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Attorneys for Plaintiff and others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

NATALIE PALMER, individually, on behalf
of all similarly situated current and former
employees, and on behalf of the State of
California and all Aggrieved Employees;

Plaintiff,

vs.

CHARTER HOSPICE, INC., a California
Corporation; CHARTER HOSPICE OF
COLTON, LLC, a California Limited
Liability Company; ARCH B. GILBERT, an
individual; FRED FRANK, an individual; and
DOES 1 through 10, inclusive;

Defendants.

Case No.: CIVDS2013037
*[Assigned to Hon. Judge David Cohn, Dept
S26, for all purposes]*

**DECLARATION OF BRIAN J. MANKIN,
ESQ., IN SUPPORT OF MOTION FOR
FINAL APPROVAL OF CLASS ACTION
SETTLEMENT**

Hearing
Date: November 15, 2021
Time: 10:00 a.m.
Dept: S26

Complaint filed: June 25, 2020

I, Brian J. Mankin, state and declare:

1. I am an attorney licensed to practice before all of the courts of the State of California. I am a partner with Lauby Mankin Lauby LLP and manage the firm's employment law department, which has offices in Orange County and Riverside County. I am thoroughly familiar with and have personal knowledge of all of the facts set forth herein. I submit this declaration in support of Plaintiff's Motion for Final Approval of this Class Action Settlement.

1 If called as a witness, I could and would competently testify thereto.

2 COUNSEL’S EXPERIENCE

3 2. I have been a member, in good standing, of the State Bar of California since 2001.
4 I am admitted to practice in the United States District Courts for the Central and Southern
5 District of California and the Ninth Circuit Court of Appeal and have tried cases in various
6 courts in California.

7 3. I have handled approximately 500 employee vs. employer litigation matters
8 during my 20 years in practice. Over the last 15 years, my practice has almost entirely consisted
9 of representing employees, the majority of which has included class action and representative
10 action wage and hour matters. In total, I have handled over 200 class action and representative
11 action wage/hour cases, and have been appointed by the court as class counsel and have received
12 final court approval and judgment in over half of those actions to date, and anticipate receiving
13 final approval in many more of those in the future.

14 4. As part of these settlements and judgments, I have recovered in excess of \$250
15 million in damages for my clients and the class members (who often work as nurses, ambulance
16 drivers, technicians, warehouse workers, truck drivers, sales, professional occupations and
17 countless other trades). My team and I once held the record for the largest known PAGA-only
18 case in California’s history, which followed extensive litigation, summary adjudication and writs
19 to the CA Supreme Court against a Fortune 50 company (Garcia v. Macy’s, San Bernardino
20 Superior Court).

21 5. I have tried two major class and PAGA cases against Fortune 100 companies. In
22 2018, I was lead counsel in a PAGA case that my firm tried in the Orange County Superior Court
23 and received a \$425,000 judgment. In 2019, I was co-counsel in a class action case against
24 Walmart in District Court, wherein the jury awarded Plaintiffs and the class over \$6 million.
25 Both cases were appealed.

26 6. Over each of the last three years, I have been selected by my peers as a “Super
27 Lawyer” in Employment Litigation.

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1 ADEQUACY OF THE SETTLEMENT

2 7. The Class, as conditionally certified by this Court, consists of 213 individuals
3 who are and/or were employed as non-exempt employees who performed nursing duties in
4 California at any time during the period from June 25, 2016, through July 15, 2021.

5 8. As set forth in the Declaration of the Settlement Administrator, the Net Settlement
6 Amount is approximately \$454,096.50, after the deductions set forth in the chart below:

7

	Total Amount
<i>Gross Settlement Amount</i>	\$ 750,000.00
Attorneys' Fees (1/3)	\$ 250,000
Litigation Costs	\$ 10,603.50
Administrator Costs	\$ 5,300.00
PAGA Penalties	\$ 25,000.00
Class Representative's Service Award	\$ 5,000.00
<i>Net Settlement Amount</i>	\$ 454,096.50

12

13 9. The process of mailing the Class Notice was very successful, as all but two Class
14 Notices were deemed deliverable by the Settlement Administrator – a 99.1% success rate.

15 10. The response from the Class Members was overwhelmingly positive, as no Class
16 Member objected to or opted-out of the settlement.

17 11. As discussed at length in Plaintiff's motion for preliminary approval, as well as in
18 the Motion for Final Approval, this Settlement is very favorable to the Class with an average
19 payment of over \$2,131 per person and the release is narrowly limited to the claims alleged.

20 12. Sufficient information existed to allow Class Counsel to intelligently value this
21 case. Given the parties' arms' length bargaining facilitated by a reputable and experienced wage
22 and hour mediator, the exchange of informal discovery, the experience of Class Counsel, the fact
23 that 100% of the Class elected to participate and no objections were submitted, the presumption
24 of fairness is justified.

25 13. I believe that the Settlement is fair, reasonable and adequate, and in the best
26 interests of the Class, given the litigation risks and delay inherent in further litigation and
27 possible appeals. As set forth in Plaintiff's motion for preliminary approval and the declarations
28 submitted in support thereof, Defendants contested Plaintiff's claims, and Plaintiff faced real

1 challenges moving forward and obtaining a recovery in this matter. Nonetheless, the Parties
2 concluded that further litigation would be protracted and expensive, and that it is desirable that
3 the action be fully and finally settled in the manner and upon the terms and conditions set forth in
4 the Settlement Agreement in order to limit further expense, inconvenience and distraction, to
5 dispose of burdensome and protracted litigation, and to permit the operation of Defendants'
6 business without further expensive litigation and the distraction and diversion of its personnel
7 with respect to matters at issue. All parties took into account the uncertainty of risks inherent in
8 any litigation, especially in complex cases such as this case. The parties determined that it is
9 desirable and beneficial to both the Class and Defendants that this case be settled. Risks on both
10 sides were considered in reaching the Settlement Agreement. The recoveries contemplated by the
11 Settlement represent a good result for the Class, fairly proportioned to the likely risk-adjusted
12 recovery in litigation.

13 ADEQUACY OF COUNSEL AND

14 REASONABLENESS OF REQUESTED FEE AND COST AWARDS

15 14. As set forth above, I have handled over 250 class and representative actions, have
16 been appointed as class counsel and have successfully resolved approximately half of those
17 actions, and many others remain pending and will successfully resolve in the future while
18 recovering in excess of \$250 million dollars for my clients and Class Members. This is
19 substantially better than average accordingly to Mayer Brown LLP's study entitled, An
20 Empirical Analysis of Class Actions, cited in *Laguna v. Coverall North America, Inc.* (9th Cir.
21 2014) 753 F.3d 918, which found that only one-third of class actions are successful, compared to
22 two-thirds that are defeated and result in no payment to the class members.¹

23 15. When this case was taken on a contingency fee basis, with my firm agreeing to
24 assume responsibility for all litigation costs, the ultimate result was far from certain. In the
25 course of this litigation, Class Counsel paid all costs including filing fees, court costs, research
26 fees, and mediation costs. There was never a guarantee that we would recoup those expenditures.

27 ///

28 ¹ www.mayerbrown.com/files/uploads/Documents/PDFs/2013/December/DoClassActionsBenefitClassMembers.pdf

1 16. It has been my experience that the benchmark for attorney fee awards in
2 California state cases is one-third of a common settlement fund, which the CA Supreme Court
3 recently upheld in the *Robert Half* case. Here, in accordance with the Settlement Agreement,
4 Class Counsel is seeking a fee of \$250,000, which is one-third of the Settlement Amount.

5 17. There are several additional factors why I believe that the Court should award
6 one-third of the common fund as reasonable attorneys' fees. First, Class Counsel's efforts
7 resulted in a common fund settlement amount of \$750,000, and the employees will receive over
8 \$2,131 on average. This is a good result in light of the disputed nature of the claims alleged.
9 This result was achieved by the work and success of my office, who negotiated the settlement
10 after extensive preparation, investigation, mediation, and substantial work thereafter.

11 18. Second, Plaintiff faced significant risks going forward with the litigation. As
12 discussed in the motion for preliminary approval, Defendants raised various defenses throughout
13 this litigation, any one of which, if successful, could have decimated Plaintiff's case. And
14 Defendants vowed to raise all these defenses at trial. Accordingly, Plaintiff faced risky issues
15 going forward with this litigation, and it would have taken several more years to realize any
16 recovery in this action along with the possibility of post-trial appeals.

17 19. Third, Class Counsel are experienced class action litigators. This experience and
18 expertise, combined with the high quality of work performed in this case, resulted in the
19 settlement achieved in this case.

20 20. Fourth, Class Counsel have been representing Plaintiff in this matter strictly on a
21 contingency fee basis. To that end, we have incurred the risk of non-recovery after investing a
22 substantial amount of time, money, and resources, and have done so since the inception of this
23 case without any payment or compensation. If Plaintiff had lost this case, we would have
24 recovered nothing, and would have lost our out-of-pocket costs. This is not an easy burden for
25 my office, which is a small firm.

