

ORIGINAL

OCT 11 2023

By K. Collier
KRISTEN COLLIER, Deputy

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

STEPHANIE CUEVAS, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

TARLANI CORP. a California Corporation;
and DOES 1 through 20, inclusive;

Defendants.

Case No.: CIVSB2202953
[Assigned to Hon. Jessica Morgan, Dept S26,
for all purposes]

~~PROPOSED~~ ORDER GRANTING
FINAL APPROVAL OF SETTLEMENT;
AND ENTRY OF FINAL JUDGMENT

Complaint filed: January 28, 2022

Plaintiff's Motion for Final Approval of the Settlement (the "Final Approval Motion") as set forth in the Class Action and PAGA Settlement Agreement and Release of Claims (the "Settlement Agreement") came for hearing in Department S26 of the above-entitled court. The Final Approval Motion was unopposed by Defendant Tarlani Corp. Having considered the Final Approval Motion, the Settlement Agreement, the Declarations, and all other materials properly before the Court and having conducted an inquiry pursuant to California Rules of Court, rule 3.769(g), the Court finds that the Settlement Agreement was entered by all parties in good faith, and the Settlement Agreement is approved. Due and adequate notice having been given to the Class, and the Court having considered the Settlement Agreement, all papers filed, and

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FILED BY FAX

1 proceedings had herein and all oral and written comments received regarding the proposed
2 settlement, and having reviewed the record in this Action, and good cause appearing,

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

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

6 2. The Court has jurisdiction over the subject matter over this Action, the Class
7 Representative, the Class Members, and Defendant.

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

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

15 5. The Released Class Claims on behalf of the Participating Class Members
16 included:

- 17 a. all claims stated in the operative Complaint and those based solely upon
18 the facts in the Complaint, including: (a) failure to pay minimum wages,
19 (b) failure to pay for rest and recovery periods, (c) failure to provide meal
20 periods, (d) failure to provide rest breaks, (e) failure to reimburse business
21 expenses, (f) failure to failure to timely pay wages upon separation of
22 employment, (g) failure to provide accurate itemized wage statements, (h)
23 unfair and unlawful competition, and (i) all other claims for statutory
24 penalties based on the facts or claims alleged in the operative complaint.

25 6. The Released PAGA Claims on behalf of the Aggrieved Employees included:

- 26 a. All PAGA claims that Plaintiff alleged against the Released Parties, on
27 behalf of herself and the State of California and Aggrieved Employees,
28 based on the facts stated in the operative Complaint in the Action and in

1 the LWDA notice letter, including all PAGA claims seeking civil penalties
2 that premised upon (a) failure to pay minimum wages, (b) failure to pay
3 for rest and recovery periods, (c) failure to provide meal periods, (d)
4 failure to provide rest breaks, (e) failure to reimburse business expenses,
5 (f) failure to failure to timely pay wages each period and upon separation
6 of employment, (g) failure to provide accurate itemized wage statements,
7 (h) failure to maintain employment records, and (i) all other claims for
8 civil penalties recoverable under the Private Attorneys General Act, Labor
9 Code §§ 2698 *et seq.* based on the facts or claims alleged in the operative
10 complaint

11 7. There were no Objections and no Requests for Exclusion to the Settlement. Thus,
12 all Class Members are Participating Class Members who are entitled to payment pursuant to the
13 Settlement and this Judgment. Likewise, all Aggrieved Employees are entitled to a pro rata
14 share of PAGA Penalties.

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

19 9. The Parties are to bear their own costs, except as otherwise provided in the
20 Settlement Agreement.

21 10. For purposes of effectuating this Order and Judgment, this Court has certified the
22 following class: “all current and former non-exempt (hourly paid) employees employed by
23 Defendant in California as a healthcare field worker (including but not limited to LVN, RN,
24 and/or Certified Home Health Aid) (excluding office staff) at any time during the Class Period of
25 January 28, 2018, through April 23, 2023,” as defined in the Settlement Agreement. The Court
26 deems this definition sufficient for purposes of California Rules of Court, rule 3.765(a).

27 11. With respect to the Settlement Class and for purposes of approving this
28 Settlement, this Court finds and concludes as follows: (a) the Class Members are ascertainable

1 and so numerous that joinder of all members is impracticable; (b) there are questions of law or
2 fact common to the Class Members, and there is a well-defined community of interest among the
3 Class Members with respect to the subject matter of the Action; (c) the claims of the Class
4 Representative are typical of the claims of the Class Members; (d) the Class Representative has
5 fairly and adequately protected the interests of the Class Members; (e) a class action is superior
6 to other available methods for an efficient adjudication of this controversy; and (f) the counsel of
7 record for the Class Representative, i.e., Class Counsel, are qualified to serve as counsel for the
8 Plaintiff in his individual and representative capacity and for the Settlement Class.

