time from Plaintiffs and Class Members. Plaintiffs and Class Members relied upon defendants' representations by performing work and services for defendants. This reliance was reasonable, as Plaintiffs and Class Members had every right to believe that defendants would abide by their obligations to pay for all hours worked pursuant to the Mass. Gen. Law Ch. 149 §§ 148, 150 and Mass. Gen. Law Ch. 151 §§ 1A, 1B and common law.

205. As a direct and proximate cause of defendants' fraud and negligent misrepresentations Plaintiffs and Class Members have suffered damages because they were not compensated for all compensable time that they worked both under and in excess of forty per week.

206. Defendants also failed to make, keep and preserve true and accurate records of the hours worked by Plaintiffs and Class Members in violations of Mass. Gen. Law Ch. 151 § 15.

207. Defendants failed to post a workplace notice of basic minimum wage rates and other relevant positions in violation of 455 MA A.D.C. 2.06.

208. Plaintiffs and Class Members were not classified as exempt employees because hourly employees do not fall under one of the enumerated exemptions under Mass. Gen. Law Ch. 151 §§ 1A, 1B.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

209. Pursuant to the requirements as set forth in Mass. Gen. Law Ch. 149 § 150, the Office of the Attorney General has issued right-to-sue letters to proceed on these claims in court.

FIRST CAUSE OF ACTION
FLSA

210. Plaintiffs and Class Members reallege the above paragraphs as if fully restated herein.

211. Defendants willfully violated their obligations under the FLSA and are liable to Plaintiffs and Class Members.

SECOND CAUSE OF ACTION
ERISA—Failure to Keep Accurate Records

212. Plaintiffs and Class Members reallege the above paragraphs as if fully restated herein.

213. Class Members bring these claims under 29 U.S.C. § 1132(a)(3), which confers on plan participants the right to bring suit to enjoin any violation of ERISA § 1059(a)(1).

214. Defendants failed to keep accurate records of all time worked by Class Members. By failing to keep such records, defendants' records are legally insufficient to determine benefits. Defendants failed to keep records "sufficient to determine the benefits due or which may become due" under the terms of the Plan as required by ERISA § 209(a)(1), 29 U.S.C. § 1059(a)(1).

THIRD CAUSE OF ACTION
ERISA—Breach of Fiduciary Duty

215. Plaintiffs and Class Members reallege the above paragraphs as if fully restated herein.

216. Defendants breached their fiduciary duties under 29 U.S.C. § 1104(a)(1).

FOURTH CAUSE OF ACTION
RICO

217. Plaintiffs and Class Members reallege the above paragraphs as if fully restated herein.

218. Plaintiffs and Class Members bring these claims under 18 U.S.C. § 1964(c), which confers on private individuals the right to bring suit for any injury caused by a violation of 18 U.S.C. § 1962.

219. Defendants' conduct, and the conduct of other members of the enterprise, injured Plaintiffs and Class Members by refusing to pay their regular or statutorily required rate of pay for all hours worked. Defendants conducted or participated, directly or indirectly, in the conduct of the enterprise's affairs through a pattern of racketeering activity, by devising a Scheme to obtain Plaintiffs' and Class Members' property by means of false or fraudulent representations, at least some of which were made in the misleading payroll checks which defendants mailed.

FIFTH CAUSE OF ACTION
Estoppel

220. Plaintiffs and Class Members reallege the above paragraphs as if fully restated herein.

221. Defendants are estopped from asserting statute of limitations defenses against

Plaintiffs and Class Members.

SIXTH CAUSE OF ACTION
Violation of Mass. Gen. Laws Ch. 149 § 148

222. Plaintiffs re-allege the above paragraphs as if fully restated herein.

223. As a direct and proximate cause of defendants' acts, including defendants' failure to act in good faith, defendants violated Mass. Gen. Laws Ch. 149 § 148, and Plaintiffs and Class Members have suffered damages.

SEVENTH CAUSE OF ACTION
Failure to Pay Overtime Wages, Mass. Gen. Laws Ch. 151 §§ 1A

224. Plaintiffs re-allege the above paragraphs as if fully restated herein.

225. As a direct and proximate cause of defendants' acts, including defendants failure to act in good faith, defendants violated Mass. Gen. Laws Ch. 151 § 1A, and Plaintiffs and Class Members have suffered damages.