26 21. Fifth, the request for attorney's fees in the amount of one-third of the common
27 fund falls well within the norms accepted by state and federal courts in California in comparable
28 wage and hour actions actually handled by my office. Moreover, the award of a one-third fee

1 recovery under the common fund doctrine was recently approved by the California Supreme
2 Court in *Laffitte v. Robert Half*.

3 22. For all of the above reasons, a common fund fee award here in the amount of one-
4 third of the common fund created by Plaintiffs and Class Counsel is fair and reasonable.

5 23. At my office, this case was primarily handled by Misty Lauby and me. Ms.
6 Lauby works exclusively with me on employment law matters and has been in practice for 14
7 years. She bills at the hourly rate of \$550/hour. I have been in practice for 20 years, with most
8 of those years handling complex litigation and for nearly the last 15 years, my practice has
9 almost entirely consisted of handling class action wage and hour matters. My billing rate is
10 \$695/hour. My rate has been approved by Courts in Riverside, San Bernardino, Los Angeles,
11 Orange and San Diego counties, as well as in several District Courts in California. I believe
12 these rates are consistent with Plaintiff and Defense attorneys who handle complex class action
13 litigation, if not somewhat lower (i.e., the Laffrey Matrix at www.laffeymatrix.com indicates that
14 the benchmark rate for a 4 year attorney to be \$455/hour and a 12 year attorney at \$742/hour).
15 The Real Rate Report then compiles and analyzes this data to provide the hourly rates for
16 partners and associates in major metropolitan areas. For the southern California area, which is
17 based on billing entries for 1,125 partners and 1,566 associates, the Real Rate Report states that:
18 (a) the rates for partners in Los Angeles is between \$640 and \$869.75 per hour for the middle
19 and upper quartiles, and (b) the rates for associates in Los Angeles is between \$478.74 and
20 \$638.97 for the median and upper quartiles. (*Id.*) And, perhaps most importantly, the
21 information provided in the Real Rate Report is not based on self-reported numbers, surveys,
22 sampling, or reviews or other publications – instead, the Real Rate Report is based on the actual
23 hours and fees billed by law firms. (*Id.*) These numbers are not surprising given that a 4-year-old
24 article in the National Law Journal stated that in **2014** partners in Los Angeles charge an average
25 of \$665, while the average associate rate is \$401. (Sloan, \$1,000 Per Hour Isn't Rare Anymore;
26 Nominal Billing Levels Rise, But Discounts Ease Blow (2014) Nat. Law Journal.)²

27
28 ² The article notes that at Irell & Manella, the average partner rate is \$890/hr; Mannatt, Phelps & Phillips is \$740/hr; O'Melveny & Meyers is \$715/hr; and Jeffer Mangels Butler & Mitchell is \$690/hr. *Id.*

24. I have reviewed the work performed on the case. The table below includes a summary of the hours worked, plus an estimated 35 hours that I will bill in finalizing and filing the motion, preparing for and attending the approval hearing, and working with the claims administrator and defense counsel to finalize this matter. The total lodestar for my firm is approximately \$185,585 through the conclusion of this matter, resulting in a multiplier of only 1.35, as noted in the chart below:

Attorney	Experience	Rate per Hour	Hours	Total Lodestar
Brian Mankin	20 years	\$695	145 ³	\$100,775
Misty Lauby	14 years	\$550	154.2	\$84,810
Total Lodestar				\$185,585

25. The fee is warranted because of the results achieved for the Class Members, both in terms of the immediate cash settlement, as well as the fact that the Class Members resoundingly supported the Settlement. Defendant does not oppose this fee request.

26. In the course of prosecuting this action, Class counsel have incurred expenses that were incidental and necessary to the effective representation of the Class. These expenses included but were not limited to: court filings, copying and management of documents, on-line Lexis research, messenger services, postage, fax transmission expenses, transportation, mediator fees including travel to mediation, and other incidental expenses directly related to this action. The Settlement Agreement provided up to \$15,000 in costs. Through final approval, my office incurred \$10,603.50 in litigation costs (see Exhibit "B" attached hereto). The saving will be placed in the Net Settlement Amount for payment to the Class Members. Defendants do not oppose this request for costs.

REASONABLENESS OF REQUESTED SERVICE AWARDS

27. I also believe that the service award of \$5,000 for Plaintiff is fair and warranted for the reasons outlined in his declaration and in the motion. She both came forward and worked directly with my office in analyzing the claims and documents, and providing valuable information. (See her declaration for supporting information.) Indeed, her participation was an

³ Includes an estimated 35 hours of work finalizing this motion, attending final approval, working with Defense Counsel and the Administrator finalizing this matter, submitting a declaration of disbursement and other matters.

1 essential element of Defendant's desire to mediate and of the pre and post mediation analysis
2 that allowed Class Counsel to settle the case. Of course, she also took on various risks, including
3 the risk that she could have been ordered to pay Defendant's costs if she lost and the risk of
4 retaliation and being black-balled in the industry. Finally, Defendant does not oppose the
5 requested service awards.

6 SUBMISSION TO THE LWDA

7 28. The Motion and declarations, including the Settlement Agreement, have
8 concurrently been submitted to the LWDA. (See Exhibit "C").

9 EXHIBITS AND CONCLUSION

10 29. A true and correct copy of the Settlement Agreement is attached hereto as Exhibit
11 "A."

12 30. Attached hereto as Exhibit "B" is a true and correct copy of an itemized statement
13 of my firm's litigation costs.

14 31. The LWDA's confirmation of receipt of this Motion and Declaration is attached
15 hereto as Exhibit "C."

16 32. For the foregoing reasons, it is respectfully requested that the Court grant final
17 approval of the settlement as being fair, reasonable, and in the best interest of the class, and
18 approve the requested attorneys' fees, costs, and service award.

19 I declare under penalty of perjury under the laws of the State of California that the
20 foregoing is true and correct. Executed on October 21, 2021, at Riverside, California.

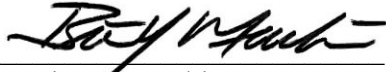
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22 By: 
23 Brian J. Mankin, Esq.
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25
26
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28

EXHIBIT “A”

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO

NATALIE PALMER, individually, on behalf
of all similarly situated current and former
employees, and on behalf of the State of
California and all Aggrieved Employees;

Plaintiff,

vs.

CHARTER HOSPICE, INC., a California
Corporation; CHARTER HOSPICE OF
COLTON, LLC, a California Limited
Liability Company; ARCH B. GILBERT, an
individual; FRED FRANK, an individual; and
DOES 1 through 10, inclusive;

Defendants.

Case No.: CIVDS2013037

*[Assigned to Honorable David Cohn, Dept.
S26, for all purposes]*

**CLASS ACTION SETTLEMENT
AGREEMENT AND RELEASE OF
CLAIMS**

1 This Class Action Settlement Agreement and Release of Claims is entered into by and
2 between Plaintiff Natalie Palmer, individually and on behalf of all others similarly situated, and
3 Defendants Charter Hospice, Inc., Charter Hospice of Colton, LLC, Arch B. Gilbert, and Fred
4 Frank (“Defendants”) and is approved by their respective counsel of record, subject to the terms
5 and conditions hereof and the Court’s approval.
6

7 **A. Definitions**

8 1. “Action” or “Lawsuit” means and refers to the case entitled *Natalie Palmer v.*
9 *Charter Hospice, Inc., et al.*, San Bernardino County Superior Court, Case No. CIVDS2013037.

10 2. “Settlement Agreement” or “Agreement” shall mean this Class Action Settlement
11 Agreement and Release of Claims, including any attached Exhibits.

12 3. “Aggrieved Employees” means all current and former non-exempt employees of
13 Defendants who worked in the State of California and performed in-home nursing duties at any
14 time during the PAGA Period.

15 4. “Class Counsel” refers to Brian Mankin and Misty Lauby of Lauby Mankin
16 Lauby LLP.

17 5. “Class Data” means a complete list that Defendants will diligently and in good
18 faith compile from its records and provide to the Settlement Administrator on one spreadsheet
19 and shall include the Settlement Class Members’ full names; last known addresses; telephone
20 numbers; Social Security Numbers; the total Weeks Worked during the PAGA Period for each
21 Aggrieved Employee, and the total Weeks Worked during the Class Period for each Settlement
22 Class Member.

23 6. “Class Period” is deemed to be any time during the period of June 25, 2016
24 through the Preliminary Approval Date.

25 7. “Class Representative” or “Plaintiff” means and refers to Natalie Palmer.

26 8. “Complaint” refers to the operative first amended complaint on file alleging class
27 and representative PAGA claims, filed in the San Bernardino County Superior Court on June 25,
28 2020, and amended on August 13, 2020, in the matter of *Natalie Palmer v. Charter Hospice,*
Inc., et al., et al., San Bernardino County Superior Court Case No. CIVDS2013037.

1 9. “Court” (or “Judge”) means the California Superior Court, County of San
2 Bernardino.

3 10. “Defendants” means and refers to Charter Hospice, Inc., Charter Hospice of
4 Colton, LLC, Arch B. Gilbert, and Fred Frank.