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

13 13. For purposes of effectuating this Order and Judgment, the release of the Released
14 PAGA Claims, as defined in the Settlement Agreement, shall apply to all Aggrieved Employees
15 which consists of “all current and former non-exempt (hourly paid) employees employed by
16 Defendant in California as a healthcare field worker (including but not limited to LVN, RN,
17 and/or Certified Home Health Aid) (excluding office staff) at any time during the PAGA Period
18 of January 28, 2021, through April 23, 2023.”

19 14. Neither the Settlement Agreement nor the Settlement contained therein, nor any
20 act performed or document executed pursuant to or in furtherance of the Settlement Agreement
21 or the Settlement (i) is or may be deemed to be or may be used by the Plaintiff or Participating
22 Class Members as an admission of, or evidence of, the validity of any of the Class Claims, or of
23 any wrongdoing or liability of Defendant or any of the other Released Parties; or (ii) is or may be
24 deemed to be or may be used by Plaintiff or Participating Class Members as an admission of, or
25 evidence of, any fault or omission of Defendant or any of the other Released Parties in any civil,
26 criminal, or administrative proceeding in any court, administrative agency, or other tribunal.
27 Defendant or any of the other Released Parties may file the Settlement Agreement and/or the
28 Judgment from this Action in any other action that may be brought against it or them in order to

1 support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release,
2 good faith settlement, judgment bar or reduction, or any theory of claim preclusion or issue
3 preclusion or similar defense or counterclaim.

4 15. The Escalator Clause in the Settlement Agreement indicates if the total Patient
5 Visits¹ exceeds 192,500, then the Gross Settlement Amount shall be increased by \$4.21 for each
6 additional Patient Visit. Here, the total number of Patient Visits was 269,928, which exceeds the
7 cap by 77,428 Patient Visits. Therefore, the Escalator Clause was triggered and the Gross
8 Settlement Amount is increased from \$737,500 to \$1,063,471.88 (an increase of \$325,971.88
9 which is arrived at by multiplying 77,428 Patient Visits x \$4.21).

10 16. The updated Gross Settlement Amount to be paid under the Settlement
11 Agreement is \$1,063,471.88. From this amount, Class Counsel sought an award of attorney's
12 fees of \$354,490.63 (one-third of the Gross Settlement Amount), litigation expenses of \$10,948.74,
13 a Service Award of \$7,500 for the Class Representative Stephanie Cuevas, \$13,500 to the
14 Settlement Administrator, Phoenix Settlement Administrators, \$37,500 to the LWDA for PAGA
15 penalties and \$12,500 to the Aggrieved Employees for PAGA Penalties. Defendant does not
16 oppose these requests. The Court finds that the Settlement Amount is fair, reasonable and
17 adequate, and awards the payments set forth below from the Settlement Amount:

- 18 A. \$354,490.63 to Class Counsel for attorneys' fees;
19 B. \$10,948.74 to Class Counsel for costs/expenses;
20 C. \$7,500 to Stephanie Cuevas as a Service Award;
21 D. \$13,500 to the Settlement Administrator, Phoenix Settlement
22 Administrators;
23 E. \$37,500 to the LWDA;
24 F. \$12,500 to the Aggrieved Employees on a pro rata basis;

27 ¹ As set forth in the Settlement Agreement, "Patient Visits" or "Patient Visits Completed" in the context of a Class
28 Member, who are healthcare field workers, means any and all patient visits during the Class Period during which the
Class Member saw an assigned patient for Defendant at the patient's residence. Likewise, in the context of
Aggrieved Employees, it means any and all patient visits during the PAGA Period during which the Aggrieved
Employee saw an assigned patient for Defendant at the patient's residence.

1 G. After deducting the foregoing payments from the Settlement Amounts, the
2 remainder shall form the Net Settlement Amount payable to the
3 Participating Class Members as set forth in the Settlement Agreement and
4 as calculated by the Settlement Administrator.