EIGHTH CAUSE OF ACTION
Breach of Contract: Failure to Pay Earned Wages

226. Plaintiffs reallege the above paragraphs as if fully restated herein.

227. Defendants are liable to Plaintiffs and Class Members for breach of their contract.

228. As a direct and proximate cause of defendants' breach of contract, Plaintiffs and Class Members have suffered damages.

NINTH CAUSE OF ACTION
Breach of Contract: Failure to Provide and Pay for Missed and/or Interrupted Meal Breaks

229. Plaintiffs reallege the above paragraphs as if fully restated herein.

230. Defendants are liable to Plaintiffs and Class Members for breach of their contract.

231. As a direct and proximate cause of defendants' breach of contract, Plaintiffs and

Class Members have suffered damages.

TENTH CAUSE OF ACTION
Breach of Implied Contract

232. Plaintiffs reallege the above paragraphs as if fully restated herein.

233. Defendants are liable to Plaintiffs and Class Members for breach of implied contracts.

234. As a direct and proximate cause of defendants' breach of implied contracts, Plaintiffs and Class Members have suffered damages.

ELEVENTH CAUSE OF ACTION
Money Had and Received in Assumpsit

235. Plaintiffs reallege the above paragraphs as if fully restated herein.

236. Defendants are liable to Plaintiffs and Class Members based on money had and received in assumpsit.

237. As a direct and proximate cause of defendants' failure to pay Plaintiffs and Class Members for all hours worked under circumstances in equity and good conscience, Plaintiffs and Class Members have suffered damages.

TWELFTH CAUSE OF ACTION
Quantum Meruit/Unjust Enrichment

238. Plaintiffs reallege the above paragraphs as if fully restated herein.

239. Defendants are liable to Plaintiffs and Class Members based on quantum meruit.

240. As a direct and proximate cause of defendants' failure to pay Plaintiffs and Class Members the reasonable value of their services, including defendants' failure to act in good faith, Plaintiffs and Class Members have suffered damages.

THIRTEENTH CAUSE OF ACTION
Fraud

241. Plaintiffs reallege the above paragraphs as if fully restated herein.

242. Defendants are liable to Plaintiffs and Class Members for fraud.

243. As a direct and proximate cause of defendants' misrepresentations Plaintiffs and Class Members have suffered damages.

FOURTEENTH CAUSE OF ACTION
Negligent Misrepresentation

244. Plaintiffs reallege the above paragraphs as if fully restated herein.

245. Defendants are liable to Plaintiffs and Class Members for negligent misrepresentation.

246. As a direct and proximate cause of defendants' misrepresentations Plaintiffs and Class Members have suffered damages.

FIFTEENTH CAUSE OF ACTION
Equitable Estoppel

247. Plaintiffs reallege the above paragraphs as if fully restated herein.

248. Defendants are estopped from asserting statute of limitations defenses against Plaintiffs and Class Members.

SIXTEENTH CAUSE OF ACTION
Promissory Estoppel

249. Plaintiffs reallege the above paragraphs as if fully restated herein.

250. Defendants are liable to Plaintiffs and Class Members for promissory estoppel.

251. As a direct and proximate cause of defendants' promises Plaintiffs and Class Members have suffered damages.

SEVENTEENTH CAUSE OF ACTION
Conversion

252. Plaintiffs reallege the above paragraphs as if fully restated herein.

253. Defendants are liable to Plaintiffs and Class Members for conversion.

254. As a direct and proximate result of the conversion by defendants of monies belonging to Plaintiffs and Class Members, Plaintiffs and Class Members have suffered damages.

EIGHTEENTH CAUSE OF ACTION
Failure To Keep Accurate Records

255. Plaintiffs reallege the above paragraphs as if fully restated herein.

256. Defendants are liable to Plaintiffs and Class Members for their failure to keep accurate records.

257. As a direct and proximate result defendants' failure to keep true and accurate record of hours worked by Plaintiffs and Class Members, Plaintiffs and Class Members have suffered damages.

WHEREFORE, Plaintiffs and Class Members demand judgment against defendants in their favor and that they be given the following relief:

(a) an order preliminarily and permanently restraining defendants from engaging in the aforementioned pay violations;

(b) an award of the value of Plaintiffs' and Class Members unpaid wages, including fringe benefits;

(c) liquidated damages under the FLSA equal to the sum of the amount of wages and overtime which were not properly paid to Plaintiffs and Class Members;

(d) an award of reasonable attorneys' fees, expenses, expert fees and costs incurred in vindicating Plaintiffs' and Class Members rights;

(e) an award of pre- and post-judgment interest; and

(f) such other and further legal or equitable relief as this Court deems to be just and appropriate.