5 11. “Defendants’ Counsel” or “Defense Counsel” means and refers to Debra Ellwood
6 Meppen, Gene Williams and Varouj Arabian of Gordon Rees Scully Mansukhani.

7 12. “Effective Date” means the latest of the following dates: (i) if no Class Member
8 objects, timely and properly intervenes, or files a motion to vacate the judgment approving the
9 Settlement Agreement under Code of Civil Procedure § 663, then the date of the Notice of Entry
10 of Order regarding Final Approval of the Settlement; (ii) if a Class Member objects, intervenes,
11 or files a motion to vacate the judgment approving the Settlement Agreement, then sixty-one
12 (61) calendar days following the date the Court enters an order granting Final Approval,
13 assuming no appeal is filed; or (iii) if a timely appeal is filed, the date of final resolution of that
14 appeal (including any requests for rehearing and/or petitions for *certiorari*), resulting in final
15 judicial approval of the Settlement.

16 13. “Final Approval” refers to the order of the Court granting final approval of this
17 Settlement Agreement and entering a judgment approving this Agreement on substantially the
18 terms provided herein or as the same may be modified by subsequent agreement of the Parties.

19 14. “Final Settlement Class” means, collectively, all Settlement Class Members who
20 have not opted out of the Settlement Class by submitting timely Requests for Exclusion.

21 15. “Individual Settlement Payment” shall have the meaning ascribed to it in
22 Paragraph 43(c) below.

23 16. “Maximum Settlement Amount” shall have the meaning ascribed to it in
24 Paragraph 47(a) below.

25 17. “Net Settlement Amount” shall have the meaning ascribed to it in Paragraph 47(b)
26 below.

27 18. “Notice” means the notice of settlement of class action that will be sent to the
28 Settlement Class Members.

1 19. “Notice Response Deadline” is 30 calendar days from the date the Notice is
2 mailed to the Settlement Class Members.

3 20. “Objecting Settlement Class Member” means a Settlement Class Member, other
4 than Plaintiff, who submits a valid and timely objection to the terms of this Agreement, pursuant
5 to Paragraph 68(c) below.

6 21. “PAGA Penalties” means the amount that the Parties have agreed to pay to the
7 Labor and Workforce Development Agency (“LWDA”) in connection with the California Labor
8 Code Private Attorneys General Act of 2004 (Cal. Lab. Code §§ 2698, *et seq.*, “PAGA”), as well
9 as the individual PAGA payment allocated to each Aggrieved Employee.

10 22. “PAGA Period” is deemed to be any time during the period of June 25, 2019
11 through the Preliminary Approval Date.

12 23. “PAGA Released Claims” by the Aggrieved Employees upon Final Approval of
13 the Settlement will include means any and all PAGA claims that Plaintiff alleged against the
14 Released Parties, on behalf of Aggrieved Employees and State of California, based on the facts
15 stated in Plaintiff’s Complaint and in Plaintiff’s LWDA notice letter, including all PAGA claims
16 seeking civil penalties that is premised upon (a) failure to pay minimum wages, (b) failure to pay
17 overtime wages, (c) failure to provide meal periods, (d) failure to provide rest breaks, (e) failure
18 to reimburse business expenses, (f) failure to failure to timely pay wages each period and upon
19 separation of employment, (g) failure to provide accurate itemized wage statements, and (h) all
20 other claims for civil penalties recoverable under the Private Attorneys General Act, Labor Code
21 § 2698 *et seq.* based on the facts or claims alleged in the Complaint. The time period governing
22 the PAGA Released Claims shall be any time during the PAGA Period. The PAGA Released
23 Claims do not release any Aggrieved Employee’s claims for wages or statutory penalties.

24 24. “Participating Class Member” means any and all Settlement Class Members who
25 are deemed to participate and receive an Individual Settlement Payment and do not opt-out by
26 submitting timely valid Requests for Exclusion.

27 25. “Parties” or “Settling Parties” mean Plaintiff, the Settlement Class, and
28 Defendants, collectively.

1 26. “Preliminary Approval Date” means the date the Court approves the Settlement
2 Agreement, and the exhibits thereto, and enters the Preliminary Approval Order.

3 27. “Preliminary Approval Order” means the judicial Order to be entered by the
4 Court, upon the application or motion of the Plaintiff, preliminarily approving this Settlement
5 and providing for the issuance of the Notice to the Settlement Class, an opportunity to opt out of
6 the Settlement, an opportunity to submit timely objections to the Settlement, and setting a
7 hearing on the fairness of the terms of Settlement, including approval of attorneys’ fees and
8 costs. Defendants will not object to Plaintiff’s motion for preliminary approval, but will be
9 provided with an opportunity to review and comment upon the motion at least five days before it
10 is filed.

11 28. “QSF” means the Qualified Settlement Fund set up by the Settlement
12 Administrator for the benefit of the Final Settlement Class, and from which the settlement
13 payments shall be made, and which is intended to be a fund that qualifies under Internal Revenue
14 Code Sec. 468.

15 29. “Released Claims” by the Participating Class Members upon Final Approval of
16 the Settlement will include any and all claims stated in the Complaint and those based solely
17 upon the facts in the Complaint, including: (a) failure to pay minimum wages, (b) failure to pay
18 overtime wages, (c) failure to provide meal periods, (d) failure to provide rest breaks, (e) failure
19 to reimburse business expenses, (f) failure to failure to timely pay wages each period and upon
20 separation of employment, (g) failure to provide accurate itemized wage statements, and (i)
21 unfair and unlawful competition, and (j) all other claims for statutory penalties based on the facts
22 or claims alleged in the Complaint.

23 30. “Released Parties” means Defendants and their past, present and/or future, direct
24 and/or indirect, officers, directors, members, managers, employees, agents, representatives,
25 attorneys, insurers, partners, investors, shareholders, administrators, parent companies,
26 subsidiaries, affiliates, divisions, predecessors, successors, assigns, joint venturers, insurers and
27 re-insurers.

28 31. “Release Period” shall be the time period governing the Released Claims which

1 shall be the same as the Class Period.

2 32. “Release” shall mean the release and discharge of the Released Claims by
3 Plaintiff and all of the Participating Class Members. The *res judicata* effect of the Judgment will
4 be the same as that of the Release.

5 33. “Request for Exclusion” shall have the meaning ascribed to it in Paragraph 68(a)
6 below.

7 34. “Service Payment” or “Service Award” means the amount approved by the Court
8 to be paid to the Class Representative, Natalie Palmer, in addition to her Individual Settlement
9 Payment as a Participating Class Member.

10 35. “Settlement Administrator” means and refers to Simpluris, the third-party class
11 action settlement administrator agreed to by the Parties, that will provide the Notice Packet to the
12 Class Members and distribute the settlement amounts as described in this Agreement.

13 36. “Settlement Administration Costs” means the costs payable from the Maximum
14 Settlement Amount to the Settlement Administrator for administering this Settlement, including,
15 but not limited to, printing, distributing, and tracking documents for this Settlement, tax
16 reporting, and deposit of the employee and employer share of payroll taxes, unclaimed property
17 due diligence, reporting and remittance obligations, distributing the Maximum Settlement
18 Amount, and providing necessary reports and declarations, as requested by the Parties. The
19 Settlement Administration Costs shall be paid from the Settlement Amount, including, if
20 necessary, any such costs in excess of the amount represented by the Settlement Administrator as
21 being the maximum costs necessary to administer the Settlement.

22 37. “Settlement Class” or “Covered Position” consists of all current and former non-
23 exempt employees of Defendants who worked in the State of California and performed in-home
24 nursing duties at any time during the Class Period.

25 38. “Settlement Class Member” or “Class Member(s)” refers to individual members
26 of the Settlement Class.

27 39. “Work Weeks” or “Weeks Worked” for each Settlement Class Members means
28 any and all weeks during the Class Period in which the Settlement Class Member was employed

by Defendants in a Covered Position and worked at least one shift during the week.

B. General Terms

40. Plaintiff filed a class and representative PAGA action complaint in the Court on June 25, 2020 against Defendants and Does 1 through 10. Plaintiff subsequently amended the Complaint on August 13, 2020. The operative Complaint alleges class and representative PAGA claims, including: (1) failure to pay minimum and regular wages, (2) failure to pay overtime wages, (3) failure to provide meal periods, (4) failure to provide rest breaks, (5) failure to reimburse for business expenses, (6) failure to timely pay final wages upon separation of employment, (7) failure to provide accurate itemized wage statements, (8) unfair and unlawful competition pursuant to Business and Professions Code §17200 *et seq.*, and (9) related claims under PAGA.

41. Defendants deny Plaintiff's claims and allegations and contend that the Action is not suitable for class certification or manageable as a class or representative action.

42. The Class Representative believes she can proceed with her representative and class claims, that the Action is meritorious, and that class certification is appropriate.

