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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

EMILY HUNT, on behalf of herself, all
others similarly situated, and on behalf of
the general public,

Plaintiff,

v.

VEP HEALTHCARE, INC., a corporation;
and DOES 1 through 100, inclusive,

Defendants.

Case No. 3:16-CV-04790-VC

~~PROPOSED~~ **ORDER AS MODIFIED
GRANTING RENEWED MOTION FOR
PRELIMINARY APPROVAL OF CLASS AND
COLLECTIVE ACTION SETTLEMENT**

Date: November 30, 2017
Time: 10:00 a.m.
Judge: Hon. Vince Chhabria
Dept.: 2

Action Filed: April 6, 2015
Trial Date: None Set

~~PROPOSED~~ **ORDER AS MODIFIED** GRANTING MOTION FOR
PRELIMINARY APPROVAL OF CLASS AND
COLLECTIVE ACTION SETTLEMENT

Case No 3:16-CV-04790-VC

1 The Court has reviewed the unopposed Renewed Motion for Preliminary Approval of Class
2 and Collective Action Settlement filed by Plaintiff Emily Hunt. The Court has considered the
3 Memorandum of Points and Authorities in support of Plaintiff's Unopposed Renewed Motion for
4 Preliminary Approval of Class and Collective Action Settlement, the Declaration of William Turley
5 and attached exhibits, the Declaration of Mae Tucker, the Declaration of Kelly Danna and attached
6 exhibits.

7 The Court's review of this proposed settlement is governed by Federal Rule of Civil
8 Procedure 23(e). See *Cotter v. Lyft, Inc.*, 176 F. Supp. 3d 930, 935 (N.D. Cal. April 7, 2016). Under
9 the requirements of Rule 23(e), generally, courts "determine whether a proposed settlement is
10 fundamentally fair, adequate, and reasonable." *Cotter*, 176 F. Supp. 3d at 935 (quoting *Hanlon v.*
11 *Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998) (citing *Class Plaintiffs v. City of Seattle*, 955
12 F.2d 1268, 1276 (9th Cir. 1992)). "It is the settlement taken as a whole, rather than the individual
13 parts, that must be examined for overall fairness." *Cotter*, 176 F. Supp. 3d at 935 (quoting *Hanlon v.*
14 *Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998) (citing *Officers for Justice v. Civil Serv.*
15 *Comm'n of S.F.*, 688 F.2d 615, 628 (9th Cir. 1982)).

16 "District courts have interpreted Rule 23(e) to require a two-step process for the approval of
17 class action settlements: 'the Court first determines whether a proposed class action settlement
18 deserves preliminary approval and then, after notice is given to class members, whether final
19 approval is warranted.'" *Cotter*, 176 F. Supp. 3d at 935 (quoting *In re High-Tech Emp. Antitrust*
20 *Litig.*, Case No. 11-CV-02509-LHK, 2014 U.S. Dist. LEXIS 110064, 2014 WL 3917126, at *3
21 (N.D. Cal. Aug. 8, 2014) (quoting *Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523,
22 525 (C.D. Cal. 2004)). At final approval, the Court must balance the following non-exhaustive
23 factors to evaluate the fairness of the proposed settlement: "the strength of the plaintiffs' case; the
24 risk, expense, complexity, and likely duration of further litigation; the risk of maintaining class
25 action status throughout the trial; the amount offered in settlement; the extent of discovery
26 completed and the stage of the proceedings; the experience and views of counsel; the presence of a
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1 governmental participant; and the reaction of the class members to the proposed settlement.” Cotter,
2 176 F. Supp. 3d at 935 (quoting Hanlon, 150 F.3d at 1026 (citing *Torrison v. Tucson Elec. Power Co.*,
3 8 F.3d 1370, 1375 (9th Cir. 1993)).

4 The standards courts are to follow at the preliminary approval stage are less clear. Cotter,
5 176 F. Supp. 3d at 935. “Some district courts . . . have stated that the relevant inquiry is whether the
6 settlement ‘falls within the range of possible approval’ or ‘within the range of reasonableness.’”
7 Cotter, 176 F. Supp. 3d at 935 (quoting *In re High-Tech Emp. Antitrust Litig.*, 2014 U.S. Dist.
8 LEXIS 110064, 2014 WL 3917126, at *3 (quoting *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d
9 1078, 1079 (N.D. Cal. 2007)) (citing *Cordy v. USS—Posco Indus.*, No. 12-553, 2013 U.S. Dist.
10 LEXIS 108952, 2013 WL 4028627, at *3 (N.D. Cal. Aug. 1, 2013)). In determining whether the
11 proposed settlement falls within the range of reasonableness, perhaps the most important factor to
12 consider is “plaintiffs’ expected recovery balanced against the value of the settlement
13 offer.” *Id.* (quoting *In re Nat’l Football League Players’ Concussion Injury Litig.*, 961 F. Supp. 2d
14 708, 714 (E.D. Pa. 2014)); see also *Nielson v. Sports Auth.*, No. C-11-4724-SBA, 2012 U.S. Dist.
15 LEXIS 168226, 2012 WL 5941614, at *6 (N.D. Cal. Nov. 27, 2012). “Determining whether the
16 settlement falls in the range of reasonableness also requires evaluating the relative strengths and
17 weaknesses of the plaintiffs’ case; it may be reasonable to settle a weak claim for relatively little,
18 while it is not reasonable to settle a strong claim for the same amount.” Cotter, 176 F. Supp. 3d at
19 935.