JURY DEMAND

Plaintiff demands a jury to hear and decide all issues of fact.

Dated: May 24, 2010

Respectfully submitted,
VIRGINIA WOOLFSON, et al.,
and all others similarly situated

By their attorneys,

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Tab C

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
Woolfson, et al. v. CareGroup, Inc., et al.

OFFICIAL COURT NOTICE OF SETTLEMENT OF CLASS ACTION

To: Present and Former Non-Exempt Employees of Certain Medical Care Providers

Re: Settlement of Class Action Lawsuit

Date: _____

INTRODUCTION

- As detailed below, the parties have reached a proposed settlement of $8,500,000 to settle this case. Please read this Notice carefully. It contains important information about your rights concerning the class action settlement described below.

- As described more fully below, to participate in the settlement, you must send a properly completed Consent to Join and Claim Form to the Settlement Administrator that must be postmarked by [date 45 days after mailing]. If you fail to turn in a timely Consent to Join and Claim Form, you will receive no money from the settlement. Unless you "Opt Out" of the settlement by mailing by [date 45 days after mailing] a written, signed statement to the Settlement Administrator that you are opting out of the settlement, you will be bound by the terms of the settlement, whether or not you submit a Consent to Join and Claim Form.

This Notice explains the lawsuit and the terms of the settlement and explains your rights and obligations. The Notice should not be understood as an expression of any opinion by the Court as to the merits of any of the claims or defenses asserted by the parties. The Notice contains information about the following topics:

1. What is The Lawsuit About and Why Was This Notice Sent?

Former employees ("Plaintiffs") sued certain medical care providers ("Defendants")[1] in a lawsuit, claiming that non-exempt hourly employees (collectively "Non-Exempt Employees") were not paid for all time they actually worked during meal breaks, before or after their scheduled shifts, and in certain types of trainings.

Defendants deny Plaintiffs' allegations and assert that their pay practices with respect to all Non-Exempt Employees have complied with all legal requirements and that they violated no laws whatsoever.

The lawsuit is before Judge Joseph L. Tauro, United States District Judge for the United States District Court for the District of Massachusetts. After litigating the case for approximately seven months and engaging in discovery and extensive negotiations, the parties have reached a proposed settlement of all claims. The Court has granted preliminary approval of the settlement and has scheduled a hearing on _____ at _____ at the United States Courthouse in Boston, Massachusetts to determine whether to grant final approval. This Notice tells you about your rights and responsibilities under the proposed settlement.

2. Who is Affected by The Proposed Settlement?

The proposed settlement affects individuals who worked for any of the Defendants as a Non-Exempt Employee. The Court has certified, for settlement purposes only, the following classes:

COLLECTIVE CLASS: The Collective Class consists of all individuals who worked for any of the Defendants as Non-Exempt Employees from September 3, 2006 through the date of Final Approval of the Settlement and timely return their Consent to Join and Claim Form.

RULE 23 CLASS: The Rule 23 Class consists of all individuals who worked for any of the Defendants as a Non-Exempt Employee from September 3, 2006 through the date of Final Approval of the Settlement and who do not request to be excluded from the settlement.

The dates September 3, 2006 through the date of Final Approval of the Settlement is the applicable class period ("Class Period"). You can be in either the Collective Class, the Rule 23 Class, *or both*, and, if so, you can take part in the Settlement by returning a Consent to Join and Claim Form by [date 45 days after mailing]. If you do not return the Consent to Join and Claim Form, you may nevertheless be a member of the Rule 23 Class and, if so, your rights will be impacted if the settlement is approved by the Court. See the "What if I do nothing" section, below.

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[1] Defendant medical care providers for whom you may have worked include Beth Israel Deaconess Medical Center Inc., Beth Israel Deaconess Hospital – Needham, Inc., Mount Auburn Hospital, New England Baptist Hospital, or certain of their affiliates, including Cardiovascular Associated Physicians of Harvard Faculty Physicians at BIDMC, HeartCenter of MetroWest, Medical Care of Boston Management Corp. d/b/a Affiliated Physicians Group, Mount Auburn Professional Services, and New England Baptist Medical Associates.

3. What Are Your Options?

You have four options with regards to this Settlement. You can:

(1) participate in the settlement by filing a Consent to Join and Claim Form;
(2) do nothing;
(3) request to be excluded from the settlement; or
(4) object to the settlement and/or request by Class Counsel for an award of attorneys fees, service awards to the plaintiffs, and reimbursement of expenses.