43. The Parties have conducted a thorough investigation into the facts of the Action. This includes conducting an extensive exchange of informal discovery, including Defendants' written policies and practices and the production of a sampling of payroll and timekeeping records for Settlement Class Members. Class Counsel is both knowledgeable about and has done extensive research with respect to the applicable law and potential defenses to the claims of the Settlement Class. Class Counsel has diligently pursued an investigation of the Class Members' claims against Defendants. Based on the foregoing data and on their own independent investigation and evaluation, Class Counsel is of the opinion that the settlement with Defendants for the consideration and on the terms set forth in this Settlement Agreement is fair, reasonable, and adequate and is in the best interest of the Class Members in light of all known facts and circumstances, including the risk of significant delay and uncertainty associated with litigation, various defenses asserted by Defendants, and numerous potential appellate issues.

44. On February 18, 2021, Plaintiff and Defendants participated in mediation before

Jeffrey Krivis, a highly experienced wage and hour class action mediator. The matter resolved at mediation pursuant to a mediator's proposal.

45. The Parties agree that neither the Parties' Settlement, this Agreement, nor the acts to be performed or judgments to be entered pursuant to the terms of the Settlement and Agreement, shall be construed as an admission by Defendants of any wrongdoing or violation of any statute or law or liability on the claims or allegations in the Action.

46. Stipulation for Class Certification. For settlement purposes only, Defendants will stipulate that the Settlement Class Members described herein who do not submit a Request for Exclusion from the Settlement Class may be conditionally certified as a settlement class. This stipulation to certification is in no way an admission that class action certification is proper and shall not be admissible in this or in any other action except for the sole purposes of enforcing this Agreement. Should, for whatever reason, the Court fail to issue Final Approval, the Parties' stipulation to class certification as part of the Settlement shall become null and void *ab initio* and shall have no bearing on, and shall not be admissible in connection with, the issue of whether or not certification would be appropriate in a non-settlement context. Defendants expressly reserve their rights and declare that they would continue to oppose class certification and the substantive merits of the case should the Court decline to issue Final Approval. Plaintiff expressly reserves her rights and declares that she will continue to pursue class certification and a trial should the Court decline to issue Final Approval.

C. Terms of Settlement

47. The financial terms of the Settlement are as follows:

(a) Maximum Settlement Amount: The Parties agree to settle this Action for Seven Hundred and Fifty Thousand Dollars (\$750,000) ("the Maximum Settlement Amount"). The Maximum Settlement Amount is the maximum amount that will be paid, and includes Individual Settlement Payments, Attorneys' Fees and Costs Award, the Service Payment to the Class Representative, all Settlement Administration Costs, and PAGA Penalties. Defendants shall separately pay the employers' share of their payroll tax obligations, which shall be reported through the Settlement Administrator.

1 (b) Net Settlement Amount: The “Net Settlement Amount” is defined as the
2 Maximum Settlement Amount less the Attorneys’ Fees and Costs Award, the Service Payment to
3 the Class Representative as awarded by the Court, the Settlement Administration Costs, and
4 PAGA Penalties. If the Court reduces the attorneys’ fees, litigation costs, Service Award, or
5 Settlement Administrator Costs, the difference shall be placed in the Net Settlement Amount and
6 allocated to the Settlement Class.

7 (c) Individual Settlement Payments for the Settlement Class: Individual
8 Settlement Payments will be calculated and apportioned from the Net Settlement Amount based
9 on the number of Work Weeks a Settlement Class Member worked during the Class Period.
10 Specific Calculations of Individual Settlement Payments will be made as follows:

- 11 • Defendants will calculate the total number of Work Weeks worked by each
12 Settlement Class Member during the Class Period and the aggregate total
13 number of Work Weeks worked by all Settlement Class Members during the
14 Class Period.
- 15 • To determine each Settlement Class Member’s estimated Individual
16 Settlement Payment, the Settlement Administrator will use the following
17 formula: The Net Settlement Amount will be divided by the aggregate total
18 number of Work Weeks, resulting in the “Work Week Value.” Each
19 Settlement Class Member’s Individual Settlement Payment will be calculated
20 by multiplying his or her total number of Work Weeks during the Class Period
21 by the Work Week Value.
- 22 • Individual Settlement Payments will be reduced by any required deductions
23 for each Participating Class Member as specifically set forth herein, including
24 employee-side tax withholdings or deductions.
- 25 • The entire Net Settlement Amount will be disbursed to all Participating Class
26 Members. If there are any valid and timely Requests for Exclusion, the
27 Settlement Administrator shall proportionally increase the Individual
28 Settlement Payment for each Participating Class Member according to the

number of Work Weeks worked, so that the amount actually distributed to the Settlement Class equals 100% of the Net Settlement Amount.

(d) Allocation of Individual Settlement Payments: The Individual Settlement Payments will be allocated based on the allegations in the Action as follows: one-third (33.34%) will be allocated as wages subject to withholding of all applicable local, state and federal taxes; and the remaining two-thirds will be allocated equally between interest (33.33%) and as penalties (33.33%) (pursuant to, e.g., California Labor Code sections 203, 210, 226, 2699) from which no taxes will be withheld. The Settlement Administrator will issue to each Participating Class Member an Internal Revenue Service Form W-2 and comparable state forms with respect to the wage allocation and a Form 1099 with respect to the penalties and interest allocations.

(e) Service Payment to Class Representative: The amount, if any, awarded to the Class Representative as a Service Payment will be set by the Court in its discretion, not to exceed \$5,000, in exchange for the services Plaintiff performed on behalf of the Class and for entering into the general and expansive release discussed hereinafter. Defendants agree not to oppose this request. The Service Payment to Plaintiff will be paid out of the Maximum Settlement Amount. The Class Representative will be issued IRS Form 1099 in connection with this payment. Plaintiff shall be solely and legally responsible to pay any and all applicable taxes on this payment. The Parties agree that any amount awarded as the Service Payment to Plaintiff less than the requested amount shall not be a basis for Class Counsel to void this Settlement Agreement. Should the Court approve a lesser amount for the Service Payment, the difference shall be added to the Net Settlement Amount to be distributed to the Participating Class Members.

(f) Attorneys' Fees and Costs Award: Defendants agree to not oppose a request by Class Counsel to the Court for an award of attorneys' fees of one-third of the Maximum Settlement Amount (\$250,000), plus reasonable litigation costs not to exceed \$15,000 ("Attorney's Fees and Cost Award"). Defendants agree not to oppose any contention by Class Counsel that attorneys' fees should be based on the common fund theory. The Attorney's Fee and Cost Award shall be paid from the Maximum Settlement Amount, and except for this award,

1 Defendants shall have no further obligation to pay any attorneys' fees, costs or expenses to Class
2 Counsel. Should the Court approve a lesser amount than what is sought by Class Counsel, the
3 difference shall be added to the Net Settlement Amount to be distributed to the Participating
4 Class Members. Any Court order awarding less than the amount sought by Class Counsel shall
5 not be grounds to rescind the Settlement Agreement or otherwise void the Settlement. The
6 Settlement Administrator shall issue to Class Counsel an IRS Form 1099 reflecting the amount
7 of attorneys' fees and costs awarded by the Court.

8 (g) Settlement Administration Costs: The fees and other charges of the
9 Settlement Administrator will be paid from the Maximum Settlement Amount, not to exceed
10 \$5,300 unless approved by all Parties and the Court.

11 (h) PAGA Penalties: The Parties agree that \$25,000 is allocated to PAGA
12 Penalties, and is to be paid from the Maximum Settlement Amount, subject to Court approval.
13 Of this amount, \$18,750 (75%) shall be paid to the LWDA in satisfaction of civil penalties under
14 the Private Attorney General Act of 2004 ("PAGA") and \$6,250 (25%) will be paid to the
15 Aggrieved Employees on a Work Week basis, which will be treated entirely as civil penalties
16 and shall be reported as required on an IRS form 1099. Class Counsel shall give proper notice to
17 the LWDA of the Settlement.

18 (i) Tax Liability: Class Counsel and Defendants make no representations as
19 to the tax treatment or legal effect of Settlement Amounts called for hereunder, and Plaintiff and
20 the Settlement Class Members are not relying on any statement or representation by Class
21 Counsel or Defendants in this regard. Plaintiff and Participating Class Members understand and
22 agree that they will be solely responsible for the payment of any taxes and penalties assessed on
23 their respective Settlement Amounts described herein. The amount of federal income tax
24 withholding will be based upon a flat withholding rate for supplemental wage payments in
25 accordance with Treas. Reg. § 31.3402(g)-1(a)(2) as amended or supplemented. Income tax
26 withholding will also be made pursuant to applicable state and/or local withholding codes or
27 regulations. Forms W-2 and/or Forms 1099 will be distributed at times and in the manner
28 required by the Internal Revenue Code of 1986 (the "Code") and consistent with this Agreement.

1 If the Code, the regulations promulgated thereunder, or other applicable tax law, is changed after
2 the date of this Agreement, the processes set forth in this Section may be modified in a manner to
3 bring Defendants into compliance with any such changes. Plaintiff and Participating Class
4 Members understand and agree that they will be solely responsible for the payment of any taxes
5 and penalties assessed on their respective payments described herein and will defend, indemnify,
6 and hold Defendants free and harmless from and against any claims resulting from treatment of
7 such payments as non-taxable damages.