20 Where the parties reach a settlement before class certification, courts must apply a “higher
21 standard of fairness.” Cotter, 176 F. Supp. 3d at 935-936 (quoting Hanlon, 150 F.3d at 1026). This
22 additional scrutiny is needed to ensure that the interests of the class are adequately protected,
23 because the agreement has “not [been] negotiated by a court-designated class representative.” Cotter,
24 176 F. Supp. 3d at 935-936.

25 Under this framework, the Court hereby finds and orders as follows:

1 1. The Court finds on a preliminary basis that the provisions of the Joint Stipulation and
2 Settlement Agreement (hereinafter “Agreement”), filed with the Court on December 1, 2017, are
3 fair, just, reasonable, and adequate and, therefore, meet the requirements for preliminary approval.

4 2. For purposes of this Order, the Court adopts all defined terms as set forth in the
5 Agreement.

6 3. The Court conditionally certifies, for settlement purposes only, the following
7 stipulated collective (referred to in the Parties’ Agreement as the “FLSA Collective”) described in
8 the Motion for Preliminary Approval:

9 **All individuals employed by VEP Healthcare, Inc. anywhere in the**
10 **United States as Physician’s Assistants who were eligible to receive**
11 **productivity pay from April 6, 2012 through May 15, 2017.**

12 4. The Court certifies, for settlement purposes only, the following stipulated class
13 (referred to the Parties’ Agreement as the “California Class”) described in the Motion for
14 Preliminary Approval:

15 **All individuals employed by VEP Healthcare, Inc. as Physician’s**
16 **Assistants in the state of California who were eligible to receive**
17 **productivity pay from April 6, 2011 to May 15, 2017.**

18 5. The Court finds, for settlement purposes only, the requirements of Federal Rule of
19 Civil Procedure 23(a) and Federal Rule of Civil Procedure 23(b)(3) are satisfied.

20 6. This Order, which conditionally certifies a class action for settlement purposes only,
21 shall not be cited in this or any matter for the purpose of seeking class certification, opposing
22 decertification, or for any other purpose, other than enforcing the terms of the Parties’ Agreement.

23 7. The Court finds, for settlement purposes only, the requirements of 29 U.S.C. § 216(b)
24 for conditional certification of an FLSA Collective Action are satisfied.

25 8. This Order, which conditionally certifies a FLSA collective for settlement purposes
26 only, shall not be cited in this or any matter for the purpose of seeking conditional certification,
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1 opposing decertification, or for any other purpose, other than enforcing the terms of the Parties'
2 Agreement.

3 9. The Court appoints for settlement purposes only, as the Class/Collective
4 Representative Emily Hunt.

5 10. The Court appoints for settlement purposes only, William Turley, David Mara, and
6 Jill Vecchi of The Turley & Mara Law Firm, APLC, as Class/Collective Counsel for the purposes of
7 settlement and the releases and other obligations therein.

8 11. CPT Group, Inc. is appointed as Class Administrator.

9 12. The Notice of Collective and Class Action Settlement, in the form attached to the
10 Joint Stipulation and Settlement Agreement as Exhibit 1, is approved.

11 13. The FLSA Settlement Claim Form and Release of Claims (hereinafter referred to as
12 the "FLSA Claim Form"), in the form attached to the Joint Stipulation and Settlement Agreement as
13 Exhibit 2, is approved.

14 14. The Class Administrator is ordered to mail the Notice of Collective and Class Action
15 Settlement and FLSA Claim Form to the California Class and FLSA Collective Members as
16 provided in the Agreement. The Court finds that this Notice is the best notice practicable under the
17 circumstances and is in compliance with the requirements of Fed. R. Civ. P. 23 and applicable
18 standards of due process and that, when completed, shall constitute sufficient notice to
19 Class/Collective Members of the settlement, the Final Approval Hearing, and the right to be
20 excluded from the settlement.