Details about how each option would affect your rights are explained below.

4. What Are The Terms of The Proposed Settlement and How Much Can You Expect to Receive?

If the settlement is approved, Defendants will pay $8,500,000. ("Settlement Amount") into a fund. This fund will cover all alleged back pay and liquidated/statutory damages available under each class member's applicable law; Class Counsel's attorneys' fees and costs up to thirty-three percent (33%) of the total fund; service payments to the named plaintiffs and opt-in plaintiffs who had joined this litigation prior to the date the settlement was reached in principle, of up to but not exceeding $20,000, cumulatively; the full amount of the costs of notice and settlement administration; the participating class members' W-2 withholdings (and state/local withholdings if applicable); any employer share of payroll taxes on back wage payments made to participating claimants; and the costs of the Parties expert witnesses. Net settlement funds not paid out to settle claims shall be returned to the Defendants.

After the deductions, the resulting amount is anticipated to be $_____. This amount will be distributed among members of the Settlement who submit a valid and timely Consent to Join and Claim Form. The amount of wages you earned during the period covered by the Settlement, as reflected in the records provided by Defendants to the Settlement Administrator, is set forth in the Consent to Join and Claim Form included with this Notice. If you believe that the amount of your wages is not accurate, you can indicate your disagreement on the Claim Form, but if you do so, you must provide pay-stubs or other documentation supporting your claim.

The period covered by the settlement for you is from September 3, 2006 through the date the Court grants final approval of this settlement, which is anticipated to be on or about _____.

5. Who Represents the Parties and How Will The Attorneys for the Class Get Paid?

Attorneys for Plaintiff & the Class:

THOMAS & SOLOMON LLP
Patrick J. Solomon, Esq.
J. Nelson Thomas, Esq.
693 East Avenue
Rochester, NY 14607
Telephone: 585.272.0540
Facsimile: 585.272.0574

The named plaintiffs for the proposed settlement are Virginia Woolfson and Michael Stinson.

Class Counsel will apply to the Court for legal fees and reimbursement of costs of litigation in an amount of no more than thirty-three percent (33%) of the total settlement amount. Class Counsel will also request service payments to the named plaintiffs and opt-in plaintiffs who had joined this litigation prior to the date the settlement was reached in principle, of up to but not exceeding $20,000, cumulatively. The actual amounts awarded will be determined by the Court to ensure that the amount of attorneys' fees and costs is reasonable.

Attorneys for Defendant are:

CONSTANGY, BROOKS & SMITH LLP
Ellen C. Kearns, Esq.
Jeffrey M. Rosin, Esq.
Christopher M. Pardo, Esq.
535 Boylston Street, Suite 902
Boston, MA 02116
Telephone: 617.849.7880
Facsimile: 617.849.7870

6. How Can You Participate in the Settlement?

If you are an eligible participant and return the enclosed "Consent to Join and Claim Form" postmarked by [date 45 days after mailing] and the Court approves the Settlement, you will receive a monetary award, as set forth above.

A copy of the Consent to Join and Claim Form is enclosed with this notice and may also be obtained by contacting the Claims Administrator listed below. The address of the Settlement Administrator appears at the end of this notice.

Upon approval of the settlement by the Court and such approval becoming final, you will be unable to bring any claim against any of the Defendants in conjunction with your employment during the class period that this settlement covers.

7. What if You Do Nothing?

Individuals who do not return the "Consent to Join and Claim Form" enclosed with this Notice or submit a request for exclusion from settlement will not receive any money from the Settlement.

If you have already filed a Consent to Join and Claim Form and do nothing more, you will be bound by the Settlement and will, upon approval of the settlement by the Court and that approval becoming final, be deemed to have released all your federal, state, and local claims for payment of hours worked for any Defendant during the Class Period. You will receive a payment by mail at your last known address.

If you do nothing, upon approval of the settlement by the Court and that approval becoming final, you will be deemed to have released and waived any claims during the Class Period under all federal, state, or local laws which were, or could have been, alleged based on the facts set forth in the Complaint, other than as set forth below. You may still have the right under federal law to file an individual complaint under the Fair Labor Standards Act if the deadline to file such a claim has not already expired. However, you will not receive any money pursuant to this Settlement.

8. No Retaliation

Whether you are a current or former employee of any of the Defendants, your decision as to whether or not to submit a Consent to Join and Claim Form will in no way affect your employment with any of the Defendants. The Defendants are prohibited by law from taking any action against employees who join this lawsuit or participate in the Settlement.