8 (j) CIRCULAR 230 DISCLAIMER. EACH PARTY TO THIS
9 AGREEMENT (FOR PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY”
10 AND EACH PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING
11 PARTY, AN “OTHER PARTY”) ACKNOWLEDGES AND AGREES THAT (1) NO
12 PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR
13 DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND
14 OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH
15 COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE
16 RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES
17 TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE
18 ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS
19 OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX
20 ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO
21 THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY
22 OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT
23 ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY
24 ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY
25 THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO
26 ATTORNEY OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION
27 THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY’S OR
28 ADVISER’S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS

1 LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF
2 THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING
3 ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

4 48. No Credit Toward Benefit Plans. The Individual Settlement Payments made to
5 Participating Class Members under this Agreement, as well as any other payments made
6 pursuant to this Agreement, shall not be utilized to calculate any additional benefits under any
7 benefit plans to which any Settlement Class Members may be eligible, including, but not limited
8 to: profit-sharing plans, bonus plans, 401(k) plans, stock purchase or other types of equity plans,
9 vacation plans, sick leave plans, PTO plans, and any other benefit plan. Rather, it is the Parties'
10 intention that this Settlement will not affect any rights, contributions, or amounts to which any
11 Settlement Class Members may be entitled under any benefit plans. The Parties agree that the
12 amounts paid pursuant to this Settlement are not for days or hours worked, and are not included
13 toward any regular rate of pay calculation, or any benefit vesting or accrual purpose.

14 49. "Non-Reversionary" Settlement. This is a "non-reversionary" settlement. Under
15 no circumstances will any portion of the Maximum Settlement Amount revert to Defendants.
16 Participating Class Members will not have to make a claim in order to receive an Individual
17 Settlement Payment. Distributions, in the form of Individual Settlement Payments, will be made
18 directly to each Participating Class Member. The Settlement Administrator shall be responsible
19 for accurately and timely reporting and remittance obligations with respect to unclaimed funds as
20 a result of a Participating Class Member not cashing an Individual Settlement Payment by the
21 check cashing deadline, as set forth herein.

22 50. Class Counsel and Plaintiff believe that the Settlement is fair and reasonable, and
23 adequate, and will so represent same to the Court.

24 **D. Release by Plaintiff, the Aggrieved Employees and the Settlement Class**

25 51. Upon entry of the Final Approval Order and Defendants funding of the Settlement
26 Amount, and except as to such rights or claims as may be created by this Settlement Agreement,
27 the Settlement Class (other than those who submit a valid Request for Exclusion) and each
28 member of the Settlement Class who does not timely opt-out, will forever completely release and

1 discharge the Released Parties from the Released Claims for the Release Period.

2 52. Upon entry of the Final Approval Order and Defendants funding of the Settlement
3 Amount, the State of California and Aggrieved Employees shall completely release and
4 discharge the Released Parties from the PAGA Released Claims for the PAGA Period.

5 53. Each Settlement Class Member will be deemed to have made the foregoing
6 Release as if by manually signing it.

7 54. Plaintiff and Defendants intend that the Settlement described in this Agreement
8 will release and preclude any further claim, whether by lawsuit, administrative claim or action,
9 arbitration, demand, or other action of any kind, by each and all of the Participating Class
10 Members to obtain a recovery based on, arising out of, and/or related to any and all of the
11 Released Claims. The Class Members shall be so notified in the Notice. This paragraph does not
12 apply to any Class Member who timely and validly opts out of the Settlement.

13 55. Class Representative, on behalf of herself and the Settlement Class, acknowledges
14 and agrees that the claims for unpaid wages and unreimbursed expenses in the Action, and
15 untimely payment of wages in the Action, are disputed, and that the payments set forth herein
16 constitute payment of all sums allegedly due to them. Class Representative, on behalf of herself
17 and the Settlement Class, acknowledges and agrees that California Labor Code Section 206.5 are
18 not applicable to the Parties hereto. Section 206.5 provides in pertinent part as follows:

19 An employer shall not require the execution of any release of any claim or
20 right on account of wages due, or to become due, or made as an advance
21 on wages to be earned, unless payment of those wages has been made.

22 **E. Release by Class Representative**

23 56. Except for Plaintiff's separate "Individual Claims" (which shall be released
24 through a separate individual agreement), as a material inducement to Defendants to enter into
25 this Settlement Agreement, Class Representative does hereby, for herself and for her respective
26 spouses, heirs, successors, beneficiaries, devisees, legatees, executors, administrators, trustees,
27 conservators, guardians, personal representatives, and assigns forever and completely release and
28 discharge the Released Parties from any and all charges, complaints, claims, liabilities,

obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts, and expenses (including back wages, statutory penalties, civil penalties, liquidated damages, exemplary damages, interest, attorneys' fees, and costs) of any nature whatsoever, from the beginning of time through the execution of this Stipulation, whether known or unknown, suspected or unsuspected, including but not limited to all claims arising out of, based upon, or relating to Class Representative's employment with Defendants or the remuneration for or termination of such employment (collectively, the "Class Representative's Claims").

57. Without limiting the generality of the foregoing, this general release by Class Representative includes all federal, state and local statutory claims, federal and state common law claims (including but not limited to those for contract, tort and equity), including without limitation the Americans with Disabilities Act, Age Discrimination in Employment Act, Title VII of the Civil Rights Act of 1964 (as amended), 42 USC sec. 1981, 42 USC sec. 1983, the Fair Labor Standards Act, the Employment Retirement Security Income Act of 1974, the California Constitution, the California Fair Employment and Housing Act, the California Unfair Competition Act (California Business and Professions Code section 17200 et seq.), and the California Labor Code, except for the Individual Claims.

58. Class Representative agrees that there is a risk that any injury that she may have suffered by reason of the Released Parties' relationship with her might not now be known, and there is a further risk that said injuries, whether known or unknown at the date of this Settlement Agreement, might possibly become progressively worse, and that as a result thereof further damages may be sustained. Nevertheless, Class Representative agrees to forever and fully release and discharge the Released Parties, and understands that by the execution of this Settlement Agreement no further claims for any such injuries that existed at the time of the execution of this Settlement Agreement may ever be asserted by Class Representative with respect to claims arising in the time period from the beginning of time to the execution of this Settlement Agreement.

59. Class Representative expressly waives and relinquishes all rights and benefits

1 afforded by Section 1542 of the Civil Code of the State of California and does so understanding
2 and acknowledging the significance of the waiver of Section 1542. Section 1542 of the Civil
3 Code of the State of California states:

4 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
5 THAT THE CREDITOR OR RELEASING PARTY DOES NOT
6 KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT
7 THE TIME OF EXECUTING THE RELEASE AND THAT, IF
8 KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY
9 AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR
10 OR RELEASED PARTY.

9 Notwithstanding the provisions of Section 1542, and for the purpose of implementing a
10 full and complete release and discharge of all parties, Class Representative and Class Counsel
11 expressly acknowledge that this Settlement Agreement is intended to include in its effect,
12 without limitation, all claims that Class Representative knew of, as well as all claims that she
13 does not know or suspect to exist in her favor against the Released Parties, or any of them, for
14 the time period from the beginning of time to the execution of this Settlement Agreement, and
15 that this Settlement Agreement contemplates the extinguishment of any such Class
16 Representative's claims. Notwithstanding the above, the general release by Class Representative
17 shall not extend to claims for workers' compensation benefits, claims for unemployment
18 benefits, or other claims that may not be released by law.

19 **F. Interim Stay of Proceedings**

20 60. Pending completion of all of the prerequisites necessary to effectuate this
21 Settlement, the Parties agree, subject to Court approval, to a stay of all proceedings in the Action
22 except such as are necessary to effectuate the Settlement.

23 **G. Notice Process**

24 61. Appointment of Settlement Administrator. The Parties have agreed to the
25 appointment of the Settlement Administrator to perform the duties of a settlement administrator,
26 including mailing the Notice, using standard devices to obtain forwarding addresses,
27 independently reviewing and verifying documentation associated with any claims or opt-out
28 requests, resolving any disputes regarding the calculation or application of the formula for
determining the Individual Settlement Payments, drafting and mailing the settlement checks to

1 Participating Class Members, issuing W-2 and 1099 Tax Forms, unclaimed funds due diligence,
2 reporting and remittance obligations, and performing such other tasks as set forth herein or as the
3 Parties mutually agree or that the Court orders.

4 62. Disputes Regarding Settlement Administration. Any and all disputes relating to
5 administration of the Settlement by the Settlement Administrator (except for disputes regarding
6 Class Data) shall be referred to the Court, if necessary, which will have continuing jurisdiction
7 over the terms and conditions of this Settlement Agreement, until Plaintiff and Defendants notify
8 the Court that all payments and obligations contemplated by this Settlement Agreement have
9 been fully carried out. Prior to presenting any issue to the Court, counsel for the Parties will
10 confer in good faith to resolve the dispute without the necessity of Court intervention. The
11 Settlement Administrator shall also be responsible for issuing to Plaintiff, Settlement Class
12 Members, and Class Counsel any W-2, 1099, or other Tax Forms as may be required by law for
13 all amounts paid pursuant to this Agreement. The Settlement Administrator shall also be
14 responsible for setting up all necessary tax accounts and forwarding all payroll taxes and
15 penalties to the appropriate government authorities.