5 17. Defendant Tarlani Corp. is directed to fund the Gross Settlement Amount,
6 pursuant to the payment plan set forth in the Settlement Agreement and chart below. The
7 Settlement Administrator is directed to calculate the Participating Class Members' Individual
8 Class Payment from the Net Settlement Amount, as well as the payments due to the Aggrieved
9 Employees, and issue all payments within 10 days of receipt of each payment in accordance with
10 the Settlement Agreement. Concurrently with mailing the settlement checks to the Participating
11 Class Members and Aggrieved Employees, the Settlement Administrator include a Notice of
12 Entry of Judgment to all Class Members either on a postcard or as a detachable portion of the
13 check, noting the following: "Please be advised that on [DATE] the Superior Court of
14 California for the County of San Bernardino entered Judgment in the case entitled *Cuevas v.*
15 *Tarlani Corp. et al.*, San Bernardino County Superior Court, Case No. CIVSB2202953, on
16 behalf of all current and former non-exempt (hourly paid) employees employed by Defendant in
17 California as a healthcare field worker (including but not limited to LVN, RN, and/or Certified
18 Home Health Aid) (excluding office staff) at any time during the Class Period of January 28,
19 2018, through April 23, 2023."

20 18. Participating Class Members and Aggrieved Employees shall have 180 days to
21 negotiate each settlement check from the date of issuance by the Settlement Administrator. In
22 the event that a person does not negotiate his/her check within this time period, the check will be
23 canceled, but can be requested to be reissued at any time up until 180 days after the issuance of
24 the final (third) check. Once 180 days passes from the mailing of the third check, the value of
25 the unclaimed funds in the Settlement Administrator's account as a result of a failure to timely
26 cash a settlement check(s) shall be issued to the State Controller's Office in the name of the
27 Participating Class Members and/or Aggrieved Employees.
28

1 19. The following dates shall govern for purposes of this implementing this
2 Order/Judgment:

3 October 11, 2023	Final Approval Order is entered and the Effective Date occurs
4 December 1, 2023	<u>Payment #1 Due:</u> Defendant Tarlani Corp. is ordered to fund one-third (33.33%) of the Gross Settlement Amount (plus Defendant's share of payroll taxes owed on Individual Class Payments), which shall be distributed in a manner that compensates Plaintiff, the Participating Class Members, the Aggrieved Employees, the LWDA, Class Counsel [for fees and costs], and the Settlement Administrator for one-third (33.33%) of the Court-awarded amounts.
5 November 6, 2023	Settlement Administrator is directed to disburse Payment #1 in a manner that compensates Plaintiff, the Participating Class Members, the Aggrieved Employees, the LWDA, Class Counsel [for fees and costs], and the Settlement Administrator for one-third (33.33%) of the Court-awarded amounts.
6 May 1, 2024	<u>Payment #2 Due:</u> Defendant Tarlani Corp. is ordered to fund one-third (33.33%) of the Gross Settlement Amount (plus Defendant's share of payroll taxes owed on Individual Class Payments).
7 May 13, 2024	Settlement Administrator is directed to disburse Payment #2 in a manner that compensates Plaintiff, the Participating Class Members, the Aggrieved Employees, the LWDA, Class Counsel [for fees and costs], and the Settlement Administrator for one-third (33.33%) of the Court-awarded amounts.
8 September 1, 2024	<u>Payment #3 Due:</u> Defendant Tarlani Corp. is ordered to fund the final one-third (33.34%) of the Gross Settlement Amount (plus Defendant's share of payroll taxes owed on Individual Class Payments).
9 September 11, 2024	Settlement Administrator is directed to disburse Payment #3 in a manner that compensates Plaintiff, the Participating Class Members, the Aggrieved Employees, the LWDA, Class Counsel [for fees and costs], and the Settlement Administrator for one-third (33.33%) of the Court-awarded amounts.

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March 10, 2025	180-day deadline for Participating Class Members and Aggrieved Employees to cash the settlement checks from Payment #2 after which any uncashed checks will be voided and forwarded to the State Controller, pursuant to the Settlement Agreement, this Order and applicable law.
April 10, 2025	Deadline to file Declaration by Settlement Administrator describing: (i) the date the checks were mailed, (ii) the total number of checks mailed to Participating Class Members and Aggrieved Employees, (iii) the number of checks that were uncashed, (iv) the total value of those uncashed checks, and (v) the anticipated date payment will issued to the State Controller.
Date: <u>5/5/</u> , 2025 Time: <u>8:30</u> a.m.	OSC re: Disbursement Hearing

20. In the event that Defendant Tarlani Corp. fails to timely make any payment outlined above within 5 calendar days of the due date, Class Counsel shall send a "Notice of default" to Defense Counsel. Defendant will then have seven (7) calendar days after issuance of the notice of default to cure and bring all payments up to the current required amount due. If Defendant fails to timely cure the late payment, all remaining balances shall immediately become due and payable.

21. 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 Participating Class Members, Aggrieved Employees, and Defendant for the purposes of supervising the implementation, enforcement, construction, administration, and interpretation of the Settlement Agreement and this Judgment.

IT IS SO ORDERED.

Dated: 10/11/23


JESSICA L. MORGAN
JUDGE OF THE SUPERIOR COURT