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

MANUEL BURGOS, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

DESTINY HOSPICE CARE, INC., a
California Corporation; and DOES 1
through 20, inclusive;

Defendants.

Case No.: CIVSB2308809
*[Assigned to Hon. Jessica Morgan, Dept S26, for
all purposes]*

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

Hearing

Date: June 10, 2024

Time: 8:30 a.m.

Dept.: S26

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 manage the employment department within my firm where I am also a Partner. I represent Plaintiff in this action and 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 Preliminary Approval of this Class Action Settlement. If called as a witness, I could and would competently testify thereto.

1 **COUNSEL'S EXPERIENCE**

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

6 3. I have handled well over 500 employee vs. employer litigation matters during my
7 23 years in practice. Over the last 17 years, my practice has almost entirely consisted of
8 representing employees, the majority of which has included class action and representative
9 action wage and hour matters. In total, I have handled well over 250 class action and
10 representative action wage/hour cases, and have been appointed by the court as class counsel and
11 have received final court approval and judgment in over half of those actions to date, and
12 anticipate receiving final approval in many more of those in the future.

13 4. As part of these settlements and judgments, I have recovered well in excess of
14 \$250 million in damages for my clients and the class members (who often work as nurses,
15 ambulance drivers, technicians, warehouse workers, truck drivers, sales, professional
16 occupations and countless other trades). My team and I once held the record for the largest
17 PAGA-only case in California's history - a \$12.5 million-dollar court approved settlement,
18 which followed extensive litigation, summary adjudication and writs to the CA Supreme Court
19 against a Fortune 50 company (*Garcia v. Macy's*, San Bernardino Superior Court).

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

26 6. I was named by the LA Times as one "Southern California Leading Lawyers" in
27 the May 2023 issue of Consumer Attorney's of Southern California (a recognition given to 17
28 employment/labor law attorneys in 2023). Additionally, over the last 5+ consecutive years, I

1 have been selected by my peers as a “Super Lawyer” in Employment Litigation, a distinction that
2 only 5% of lawyers receive.

3 **BRIEF SUMMARY OF THE SETTLEMENT**

4 7. Following a contested litigation process, Plaintiff and Defendants (collectively,
5 the “Parties”) finalized a Class Action and PAGA Settlement Agreement and Release (the
6 “Settlement Agreement” or “S.A.”), which is attached hereto as **Exhibit 1**. The Parties are in the
7 process of getting the Settlement Agreement executed, and I will file a supplemental declaration
8 with the fully signed version as soon as it is available.

9 8. The Settlement Agreement seeks to release and discharge Defendants from the
10 claims brought against them in exchange for Defendants’ agreement to pay \$450,000 on a non-
11 reversionary, non-claims made basis (each Class Member will receive his/her share of the Net
12 Settlement Amount without having to submit a claim form or take any action, except for those
13 who opt-out). As set forth in the motion and Settlement Agreement, Plaintiff seeks to represent
14 “All current and former nonexempt employees employed by Defendants in California at any
15 time during the Class Period.”

16 9. Under the terms of the Settlement Agreement, Defendants will not oppose my
17 firm’s application for a reasonable award of attorneys’ fees not to exceed \$150,000 (1/3 of the
18 Settlement Amount), litigation expenses not to exceed \$25,000, Settlement Administrator Costs
19 of \$9,000, PAGA penalties of \$30,000 (with 75% to the LWDA and 25% to the Aggrieved
20 Employees on a pro rata basis), and a Service Payment of \$10,000 to Plaintiff Manuel Burgos
21 (“Class Representative”). After subtracting the agreed-upon deductions from the Settlement
22 Amount, approximately \$226,000 will be available to pay the individual settlement amounts to
23 approximately the Class Members who do not opt-out of the settlement, as follows:

<i>Settlement Amount</i>	\$ 450,000.00
Attorneys’ Fees (1/3)	\$ 150,000.00
Litigation Costs (not to exceed)	\$ 25,000.00
Administrator Costs	\$ 9,000.00
PAGA Penalties	\$ 30,000.00
Class Representative Service Award	\$ 10,000.00
<i>Net Settlement Amount</i>	\$ 226,000.00

10. Assuming 350 Class Members, the average payment will be approximately \$645.71 (\$226,000 / 350). However, the actual payments will be calculated on a pro-rata basis according to the number of Weeks Worked by each Class Member during the Class Period. In addition, approximately 200 Aggrieved Employees will receive a share of the \$7,500 PAGA Penalties (25% of the \$30,000 allocation), calculated pro-rata based on Pay Periods Worked during the PAGA Period.