16 63. Class Data. Within fifteen (15) business days after entry of the Preliminary
17 Approval Order, Defendants shall provide the Class Data to the Settlement Administrator. The
18 Settlement Administrator will run a check of the Class Members' addresses against those on file
19 with the U.S. Postal Service's National Change of Address List. The Class Data provided to the
20 Settlement Administrator will remain confidential, shall be used solely to administer the
21 Settlement, and will not be used or disclosed to anyone, except as required by applicable tax
22 authorities, pursuant to Defendants' express written consent, or by order of the Court. Although
23 Class Counsel will not be provided with the list of Class Data, nothing herein shall prevent Class
24 Counsel from communicating with Class Member's regarding the Action and Settlement.

25 64. Notice. The Notice, as approved by the Court, shall be sent by the Settlement
26 Administrator to the Settlement Class Members, by first class mail, in English, within ten (10)
27 calendar days following the Settlement Administrator's receipt of the Class Data. The
28 Settlement Administrator shall use standard devices, including a skip trace, to obtain forwarding

addresses of Settlement Class Members if any envelopes are returned.

65. Returned Notices. The Settlement Administrator will take steps to ensure that the Notice is received by all Settlement Class Members, including utilization of the National Change of Address Database maintained by the United States Postal Service to review the accuracy of and, if possible, update a mailing address. Notices will be re-mailed to any Class Member for whom an updated address is located within ten (10) calendar days following both the Settlement Administrator learning of the failed mailing and its receipt of the updated address. The Notice shall be identical to the original Notice, except that it shall notify the Class Member that the exclusion (opt-out) request or objection must be returned by the later of the Notice Response Deadline or fifteen (15) days after the remailing of the Notice.

66. Disputes Regarding Information on Notices. Class Members are deemed to participate in the Settlement, unless they opt-out. The Notice will inform Class Members of his/her estimated Individual Settlement Payment and the number of Weeks Worked during the Class Period. Class Members may dispute their Weeks Worked if they feel they should be credited with more Work Weeks than Defendants' records show by timely submitting evidence to the Settlement Administrator. Defendants' records will be presumed determinative absent reliable evidence to rebut Defendants' records, but the Settlement Administrator will evaluate the evidence submitted by the Class Member and provide the evidence submitted to Class Counsel and Defense Counsel who agree to meet and confer in good faith about the evidence to determine the Class Member's actual number of Work Weeks and estimated Individual Settlement Payment. If Class Counsel and Defense Counsel are unable to agree, they agree to submit the dispute to the Settlement Administrator to render a final decision. Class Members will have until the Notice Response Deadline to dispute Weeks Worked, object or opt out, unless extended by the Court. In the event that the Settlement Administrator increases the number of Weeks Worked for any Settlement Class Member, then the Settlement Administrator will recalculate the Individual Settlement Payments; accordingly, in no event will Defendants be required to increase the Maximum Settlement Amount.

1 67. Declaration of Due Diligence. The Settlement Administrator shall provide
2 counsel for the Parties, at least twenty-five (25) calendar days prior to the final approval hearing,
3 a declaration of due diligence and proof of mailing with regard to the mailing of the Notice.

4 68. Settlement Class Members' Rights. Each Settlement Class Member will be fully
5 advised of the Settlement, the ability to object to the settlement, and the ability to opt-out or
6 request exclusion from the Settlement. The Notice will inform the Settlement Class Members of
7 the Court-established deadlines for filing objections or requesting exclusion from the Settlement
8 in accordance with the following guidelines:

9 (a) Requests for Exclusion from Settlement Class. Any Settlement Class
10 Member, other than Plaintiff, may request to be excluded from the Settlement Class by
11 submitting a "Request for Exclusion" to the Settlement Administrator, postmarked on or before
12 the Notice Response Deadline. The Request for Exclusion should state:

13 "I WISH TO BE EXCLUDED FROM THE SETTLEMENT
14 CLASS IN THE PALMER V. CHARTER HOSPICE LAWSUIT.
15 I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM
16 THE SETTLEMENT CLASS, I WILL NOT RECEIVE ANY
17 MONEY FROM THE SETTLEMENT OF THIS LAWSUIT."

18 To be valid, any Request for Exclusion must include the full name, address, telephone
19 number, last four digits of the social security number or date of birth, and signature of the
20 Settlement Class Member requesting exclusion. The Request for Exclusion must be returned by
21 mail to the Settlement Administrator at the specified address. Any such Request must be made
22 in accordance with the terms set forth in the Notice. A Request for Exclusion will be timely only
23 if postmarked by the Notice Response Deadline, unless the Parties otherwise agree in writing.
24 Any Settlement Class Member who timely requests exclusion in compliance with these
25 requirements: (i) will not have any rights under this Agreement, including the right to object,
26 appeal or comment on the Settlement; (ii) will not be entitled to receive any payments under this
27 Agreement; and (iii) will not be bound by this Agreement, or the Judgment. Any Aggrieved
28 Employee who requests timely exclusion will still be subject to the PAGA Released Claims to

1 the fullest extent permitted by law and receive a share of PAGA Penalties.

2 (b) Binding Effect on Final Settlement Class Members. Except for those
3 Settlement Class Members who exclude themselves in compliance with the procedures set forth
4 above, all Settlement Class Members will: (i) be deemed to be Participating Class Members for
5 all purposes under this Agreement; (ii) will be bound by the terms and conditions of this
6 Agreement, the Judgment, and the releases set forth herein; and (iii) except as otherwise
7 provided herein, will be deemed to have waived all objections and oppositions to the fairness,
8 reasonableness, and adequacy of the Settlement.

9 (c) Objections to Settlement. Any Settlement Class Member, other than
10 Plaintiff, may object to the terms of this Agreement. To object, a Settlement Class Member shall
11 inform the Settlement Administrator, in writing, of his or her objection which must be
12 postmarked by the Notice Response Deadline at the address set forth in the Notice. Such
13 objection shall include the objecting Settlement Class Member's full name, address, telephone
14 number, and dates of employment with Defendants, the case name and number, the basis for the
15 objection, including any legal support and each specific reason in support of the objection, as
16 well as any documentation or evidence in support thereof, and, if the Objecting Settlement Class
17 Member is represented by counsel, the name and address of his or her counsel. The Settlement
18 Administrator shall provide objections, if any, to Class Counsel and Defense Counsel within
19 three (3) calendar days of receipt, and the Settlement Administrator shall attach the same to its
20 declaration of due diligence and file with the Court prior to the Final Approval Hearing. Any
21 Participating Class Member who files an objection remains eligible to receive monetary
22 compensation from the Settlement. Plaintiff and Defendants shall not be responsible for any
23 fees, costs, or expenses incurred by any Class Member and/or his or her counsel related to any
24 objections to the Settlement. Submitting an objection does not preserve the right to appeal a
25 final judgment. Rather, the right to appeal is preserved by becoming a party of record by timely
26 and properly intervening or filing a motion to vacate the judgment under Code of Civil
27 Procedure § 663.

28 (d) Failure to Object. Any Settlement Class Member who desires to object

1 but fails to timely submit a written objection or in person objection at the Final Approval
2 Hearing waives any right to object and will be foreclosed from making any objection to this
3 Settlement. Any Settlement Class Member who does not timely and properly become a party of
4 record by intervening or filing a motion to vacate the judgment waives any and all rights to
5 appeal from the Judgment, including all rights to any post-judgment proceeding and appellate
6 proceeding, such as a motion to vacate judgment, motion for new trial, a motion under California
7 Code of Civil Procedure section 473, and extraordinary writs.

8 (e) Responses to Objections. Counsel for the Parties may file a response to
9 any objections submitted by objecting Settlement Class Members at least five (5) court days
10 before the date of the Final Approval Hearing.

11 (f) Settlement Class Members will have until the Notice Response Deadline
12 to object or submit a Request for Exclusion to the Settlement Administrator by U.S. Mail. The
13 Settlement Administrator shall disclose jointly to Class Counsel and Defendants' counsel what
14 objections or Requests for Exclusion were timely submitted on a weekly basis, and upon the
15 request of Class Counsel or Defense Counsel.

16 (g) Defective Submissions. If a Settlement Class Member's Request for
17 Exclusion or objection is defective as to the requirements listed herein, that Settlement Class
18 Member will be given an opportunity to cure the defect(s). The Settlement Administrator will
19 mail the Settlement Class Member a cure letter within three (3) business days of receiving the
20 defective submission to advise the Settlement Class Member that his or her submission is
21 defective and that the defect must be cured to render the Request for Exclusion or objection
22 valid. The Settlement Class Member will have the later of (i) the Notice Response Deadline or
23 (ii) 15 calendar days from the date of the cure letter to postmark or fax a revised Request for
24 Exclusion or objection. If the revised Request for Exclusion or objection is not postmarked or
25 received by fax within that period, it will be deemed untimely.