9. How Can You Exclude Yourself or "Opt-Out" of The Settlement?

If you are a member of the Rule 23 Class described above, you may exclude yourself from the Settlement by submitting a "Request for Exclusion" to the Settlement Administrator. If you exclude yourself, you will not participate in these proceedings, nor will you receive any recovery from the net settlement fund. You will also retain the right to assert any claims you may have against Defendants.

To exclude yourself from the Rule 23 Class, you must submit a Request for Exclusion from the settlement class, in writing to the Settlement Administrator, with a postmark date of no later than [date 45 days after mailing]. This Request for Exclusion should include your name and address, and should state: (1) that you are requesting to be excluded from the Parties' settlement in the case *Woolfson, et al. v. CareGroup, Inc., et al.*, Case No. 1:09-cv-11464; and (2) that you understand that by excluding yourself from the settlement, you will receive no funds in conjunction with the case.

10. How Can You Object?

You can only object to the terms of the Settlement and/or either to the attorneys' request for fees and expenses or to the named plaintiffs' request for a service award *if you do not* submit a timely and complete Request for Exclusion *or* are not a member of the Rule 23 Class and do

nothing. You may both object to the Settlement or to the award requests and participate in the Settlement, but you must timely file a Consent to Join and Claim Form to receive any money.

In order to object to the Settlement and/or Request for Fees and Expenses, you must file a copy of your written objection with the Court at the United States Courthouse, 1 Courthouse Way, Boston, Massachusetts 02210, and mail a copy of your written objection to the counsel for the parties identified above no later than [date 45 days after mailing]. Any written objection must be signed and state each specific reason in support of your objection and any legal support for each objection. *PLEASE DO NOT TELEPHONE THE COURT.*

If you submit a timely objection, you may also appear, at your own expense, at the Final Approval Hearing. However, to appear at the Final Approval Hearing in Court, you must first submit a "Notice of Intention to Appear at the Final Approval Hearing" – which is currently set for _____ at _____, at the United States Courthouse, 1 Courthouse Way, Boston, Massachusetts 02210. You can represent yourself or appear through your own attorney. To do so, you or your attorney must also file a "Notice of Appearance" with the Clerk of the United States District Court, District of Massachusetts, and deliver copies to each of the attorneys listed above, no later than [date 45 days after mailing].

IF YOU INTEND TO OBJECT TO THE SETTLEMENT AND/OR FEE AND EXPENSE REQUEST, BUT WISH TO RECEIVE YOUR SHARE OF THE NET SETTLEMENT FUNDS, YOU MUST STILL TIMELY FILE YOUR CONSENT TO JOIN AND CLAIM FORM AS STATED ABOVE.

OTHERWISE, IF THE COURT APPROVES THE SETTLEMENT DESPITE YOUR OR ANY OTHER OBJECTIONS AND YOU HAVE NOT SUBMITTED A CONSENT TO JOIN AND CLAIM FORM , YOU WILL NOT RECEIVE ANY PROCEEDS FROM THE SETTLEMENT.

11. What if You Have Questions?

This notice only summarizes this lawsuit, the settlement, and related matters. For more information about the Settlement or if you have any questions regarding the Settlement, you may examine the Court file for the lawsuit, contact the Settlement Administrator or contact Class Counsel.

In order to see the complete court file, including a copy of the settlement agreement, you should visit the Clerk of the Court, United States District Court for the District of Massachusetts, 1 Courthouse Way, Boston, Massachusetts 02210. The Clerk will make all files relating to this lawsuit available to you for inspection and copying at your expense.

You can contact Class Counsel at the address or numbers listed in section 5, above. You may also obtain additional information concerning the Settlement by contacting the Settlement Administrator at:

RUST CONSULTING, INC.
[ADD ADDRESS]

[ADD PHONE NUMBER]

Do not contact the Court about this matter.