21 15. Each Participating California Class and FLSA Collective Member will have forty-five
22 (45) days after the date on which the Class Administrator mails the Class/Collective Notice to object
23 to the settlement by mailing a written objection to the Class Action Clerk, United States District
24 Court for the Northern District of California, 450 Golden Gate Avenue, San Francisco, California
25 94102. Any Objections shall state: (a) the objecting person's full name, address, and telephone
26 number; (b) the words "Notice of Objection" or "Formal Objection;" (c) describe, in clear and
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1 concise terms, the legal and factual arguments supporting the objection; (d) list identifying
2 witness(es) the objector may call to testify at the Final Approval Hearing; and (e) provide true and
3 correct copies of any exhibit(s) the objector intends to offer at the Final Approval Hearing. The
4 objection will not be valid if it objects only to the appropriateness of the Action or its merits. The
5 objection and supporting papers must also clearly identify the case name and number (Hunt v. VEP
6 Healthcare, Inc., Case Number 16-cv-04790).

7 16. Each California Class Member who wishes to be excluded from the settlement shall
8 sign and mail a written request for exclusion to the Settlement Administrator. The written request for
9 exclusion must: (a) state the Class Member's name, address, telephone number, and social security
10 number; (b) state the Class Member's intention to exclude themselves from or opt-out of the
11 Settlement; (c) be addressed to the Settlement Administrator; (d) be signed by the Class Member or
12 their lawful representative; and (e) be postmarked no later than forty-five (45) days after the
13 Settlement Administrator first mails the Notice to the Class.

14 17. Each FLSA Collective Member who wishes to participate in the settlement of the
15 FLSA Collective claims, will be required to submit the FLSA Claim Form to the Settlement
16 Administrator within forty-five (45) days of the Notice of Collective and Class Action Settlement
17 and FLSA Claim Form being mailed out. To be a valid claim submission, the FLSA Claim Form
18 must be post-marked no later than forty-five (45) days after the Notice and FLSA Claim Form were
19 mailed out by the Administrator.

20 18. If the Agreement is not finally approved by the Court or for any reason is terminated
21 or otherwise does not become effective, the following will occur: (1) this Preliminary Approval
22 Order, and all of its provisions, will be automatically vacated; (2) the case will proceed as if no
23 settlement has been attempted and notice will be provided to the putative Class/Collective Members
24 that the settlement will not proceed and that, as a result, no payments will be made; (3) no party shall
25 be deemed to have waived any claims, objections, rights, or defenses, or legal arguments or
26 positions, including, but not limited to, objections to class certification and claims and defenses on
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1 the merits; (4) no term or draft of the Agreement, or any aspect of the Parties' settlement
2 discussions, including related documentation, will have any effect or be admissible into evidence for
3 any purpose in the case or in any other proceeding; and (5) Defendant shall have no obligation to pay
4 all or any part of the settlement.

5 19. During the Court's consideration of the settlement and pending further order of the
6 Court, all proceedings in this case, other than proceedings necessary to carry out the terms and
7 provisions of the Agreement, or as otherwise directed by the Court, are hereby stayed and
8 suspended.

9 20. The Parties may depart from the dates and procedures if mutually agreed upon and
10 such departures are not materially different from the terms of this Order.

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12 The Court's scrutiny of a proposed settlement is as rigorous at the preliminary approval stage
13 as at the final approval stage. See *Cotter v. Lyft, Inc.*, 193 F. Supp. 3d 1030, 1036-37 (N.D. Cal.
14 2016). In this case, the proposed settlement reflects a steep discount, which would typically be
15 nearly impossible to justify. Preliminary approval is granted only on the basis of the combination of
16 highly unusual circumstances in this case, including, among other things, the defendant's showing of
17 its deteriorating financial condition and inability to pay a more reasonable settlement. Nevertheless,
18 the discount and multiple rounds of briefing required for preliminary approval will be taken into
19 account in evaluating the motion for attorney's fees.


20 The proposed timeline from the renewed motion for preliminary approval (Dkt. No. 49 at 42-
21 43) is modified as follows. The following deadlines reflect seven-day extensions from the dates
22 listed in the renewed motion, as well as a new date for the fairness hearing based on the Court's
23 availability.

25 Defendant's Production of Class/Collective List to Administrator	December 14, 2017
26 Administrator Sends Settlement Notice to Class/Collective Members	December 21, 2017
27 Plaintiff Files Motion for Attorney's Fee and Enhancement Award and Motion for Final Approval	January 19, 2018

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Deadline for Exclusion or to Object to the Settlement	February 4, 2018
Filing of Supplemental Brief in Support of Motion for Final Approval to Address Class/Collective Member Response	February 8, 2018
Submission of Settlement Administrator's Declaration to the Court	March 1, 2018
Final Approval Hearing	March 15, 2018, 10:00 am

Date: December 5, 2017



Honorable Vince Chhabria
United States District Court Judge