26 69. Funding of the Settlement Amount. Defendants shall make a one-time deposit
27 into the QSF of the Maximum Settlement Amount (including the employers' share of the payroll
28 taxes) within fifteen (15) calendar days after the Effective Date. Once Defendants have complied

1 with their obligation set forth in this paragraph, they shall be deemed to have satisfied all of the
2 terms and conditions of this Agreement, shall be entitled to all the protections afforded it under
3 the Agreement, and shall have no further obligations under the Agreement, regardless of what
4 occurs with respect to the further administration of the Settlement. The Settlement Administrator
5 (and not Defendants) shall issue the applicable W-2s and IRS Form 1099 reflecting all payments
6 to the Class Members.

7 70. Distribution of Funds. No later than ten (10) calendar days after the deposit of the
8 payment into the QSF, the Settlement Administrator will mail the Individual Settlement
9 Payments to the Participating Class Members, the payment to Class Counsel for the Attorneys'
10 Fees and Costs Award, any Service Payment to the Class Representative, the payment to the
11 LWDA for PAGA penalties, and will pay itself the Settlement Administration Costs.

12 71. Deadline for Cashing Settlement Checks. Participating Class Members shall have
13 180 calendar days after mailing by the Settlement Administrator to cash their settlement checks.
14 If any Participating Class Member's check is not cashed within that period, the check will be
15 void and a stop-payment will be issued, and the Settlement Administrator shall issue the
16 unclaimed funds to the California State Controller's Office in the name of the Class Member.
17 The release will be binding upon all Participating Class Members who do not cash their checks
18 within the 180-day period. In the event that any settlement check is returned to the Settlement
19 Administrator within 180 days of mailing, the Settlement Administrator will, within five (5)
20 business days of receipt of the returned settlement check, perform a skip trace to locate the
21 individual, and notify Defense Counsel and Class Counsel of the results. If a new address is
22 located by these means, the Administrator will have ten (10) business days to re-issue the check.
23 Neither Defendants, Defense Counsel, Class Counsel, Plaintiff, nor the Settlement Administrator
24 will have any liability for lost or stolen settlement checks, forged signatures on settlement
25 checks, or unauthorized negotiation of settlement checks. Without limiting the foregoing, in the
26 event a Participating Class Member notifies the Settlement Administrator that he or she believes
27 that a settlement check has been lost or stolen, the Settlement Administrator shall immediately
28 stop payment on such check. If the check in question has not been negotiated prior to the stop

1 payment order, the Settlement Administrator will issue a replacement check.

2 72. No person shall have any claim against Defendants (or their designees),
3 Defendants' Counsel, Plaintiff, Class Counsel, or the Settlement Administrator based on
4 mailings, distributions, payments or reports made in accordance with or pursuant to this
5 Agreement. This provision does not, however, prevent a Party from seeking enforcement of this
6 Agreement.

7 73. Without prejudice to any other remedies, the Settlement Administrator shall agree
8 to be responsible for any breach of its obligations (whether committed by the Settlement
9 Administrator or its agents) and to indemnify and hold the Parties and their counsel harmless
10 from and against all liabilities, claims, causes of action, costs and expenses (including legal fees
11 and expenses) arising out of any breach committed by the Settlement Administrator or its agents.

12 **H. Duties of the Parties Prior to the Court's Approval**

13 74. Promptly after execution of this Settlement Agreement, Plaintiff will move the
14 Court for Preliminary Approval of this Settlement and entry of the Preliminary Approval Order
15 accomplishing the following:

16 (a) Scheduling the Final Approval Hearing on the issue of whether this
17 Settlement should be finally approved as fair, reasonable and adequate as to the Class Members
18 and a hearing on fees, costs and the Service Payment;

19 (b) Approving as to form and content the proposed Notice;

20 (c) Directing the mailing of the Notice by first class mail to the Settlement
21 Class Members;

22 (d) Preliminarily approving this Settlement; and

23 (e) Preliminarily certifying the class for purposes of this Settlement.

24 **I. Duties of the Parties Following Court's Final Approval**

25 75. In connection with the Final Approval Hearing provided for in this Settlement
26 Agreement, Class Counsel shall submit a proposed Final Approval Order:

27 (a) Approving the Settlement, adjudging the terms thereof to be fair, reasonable and
28 adequate, and directing consummation of its terms and provisions;

1 (b) Approving Class Counsel's application for an award of attorneys' fees and
2 reimbursement of litigation costs and expenses, the Service Payment to the Class Representative,
3 and the payment to the Settlement Administrator for costs of administering the settlement; and

4 (c) Entering judgment approving settlement, thereby permanently barring all
5 Settlement Class Members from prosecuting any Released Claims against any of the Released
6 Parties.

7 76. Final Judgment. Class Counsel shall provide the Settlement Administrator with a
8 copy of the Final Judgment once it is entered by the Court, and the Settlement Administrator
9 shall post the Final Judgment to its website within three (3) business days of receipt.

10 **J. Voiding the Agreement**

11 77. Defendants will have, in their sole discretion, the right to void and withdraw from
12 the Settlement if ten percent (10%) or more of Class Members opt out of the Settlement by
13 giving written notice to the Settlement Administrator at least 20 calendar days before the final
14 approval hearing date.

15 78. All Parties, signatories and their counsel shall not encourage opt-outs or
16 objections to this Agreement. The Parties specifically agree not to solicit opt-outs, directly or
17 indirectly, through any means.

18 79. If the Settlement is voided or fails for any reason, Plaintiff and Defendants will
19 have no further obligations under the Settlement, including any obligation by Defendants to pay
20 the Maximum Settlement Amount, or any amounts that otherwise would have been owed under
21 this Settlement.

22 80. If the Settlement is voided or fails for any reason, any costs incurred by the
23 Settlement Administrator shall be borne equally by Defendants and Plaintiff, unless otherwise
24 specified in this Agreement.

25 **K. Other Terms**

26 81. Waiver. The waiver by one Party of any breach of this Agreement by another
27 Party shall not be deemed a waiver of any other prior or subsequent breach of this Agreement.

28 82. Parties' Authority. The signatories hereto represent that they are fully authorized

1 to enter into this Settlement Agreement and bind the Parties hereto to the terms and conditions
2 hereof.

3 83. Mutual Full Cooperation. The Parties agree to fully cooperate with each other to
4 accomplish the terms of this Settlement Agreement, including but not limited to, execution of
5 such documents and to take such other action as may reasonably be necessary to implement the
6 terms of this Settlement Agreement. The Parties to this Settlement Agreement shall use their
7 best efforts, including all efforts contemplated by this Settlement Agreement and any other
8 efforts that may become necessary by order of the Court, or otherwise, to effectuate this
9 Settlement Agreement and the terms set forth herein. As soon as practicable after execution of
10 this Settlement Agreement, Class Counsel shall, with the assistance and cooperation of
11 Defendants and Defendants' Counsel, take all necessary steps to secure the Court's preliminary
12 and final approval of the settlement, and the final entry of judgment. Class Counsel shall provide
13 Defendants' Counsel with copies of the Preliminary Approval Motion and Final Approval
14 Motion for review at least three business days prior to the filing deadline.

15 84. No Prior Assignments. The Parties hereto represent, covenant, and warrant that
16 they have not, directly or indirectly, assigned, transferred, encumbered, or purported to assign,
17 transfer, or encumber to any person or entity any portion of any liability, claim, demand, action,
18 cause of action or rights released and discharged by this Settlement Agreement.

19 85. No Admission. Defendants deny any and all liability to Plaintiff and/or any
20 Settlement Class Member in this Action, as to any and all causes of action that were asserted or
21 that might have been asserted in this Action. Nonetheless, Defendants wish to settle and
22 compromise the matters at issue in the Complaint to avoid further substantial expense and the
23 inconvenience and distraction of protracted and burdensome litigation. Defendants also have
24 taken into account the uncertainty and risks inherent in litigation, and without conceding any
25 infirmity in the defenses that they have asserted or could assert against Plaintiff, have determined
26 that it is desirable and beneficial that Plaintiff's claims be settled in the manner and upon the
27 terms and conditions set forth in this Agreement.

28 86. Inadmissibility of Agreement. Whether or not the Court issues the Final Approval

Order, nothing contained herein, nor the consummation of this Settlement Agreement, is to be construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part of Defendants or any of the other Released Parties. Each of the Parties hereto has entered into this Settlement Agreement with the intention of avoiding further disputes and litigation with the attendant inconvenience and expenses. This Settlement Agreement is a settlement document, and it, along with all related documents such as the notices, and motions for preliminary and final approval, shall, pursuant to California Evidence Code section 1152 and/or Federal Rule of Evidence 408, be inadmissible in evidence in any proceeding, except an action or proceeding to approve the settlement, and/or interpret or enforce this Settlement Agreement. The stipulation for class certification as part of this Settlement Agreement is for settlement purposes only and if, for any reason the settlement is not approved, the stipulation will be of no force or effect.