11. Each Class Member will receive the Class Notice, explaining the nature of the case, and the process for participating, objecting and opting-out, and advising of his/her estimated settlement payment and the number of Weeks or Pay Periods he/she is credited with working during the Class Period which is attached hereto as **Exhibit 2**.

PROCEDURAL BACKGROUND

12. My office has performed considerable work and diligently investigated and prosecuted this case to a successful conclusion. Our work has resulted in the creation of a significant settlement fund for the benefit of the Class. We efficiently communicated and exchanged information informally with Defense counsel which enabled the parties to successfully settle the case. Because of the risks involved in litigating the case and the contested legal and factual issues, we believe this settlement to be fair, reasonable, and adequate.

13. After being retained by Plaintiff, we sent a letter to Defendants requesting the production of Plaintiff's personnel and timekeeping records in order to further evaluate his wage and hour claims. On April 28, 2023, we submitted a letter to the California Labor Workforce Development Agency (the "LWDA") for civil penalties under the Private Attorney General Act of 2004 (the "PAGA").

14. Then, on May 1, 2023, Plaintiff filed this class action, alleging that Defendants violated various sections of the Labor Code. Then, on July 3, 2023, Plaintiff filed a First Amended Complaint adding PAGA causes of action.

15. Defendants retained counsel and immediately began to defend the case. Plaintiff propounded a full set of written discovery, seeking information relevant to class certification, including class contact information. Defendants provided responses, but Plaintiff's counsel

1 contended the responses were insufficient, and a meet and confer process commenced.
2 However, after discussions among counsel, the Parties agreed to attend private mediation prior to
3 further discovery and motion practice.

4 16. In preparation for mediation, the Parties informally exchanged documents and
5 information that allowed both sides to calculate the potential damages and evaluate potential risk,
6 including policies and procedures pertaining to the claims, statistics relating to the number of
7 current and former employees, number of shifts, pay periods worked and other things, and a
8 sampling of payroll and timekeeping records for Class Members. This information, which
9 included more than 2,000 pages of documents and more than 88,000 rows of excel data, enabled
10 both parties to take a deep dive into the claims. Additionally, during this process, Plaintiff and
11 his counsel analyzed, researched, and investigated the potential issues, including matters related
12 to the calculation of damages, trial, and appellate issues and risks.

13 17. On February 6, 2024, Plaintiff and Defendants participated in mediation with
14 Kevin Barnes, Esq. a well-respected employment mediator. After a full-day mediation, the
15 matter resolved after a mediator's proposal, and the Parties entered into the Settlement
16 Agreement. The Parties now seek the Court's preliminary approval of the Settlement.

17 **SUMMARY OF THE CLAIMS AND DEFENSES**

18 18. Here, Plaintiff alleged numerous wage and hour violations on behalf of the Class
19 Members. However, Defendants vigorously contested and denied Plaintiff's material allegations
20 on the merits and as to the propriety of a class action or PAGA representative action. Still,
21 Plaintiff believed there were several strong claims.

22 19. For instance, Plaintiff alleged Defendants failed to pay proper wages due to
23 several distinct wage violations. First, Plaintiff alleged that Defendants utilized a practice that
24 "rounded" the Class Members' timekeeping and paid in quarter-hour increments, and further
25 alleged that this practice illegally underpaid the Class because it did not pay all wages owed.
26 *Camp v. Home Depot U.S.A. Inc.*, (2022) 84 Cal.App.5th 638, 660. Second, Plaintiff alleged that
27 Defendants paid the Class on an hourly basis plus additional earned compensation but failed to
28 include this compensation in the regular rate calculations and overtime pay. Third, Plaintiff

1 alleged that Defendants failed to pay for all compensable hours due to the failure to accurately
2 record all hours worked. As a result, Plaintiff argued these violations resulted in unpaid
3 minimum wages and overtime, as well as waiting time penalties under Labor Code § 203 and
4 other derivative penalties. However, Defendants opposed each of these unpaid wage claims on
5 the merits and as to the propriety of class certification.