Dated: _____, 2010

Tab D

Must be Postmarked
Or Received
No Later Than
_____,
2010

Mail or Deliver To:
Woolfson, et al. v. CareGroup, Inc., et al.
CLAIMS ADMINISTRATOR
c/o Rust Consulting, Inc.
[ADDRESS]
[PHONE NUMBER]

Claimant Information

Name (First, Middle, Last)

Address

City, State Zip

Daytime Tel: _____

Evening Tel: _____

CORRECTIONS OR ADDITIONAL INFORMATION

Write any name and address corrections below if any are necessary **OR** if there is no preprinted data to the left, please provide your name and address here:

Email: _____

To Take Part In The Proposed Settlement,
You Need to Sign in Two Places Below After Reading This Whole Form

CONSENT TO JOIN

I, [INSERT NAME], wish to join the above-captioned lawsuit and to participate in the Parties' proposed settlement in this matter of the claims asserted under the federal Fair Labor Standards Act, 29 U.S.C. § 201, *et seq*. and any federal or state law claims I have standing to assert. I hereby consent to become a party plaintiff in the lawsuit, and I hereby authorize counsel for Plaintiffs to file this Consent to Join and Claim Form with the Court in the lawsuit.

CLAIM FORM

To share in this Settlement, you must complete, sign and return this Claim Form.
The Claim Form must be postmarked no later than _____, 2010

The records of the medical care providers who are part of this case ("Defendants")[1] indicate that you were employed by one or more of them as a Non-Exempt Employee during the Class Period from September 3, 2006 through the anticipated date of final approval of this settlement by the Court. Their records also indicate that you earned or will have earned approximately $ _____ while working for one or more of the Defendants as a Non-Exempt Employee within that Class Period.

[1] Defendant medical care providers for whom you may have worked include Beth Israel Deaconess Medical Center Inc., Beth Israel Deaconess Hospital – Needham, Inc., Mount Auburn Hospital, New England Baptist Hospital, or certain of their affiliates, including but not limited to Cardiovascular Associated Physicians of Harvard Faculty Physicians at BIDMC, HeartCenter of MetroWest, Medical Care of Boston Management Corp. d/b/a Affiliated Physicians Group, Mount Auburn Professional Services, and New England Baptist Medical Associates.

If you believe that the approximate earnings listed above is incorrect, please enter approximate earnings you believe you earned while working for one or more of the Defendants as a Non-Exempt Employee within that Class Period:

_____ – total earnings I believe I earned while working for one or more of the Defendants as a Non-Exempt Employee within that Class Period.

IF YOU DISAGREE WITH THE APPROXIMATE AMOUNT OF WAGES YOU EARNED OR HAVE EARNED DURING THE CLASS PERIOD, YOU MUST PROVIDE PAY-STUBS OR OTHER DOCUMENTATION TO THE CLAIMS ADMINISTRATOR AT THE ADDRESS LISTED ON PAGE 1 CONFIRMING THE AMOUNT YOU HAVE INDICATED.

_____

Name (First, Middle, Last)

RELEASE OF CLAIMS

By signing I certify that I was employed by one or more of the Defendants as a Non-Exempt Employee during the Class Period from September 3, 2006 through the anticipated date of final approval of this settlement by the Court. By signing, I also acknowledge that when the Court grants approval to the Parties' settlement and that approval becomes final, I shall have released all claims for unpaid wages, overtime pay, interest or liquidated damages or other penalties for unpaid wages, overtime, missed meal periods, missed rest breaks or record keeping violations, amounting to putative violations of any federal, state, or local law and all claims based on any allegations raised or which could have been raised in the Amended Complaint in this Action or any earlier complaints filed in the Federal or State Actions, including under the Fair Labor Standards Act, that I may have or ever had against any of the Defendants during the Class Period. I also acknowledge that any such claims will be fully and finally extinguished.

In exchange for the money I am eligible to receive under the Parties' settlement, I hereby fully, forever, irrevocably and unconditionally release and discharge all of the Defendants in this lawsuit, including CareGroup, Inc., Beth Israel Deaconess Medical Center Inc., Beth Israel Deaconess Hospital – Needham, Inc., Mount Auburn Hospital, New England Baptist Hospital, Paul Levy, Lisa Zankman, CareGroup, Inc. 401K Savings & Investment Plan, and CareGroup Voluntary 403B Savings Plan, including their parents, divisions, subsidiaries, affiliates,[2] their predecessors and successors, and their directors, officers, members, fiduciaries, insurers, employees, attorneys and agents from any and all causes of action, claims, or demands against them that I may have or ever had against any of them as detailed in the paragraph above.

_____ _____

Date Signature

[2] These affiliates include but are not limited to Cardiovascular Associated Physicians of Harvard Faculty Physicians at BIDMC, HeartCenter of MetroWest, Medical Care of Boston Management Corp. d/b/a Affiliated Physicians Group, Mount Auburn Professional Services, and New England Baptist Medical Associates.