87. Notices. Unless otherwise specifically provided herein, all notices, demands or other communications given hereunder shall be in writing and shall be deemed to have been duly given as of the third business day after mailing by United States registered or certified mail, return receipt requested, addressed:

To the Settlement Class:

Brian Mankin
brian@LMLfirm.com
Lauby Mankin Lauby LLP
4590 Allstate Drive
Riverside, CA 92501
Tel: (951) 320-1444 | Fax: (951) 320-1445

To Defendants:

Gene F. Williams
gfwilliams@grsm.com
Varouj Arabian
varabian@grsm.com
GORDON REES SCULLY MANSUKHANI
633 West Fifth Street, 52nd Floor
Los Angeles, CA 90071
Tel: (213) 270-7831 | Fax: (213) 680-4470

1 88. Construction. The Parties hereto agree that the terms and conditions of this
2 Settlement Agreement are the result of lengthy, intensive arms' length negotiations between the
3 Parties and that this Settlement Agreement shall not be construed in favor of or against any Party
4 by reason of the extent to which any Party or her or its counsel participated in the drafting of this
5 Settlement Agreement. Plaintiff and Defendants expressly waive the common-law and statutory
6 rule of construction that ambiguities should be construed against the drafter of an agreement and
7 further agree, covenant, and represent that the language in all parts of this Agreement shall be in
8 all cases construed as a whole, according to its fair meaning.

9 89. Captions and Interpretations. Paragraph titles or captions contained herein are
10 inserted as a matter of convenience and for reference, and in no way define, limit, extend, or
11 describe the scope of this Settlement Agreement or any provision hereof. Each term of this
12 Settlement Agreement is contractual and not merely a recital.

13 90. Modification. This Settlement Agreement may not be changed, altered, or
14 modified, except in writing and signed by the Parties hereto, and approved by the Court. This
15 Settlement Agreement may not be discharged except by performance in accordance with its
16 terms or by a writing signed by all of the Parties hereto.

17 91. Dispute Resolution. Prior to instituting legal action to enforce the provisions of
18 this Agreement or to declare rights and/or obligations under this Agreement, a Party shall
19 provide written notice to the other Party and allow an opportunity to cure the alleged
20 deficiencies, and Plaintiff and Defendants agree to seek the help of the mediator to resolve any
21 dispute they are unable to resolve informally. During this period, the Parties shall bear their own
22 attorneys' fees and costs. This provision shall not apply to any legal action or other proceeding
23 instituted by any person or entity other than Plaintiff or Defendants.

24 92. Choice of Law. This Settlement Agreement shall be governed by and construed,
25 enforced and administered in accordance with the laws of the State of California.

26 93. Integration Clause. This Settlement Agreement contains the entire agreement
27 between the Parties relating to the settlement and transaction contemplated hereby, and all prior
28 or contemporaneous agreements, understandings, representations, and statements, whether oral

or written and whether by a Party or such Party's legal counsel, are merged herein. No rights hereunder may be waived except in writing.

94. Binding On Assigns. This Settlement Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators, successors and assigns.

95. Signatures of All Class Members Unnecessary to be Binding. It is agreed that, because the members of the Settlement Class are numerous, it is impossible or impractical to have each Class member execute this Settlement Agreement. The Notice will advise all Settlement Class Members of the binding nature of the release provided herein and such shall have the same force and effect as if this Settlement Agreement were executed by each Settlement Class Member.

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

97. Counterparts. This Settlement Agreement may be executed in counterparts, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one fully signed Settlement Agreement, which shall be binding upon and effective as to all Parties. Electronic signatures shall have the same force and effect as an original.

Dated: April 21, 2021

PLAINTIFF AND CLASS REPRESENTATIVE:



Natalie Palmer (Apr 21, 2021 18:37 PDT)

Natalie Palmer

Dated: April 23, 2021

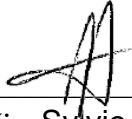
CLASS COUNSEL:
LAUBY MANKIN LAUBY LLP



Brian J. Mankin
Attorneys for Plaintiff

1 Dated: May 3, 2021

DEFENDANT:
CHARTER HOSPICE, INC.

2
3 

4 By: Sylvie Boal
5 Title: Corporate Counsel

6 Dated: May 3, 2021

DEFENDANT:
CHARTER HOSPICE OF COLTON, LLC

7
8
9 By: Sylvie Boal
10 Title: Corporate Counsel

11
12 Dated: May 3, 2021

DEFENDANTS' COUNSEL:
GORDON REES SCULLY MANSUKHANI

13
14 

15 Gene F. Williams, Esq.
16 Attorneys for Defendants

17 END OF DOCUMENT
18
19
20
21
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23
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28

EXHIBIT “B”

Selection Criteria

Clie.Selection Include: Palmer v Charter Hospice
Slip.Transaction Type Expense
Slip.Classification Open

Rate Info - identifies rate source and level

Slip ID Dates and Time Posting Status Description		Timekeeper Activity Client Phase/Task	Units DNB Time Est. Time Variance	Rate Rate Info Bill Status	Slip Value
582504 6/8/2020 WIP Clerk of the Court San Bernardino - Complaint - Check #564	EXP	SJA Court fees Palmer v Charter Hospi	1	1435.00 Do Not Bill	1435.00
582530 6/8/2020 WIP LWDA check #565	EXP	TLG Court fees Palmer v Charter Hospi	1	75.00 Do Not Bill	75.00
582492 6/30/2020 WIP 224 copies @ \$0.06 for LWDA and letters to employer 48 copies @ \$0.06 for filing complaint	EXP	SJA Copying Palmer v Charter Hospi	272	0.06 Do Not Bill	16.32
582493 6/30/2020 WIP Postage for the month of June 2020	EXP	SJA Postage Palmer v Charter Hospi	1	64.60 Do Not Bill	64.60
582985 8/13/2020 WIP 74 copies @ \$0.06 for FAC to court	EXP	SJA Copying Palmer v Charter Hospi	74	0.06 Do Not Bill	4.44
582986 8/31/2020 WIP Postage for the month of August 2020	EXP	SJA Postage Palmer v Charter Hospi	1	2.70 Do Not Bill	2.70
583230 9/10/2020 WIP First Mediation Inv 23096 for mediation with Jeffrey Krivis on 2-18-2021	EXP	SJA Mediation Fees Palmer v Charter Hospi	1	8000.00 Do Not Bill	8000.00

10/18/2021
5:09 PM

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Slip Listing

Page 2

Slip ID		Timekeeper	Units	Rate	Slip Value
Dates and Time		Activity	DNB Time	Rate Info	
Posting Status		Client	Est. Time	Bill Status	
Description		Phase/Task	Variance		
583411	EXP	SJA	1	94.00	94.00
10/9/2020		Court fees			
WIP		Palmer v Charter Hospi		Do Not Bill	
CourtCall ID #10894529 for 10/8/20 CMC					
584265	EXP	SJA	8	0.06	0.48
2/26/2021		Copying			
WIP		Palmer v Charter Hospi		Do Not Bill	
8 copies @ \$0.06 for Notice of Name Change					
584266	EXP	SJA	1	0.51	0.51
2/26/2021		Postage			
WIP		Palmer v Charter Hospi		Do Not Bill	
Postage for the month of February 2021					
584552	EXP	SJA	1	203.95	203.95
5/6/2021		Attorney Servic			
WIP		Palmer v Charter Hospi		Do Not Bill	
Bosco Inv 5639575 File and conform					
-Motion					
-Declaration					
-Proposed Order					
Advance \$90.00					
Court: San Bernardino County Superior Court -					
Central District					
585586	EXP	SJA	1	94.00	94.00
7/16/2021		Court fees			
WIP		Palmer v Charter Hospi		Do Not Bill	
CourtCall ID #11281216 for 7-15-21 MPA					
585587	EXP	SJA	1	2.50	2.50
7/16/2021		Court fees			
WIP		Palmer v Charter Hospi		Do Not Bill	
San Bernardino Superior Court Ref #PMT572654 for					
copy of signed order on MPA					
585916	EXP	TLG	1	188.00	188.00
10/7/2021		Attorney Servic			
WIP		Palmer v Charter Hospi		Do Not Bill	
Estimated cost for Courtcall for MFA and any					
additional hearings					
585917	EXP	TLG	1	300.00	300.00
10/7/2021		Attorney Servic			
WIP		Palmer v Charter Hospi		Do Not Bill	
Estimated costs for Bosco to file MFA and related					
docs					

10/18/2021
5:09 PM

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Slip Listing

Page 3

Slip ID		Timekeeper	Units	Rate	Slip Value
Dates and Time		Activity	DNB Time	Rate Info	
Posting Status		Client	Est. Time	Bill Status	
Description		Phase/Task	Variance		
585918	EXP	TLG	200	0.06	12.00
10/7/2021		Copying			
WIP		Palmer v Charter Hospi		Do Not Bill	
Estimated costs for copies of MFA and related docs					
585919	EXP	TLG	1	110.00	110.00
10/7/2021		Court fees			
WIP		Palmer v Charter Hospi		Do Not Bill	
Estimated fees for MFA and related docs					
Grand Total					
			Billable	0.00	0.00
			Unbillable	0.00	10603.50
			Total	0.00	10603.50

EXHIBIT “C”