6 20. Plaintiff also alleged that he and the Class Members were often denied compliant
7 meal and rest breaks. However, Defendants argued that Class Members were not entitled to
8 California-compliant meal and rest breaks under the “personal attendant” exemption of IWC
9 Wage Order 15. Defendants also argued they provided and made all mandated meal and rest
10 breaks available to the Class, and any employee who did not take a break did so entirely of their
11 own volition. Thus, Defendants argued these claims were without merit because, for each
12 violation, a fact-finder would have to determine why a break was noncompliant, because if it was
13 by the employee’s choice, no liability attaches to Defendants.

14 21. Finally, Plaintiff alleged a variety of other claims (all of which Defendants
15 disputed), such as the failure to timely pay wages each period (under Labor Code § 204), failure
16 to timely pay all wages upon separation of employment (Labor Code §§ 201 – 203), and failure
17 to provide accurate itemized wage statements (Labor Code § 226).

18 22. Despite the disputed nature of the claims, the Parties concluded that further
19 litigation of the Action would be protracted and expensive, and that it is desirable that the Action
20 be fully and finally settled to limit further risk, expense, and protracted litigation.

21 **EVALUATION OF THE SETTLEMENT**

22 23. In preparation for mediation, Peter Carlson, a senior associate with 10 years of
23 litigation experience within my office, and I formulated a damages model and risk analysis based
24 upon detailed data obtained through informal discovery and information exchanges. The
25 summary of the claims below is based on calculations by our expert and us, and the risks that we
26 potentially faced, giving significant credit to the defenses that Defendants raised or would likely
27 raise in further proceedings.
28

1 24. Following the informal exchange and other information provided by Defendants,
2 we estimated the following data points through the date of mediation: (1) 330 Class Members,
3 (2) 200 *former* Class Members for purposes of Labor Code § 203, (3) 20,000 workweeks, (4)
4 88,000 shifts worked, and (4) approximately 4,725 wage statements during the PAGA Period.

5 25. Here, Plaintiff alleged a variety of claims against Defendants, which boil down to
6 these categories: (1) unpaid wages, (2) meal and rest break violations, (3) waiting time penalties
7 under Labor Code §§ 201 – 203, (4) wage statement penalties under § 226(e), and (5) PAGA
8 civil penalties for the same claims.

9 26. Plaintiff’s unpaid wage claims had several distinct theories of liability, including:
10 (1) alleged rounding violations, (2) alleged regular rate issues (*i.e.*, failure to include “on call”
11 and other pay in overtime and other calculations), and (3) alleged failure to pay for all hours
12 worked. However, Defendants vehemently opposed these unpaid wage claims on the merits and
13 as to the propriety of class certification. On this point, Defendants raised several strong defenses
14 (discussed above). As a result, for mediation and settlement purposes, Plaintiff and Class
15 Counsel applied appropriate risk reductions from the maximum potential unpaid wages to
16 account for risks of defeat at class certification and on the merits.

17 27. Plaintiff also alleged meal and rest break claims against Defendants. Based on the
18 pre-mediation analysis and investigation, and when incorporating violation rates from expert
19 review of the timekeeping records and other evidence, Class Counsel estimated a 33.29%
20 violation rate for meal periods and a 40% violation rate for rest breaks. However, Defendants
21 raised numerous arguments in response to this claim, including that the claims fail on the merits
22 because the Class Members were “personal attendants” under the exemption at IWC Wage Order
23 15 and, as such, were not entitled to California’s meal and rest breaks. Defendants also argued
24 that they maintained fully compliant written policies and specifically authorized the Class
25 Members to take meal and rest breaks, meaning that no one had a reason or cause to miss a break
26 or take a short/late break. Therefore, Defendants asserted that a fact-finder would have to
27 determine for each Class Member whether a break was missed and why, and why a break was
28 noncompliant or nonexistent, because if it was the employee’s choice, no liability attaches to

1 Defendants. These defenses are factored into Plaintiff's analysis in two ways. First, these issues
2 raise questions regarding whether the meal and rest break claims could be certified. Second,
3 these defenses also go toward the merits given the evidentiary question of proving the number of
4 meal and rest violations. As such, Plaintiff and Class Counsel considered these risks and
5 defenses, along with the relatively low violation rates and, for purposes of mediation and
6 settlement, applied appropriate risk reductions regarding the risks of defeat at class certification
7 and on the merits.

