

FILED
SUPERIOR COURT
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

NOV 15 2021

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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]

**[PROPOSED] ORDER GRANTING
FINAL APPROVAL OF SETTLEMENT;
AND ENTRY OF FINAL JUDGMENT**

Complaint filed: June 25, 2020

The Motion for Final Approval of the Settlement (the "Final Approval Motion") as set forth in the Class Action Settlement Agreement (the "Settlement Agreement") came for hearing in Department S26 of the above entitled court. The Final Approval Motion was unopposed by Defendants Charter Hospice, Inc., and Charter Hospice of Colton, LLC, and their owners (collectively, "Defendants"). Having considered the Final Approval Motion, the Settlement Agreement, the Declarations, and all other materials properly before the Court and having

1 conducted an inquiry pursuant to California Rules of Court, rule 3.769(g), the Court finds that
2 the Settlement Agreement was entered by all parties in good faith, and the Settlement Agreement
3 is approved. Due and adequate notice having been given to the Class, and the Court having
4 considered the Settlement Agreement, all papers filed and proceedings had herein and all oral
5 and written comments received regarding the proposed settlement, and having reviewed the
6 record in this Litigation, and good cause appearing,

7 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

8 1. The Court, for purposes of this Judgment and Order (“Judgment”), refers to all
9 defined terms (i.e., terms with initial capitalization) as set forth in the Settlement Agreement.

10 2. The Court has jurisdiction over the subject matter over this Action, the Class
11 Representative, the Class Members, and Defendants.

12 3. The Court finds that the distribution of the Class Notice, as provided for in the
13 Order Granting Preliminary Approval for the Settlement, constituted the best notice practicable
14 under the circumstances to all Class Members and fully met the requirements of California law
15 and due process under the California and United States Constitution. Based on evidence and
16 other material submitted, the actual notice to the class was adequate.

17 4. The Court finds that the instant Action presented a good faith dispute of the
18 claims alleged, and the Court finds in favor of settlement approval.

19 a. Specifically, the claims on behalf of the Class Members included (a)
20 failure to pay minimum wages, (b) failure to pay overtime wages, (c)
21 failure to provide meal periods, (d) failure to provide rest breaks, (e)
22 failure to reimburse business expenses, (f) failure to failure to timely pay
23 wages each period and upon separation of employment, (g) failure to
24 provide accurate itemized wage statements, and (h) unfair business
25 practices pursuant to Business and Professions Code §17200 et seq.

26 b. The claims on behalf of the Aggrieved Employees included any and all
27 PAGA claims that Plaintiff alleged against the Released Parties, on behalf
28 of Aggrieved Employees and State of California, based on the facts stated

in Plaintiff's Complaint and in Plaintiff's LWDA notice letter, including all PAGA claims seeking civil penalties that is premised upon (a) failure to pay minimum wages, (b) failure to pay overtime wages, (c) failure to provide meal periods, (d) failure to provide rest breaks, (e) failure to reimburse business expenses, (f) failure to failure to timely pay wages each period and upon separation of employment, (g) failure to provide accurate itemized wage statements, and (h) all other claims for civil penalties recoverable under the Private Attorneys General Act, Labor Code § 2698 *et seq.* based on the facts or claims alleged in the Complaint

5. There were no Objections and no Requests for Exclusion to the Settlement. As such, all Participating Class Members are entitled to payment pursuant to the Settlement and this Judgment.

6. The Court approves the Settlement, as set forth in the Settlement Agreement and each of the releases and other terms, as fair, just, reasonable, and adequate as to the Settling Parties. The Settling Parties are directed to perform in accordance with the terms set forth in the Settlement Agreement.

7. The Settling Parties are to bear their own costs, except as otherwise provided in the Settlement Agreement.

8. For purposes of effectuating this Order and Judgment, this Court has certified the following class: "all current and former non-exempt employees of Defendants who worked in the State of California and performed in-home nursing duties at any time during the Class Period of June 25, 2016, through July 15, 2021," as defined in the Settlement Agreement. The Court deems this definition sufficient for purposes of California Rules of Court, rule 3.765(a).

9. With respect to the Settlement Class and for purposes of approving this Settlement, this Court finds and concludes as follows: (a) the Class Members are ascertainable and so numerous that joinder of all members is impracticable; (b) there are questions of law or fact common to the Settlement Class Members, and there is a well-defined community of interest among the Settlement Class Members with respect to the subject matter of the Action; (c) the

1 claims of the Class Representative are typical of the claims of the Class Members; (d) the Class
2 Representative has fairly and adequately protected the interests of the Class Members; (e) a class
3 action is superior to other available methods for an efficient adjudication of this controversy; and
4 (f) the counsel of record for the Class Representative, i.e., Class Counsel, are qualified to serve
5 as counsel for the Plaintiff in his individual and representative capacity and for the Settlement
6 Class.

7 10. By this Judgment, the Class Representative shall release, relinquish, and
8 discharge, and each of the Participating Class Members shall be deemed to have, and by
9 operation of the Judgment shall have, fully, finally, and forever released, relinquished, and
10 discharged all Released Claims, as defined in the Settlement Agreement.