8 28. Plaintiff also alleged claims for waiting time penalties and wage statement
9 violations, including failure to accurately state all applicable hourly rates and total hours worked.
10 Some of these claims were derivative of the claims above, meaning that they only had merit if
11 the claims for unpaid wages or meal/rest breaks were successful. But Defendants raised a variety
12 of defenses to these derivative claims that impacted the valuation. Namely, as to the wage
13 statement violations, Defendants argued that the wage statements did not violate Labor Code §
14 226 and even if there was a "technical" violation, that Plaintiff would be unable to prove the
15 required "knowing and intentional" and "injury" elements. Then, as to the waiting time penalty
16 claim, Plaintiff's valuation had to account for the fact that this claim was derivative of the unpaid
17 wage and meal/rest break claims (*e.g.*, the unpaid wage premiums) and, if those claims failed at
18 certification or on the merits, there would be no waiting time penalties owed, so the same risks
19 for those claims applied to this claim. Furthermore, even if the unpaid wage and/or meal/rest
20 claims succeeded at certification and on the merits, Plaintiff would have to prove that the
21 violations (if any existed) were "willful" under the meaning of Labor Code § 203. And, here,
22 Defendants argued that there could not be a finding of a "willful" violation since they had
23 compliant written policies, and any deviations therefrom were inadvertent and unintentional.

24 29. In sum, Plaintiff calculated the *maximum* potential Class damages in excess of
25 \$5,000,000. However, that figure fails to consider the various risks at class certification, on the
26 merits, and the many evidentiary issues. When considering all relevant factors, Class Counsel
27 estimated the risk-adjusted value of the Class claims at just over \$1,500,000.
28

1 30. And while the PAGA penalties had a potential maximum value in the seven
2 figures, this also fails to incorporate the risks above and, further, fails to acknowledge that courts
3 have wide latitude to reduce the civil penalties “based on the facts and circumstances of a
4 particular case” and if “to do otherwise would result in an award that is unjust, arbitrary and
5 oppressive, or confiscatory.” Labor Code § 2699(e)(2). Moreover, Defendants argued against
6 the merits of the underlying claims and particularly that the “willfulness” standard and/or “good
7 faith” defenses mitigated the civil penalty claims and rendered any such penalties as uncertain.
8 Defendants also argued it is improper to stack civil penalty claims on top of underlying statutory
9 claims. For these reasons, the Parties submit that this settlement is fair and reasonable.

10 **THE SETTLEMENT IS FAIR, JUST, AND REASONABLE**

11 31. The settlement was the product of extensive arm’s length negotiations, facilitated
12 by an experienced mediator. Though cordial and professional, the settlement negotiations were
13 adversarial and non-collusive in nature. The settlement reached is the product of substantial
14 effort by the parties and their counsel. Although we believed that there was a possibility of
15 certifying the claims, we recognized the potential risk, expense, and complexity posed by
16 litigation, such as unfavorable decisions on class certification, summary judgment, at trial and/or
17 on the damages awarded, and/or on an appeal that can take several more years to litigate.

18 32. The settlement will result in a fair payment to each Class Member based on the
19 percentage of weeks worked during the Class Period and other factors as set forth in the
20 Settlement Agreement. As set forth hereinabove, Plaintiff and her counsel have diligently
21 investigated the claims and defenses on behalf of the Class Members and worked to achieve a
22 resolution of the claims to maximize the recovery by avoiding further expenditure of attorneys’
23 fees and costs. After evaluating the significant risks attendant with further litigation described
24 above and weighing them against the benefits of a known compromise and settlement as set forth
25 in the Settlement Agreement, settlement on the terms agreed to is believed to be in the best
26 interest of Plaintiff and the Class, and is a fair and reasonable resolution of the claims alleged.

27 33. My office brought to bear a great deal of experience in negotiating the settlement
28 of this case. As detailed herein, my office engaged in the necessary discovery and investigation,

1 making it possible to exercise informed judgment throughout the settlement process, including
2 significant document review (e.g. documents pertaining to Defendants' policies and procedures,
3 personnel documents, among others), and conducted an extensive analysis of the detailed class-
4 wide data provided by Defendants.

5 34. Based on my experience in other cases, including wage and hour matters, I
6 believe I am qualified to evaluate the class claims and viability of defenses in this class action.
7 In this case, the recovery for each class member is reasonable, fair, and adequate, and a
8 settlement at this time is in the best interests of the class. The settlement provides each class
9 member with compensation for the alleged violations when viewed in relation to the costs and
10 risks inherent in obtaining class certification and proceeding to trial.