11 11. For purposes of effectuating this Order and Judgment, the PAGA Released
12 Claims, as defined in the Settlement Agreement, shall apply to all Aggrieved Employees which
13 consists of “all current and former non-exempt employees of Defendants who worked in the
14 State of California and performed in-home nursing duties at any time during the PAGA Period of
15 June 25, 2019, through July 15, 2021.”

16 12. Neither the Settlement Agreement nor the Settlement contained therein, nor any
17 act performed or document executed pursuant to or in furtherance of the Settlement Agreement
18 or the Settlement (i) is or may be deemed to be or may be used by the plaintiff or Participating
19 Class Members as an admission of, or evidence of, the validity of any of the Class Members’
20 Released Claims, or of any wrongdoing or liability of Defendants or any of the other Released
21 Parties; or (ii) is or may be deemed to be or may be used by any of the plaintiffs or Participating
22 Class Members as an admission of, or evidence of, any fault or omission of Defendants or any of
23 the other Released Parties in any civil, criminal, or administrative proceeding in any court,
24 administrative agency, or other tribunal. Defendants or any of the other Released Parties may
25 file the Settlement Agreement and/or the Judgment from this Action in any other action that may
26 be brought against it or them in order to support a defense or counterclaim based on principles of
27 *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any
28 theory of claim preclusion or issue preclusion or similar defense or counterclaim.

1 13. The Maximum Settlement Amount to be paid under the Settlement Agreement is
2 \$750,000. From this amount, Class Counsel sought an award of attorney's fees of \$250,000,
3 litigation expenses of \$10,603.50, a Service Award of \$5,000 for Class Representative Natalie
4 Palmer, \$5,300 to the Settlement Administrator, Simpluris, \$18,750 to the LWDA for PAGA
5 penalties and \$6,250 to the Aggrieved Employees for PAGA penalties. Defendants do not
6 oppose these requests. The Court finds that the Settlement Amount is fair, reasonable and
7 adequate, and awards the payments set forth below from the Settlement Amount:

- 8 A. \$250,000 to Class Counsel for attorneys' fees;
9 B. \$10,603.50 to Class Counsel for costs/expenses;
10 C. \$5,000 to Natalie Palmer as a Service Award;
11 D. \$5,300 to the Settlement Administrator, Simpluris;
12 E. \$18,750 to the LWDA;
13 F. \$6,250 to the Aggrieved Employees on a pro rata basis;
14 G. After deducting the foregoing payments from the Settlement Amounts, the
15 remainder shall form the Net Settlement Amount payable to the
16 Participating Class Members as set forth in the Settlement Agreement and
17 as calculated by the Settlement Administrator.

18 14. Defendants are directed to fund the Maximum Settlement Amount within 15 days
19 of the Effective Date. The Settlement Administrator is directed to calculate the Participating
20 Class Members' Individual Settlement Amounts from the Net Settlement Amount, as well as the
21 payments due to the Aggrieved Employees, and issue all payments within 10 days of receipt of
22 the payment in accordance with the Settlement Agreement. Concurrently with mailing the
23 settlement checks to the Class Members and Aggrieved Employees, the Settlement Administrator
24 include a Notice of Entry of Judgment to all Class Members either on a postcard or as a
25 detachable portion of the check, noting the following: "Please be advised that on [date] the
26 Superior Court of California for the County of San Bernardino entered Judgment in the case
27 entitled *Palmer v. Charter Hospice, Inc., et al.*, Case No. CIVDS2013037, on behalf of all
28 current and former non-exempt employees of Defendants who worked in the State of California

and performed in-home nursing duties at any time during the Class Period of June 25, 2016, through July 15, 2021.”

15. Participating Class Members shall have 180 days to negotiate the settlement check from the date of issuance by the Settlement Administrator. In the event that a Participating Class Member does not negotiate his/her check within this time period, the check will be canceled. The value of the unclaimed funds in the Settlement Administrator’s account as a result of a failure to timely cash a settlement check shall be issued to the State Controller’s Office in the name of the Class Member.

16. The following dates shall govern for purposes of this implementing this Order/Judgment:

November 15, 2021	Final Approval is entered and the Effective Date occurs
November 30, 2021	Defendants are directed to fund the Maximum Settlement Amount and separately pay their share of the employer’s tax, as calculated and directed by the Settlement Administrator.
December 10, 2021	Settlement Administrator to issue checks to participating Class Members, Class Representative, Class Counsel, Aggrieved Employees and LWDA.
June 8, 2022	Deadline for Class Members to cash settlement checks.
January 10, 2024 October 9, 2023	Deadline to file Declaration by Settlement Administrator describing: (i) the date the checks were mailed, (ii) the total number of checks mailed to class members, (iii) the number of checks that were uncashed, (iv) the total value of those uncashed checks, and (v) the date payment was issued to the State Controller.

17. This document shall constitute a Judgment for purposes of California Rule of Court 3.769(h). The Court reserves exclusive and continuing jurisdiction over the Action, the Class Representative, the Class Members, Aggrieved Employees, and Defendants for the purposes of supervising the implementation, enforcement, construction, administration, and interpretation of the Settlement Agreement and this Judgment.

IT IS SO ORDERED.

Dated: 11/15/21



Hon. David Cohn