11 35. Plaintiff's counsel, as well as Defendants' counsel, fully endorse the terms and
12 conditions of the settlement as set forth in the abovementioned Settlement Agreement.

13 36. Of course, the settlement amount represents a compromise figure, taking into
14 account the various risks surrounding class certification and the merits of Defendants' asserted
15 defense. Nevertheless, the settlement provides for fair and adequate payments to the class
16 members, with no reversion to Defendants.

17 **PLAINTIFF'S REQUESTED ENHANCEMENT PAYMENT**

18 37. Plaintiff seeks an enhancement payment of \$10,000 for his service to the class,
19 which I believe is fair and warranted. Plaintiff came forward in an effort to effectuate a policy
20 and practice change that benefitted all other Class Members, and to recover unpaid wages. He
21 assumed significant risk in bringing this litigation—namely, had he lost, he would have been
22 ordered to pay Defendants' costs.

23 38. Plaintiff provided invaluable assistance to my office and the Class in this case,
24 including providing factual background for the Class Complaint; reviewing the litigation
25 documents; providing information and documents about Defendants' policies and practices;
26 participating in phone calls to discuss litigation and settlement strategy; and reviewing the
27 settlement documents. Plaintiff agreed to participate in this case with no guarantee of personal
28 benefit. At final approval, Plaintiff will submit a comprehensive declaration setting forth all of

1 the reasons why he believes that the service award should be approved.

2 **ADEQUACY OF COUNSEL AND THE PROVISIONAL REASONABLENESS OF THE**
3 **REQUESTED FEES AND COSTS**

4 39. As set forth above, I have handled over 500 class and representative actions, have
5 been appointed as class counsel and have successfully resolved over half of those cases, and
6 many others remain pending and will successfully resolve in the future.

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

11 41. It is my experience that attorney fee awards of one-third of a common fund
12 settlement is the standard in California. In this case, my firm agreed to seek one-third of the
13 Settlement Amount for attorneys' fees. Defendants do not oppose this fee request. The fee is
14 further warranted because it is within the range of reasonableness typically awarded in class
15 actions. The costs are reasonably capped at \$25,000 and will be based on the actual amount of
16 costs incurred at the time of final approval.

17 **SETTLEMENT ADMINISTRATOR**

18 42. The parties request that the Court appoint Phoenix Settlement Administrators to
19 serve as the Settlement Administrator. Phoenix is experienced in administering class action
20 settlements and has provided a proposal to administer this settlement for a total of \$9,000, which
21 is attached hereto as **Exhibit 3**.

22 **SUBMISSION TO THE LWDA**

23 43. Plaintiff has concurrently submitted the settlement and motion documents to the
24 LWDA in accordance with Labor Code § 2699(1)(2). The proof of submission is attached hereto
25 as **Exhibit 4**.

26 **EXHIBITS AND CONCLUSION**

27 44. A true and correct copy of the final but unsigned version of the Settlement
28 Agreement is attached as **Exhibit 1**. The Parties are in the process of getting the Settlement

1 Agreement executed, and I will file a supplemental declaration with the fully signed version as
2 soon as it is available.

3 45. A true and correct copy of the proposed Class Notice is attached hereto as **Exhibit**
4 **2.**

5 46. A true and correct copy of the Phoenix's proposal to administer the Settlement is
6 attached as **Exhibit 3.**

7 47. A true and correct copy of the he LWDA's confirmation of receipt of this Motion,
8 Declarations and exhibits is attached hereto as **Exhibit 4.**

9 48. For the foregoing reasons, it is respectfully requested that the Court grant
10 preliminary approval of the settlement as being fair, reasonable, and in the best interests of the
11 class, as well as preliminarily approve the requested attorneys' fees, costs, and enhancement
12 payment to the Class Representative.

13 I declare under penalty of perjury under the laws of the State of California that the
14 foregoing is true and correct. Executed on May 16, 2024, at Riverside, California.

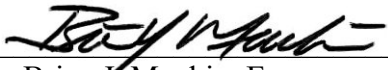
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16 By: 
17 Brian J. Mankin, Esq.
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EXHIBIT “1”

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

MANUEL BURGOS, individually, on a
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Plaintiff,

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20, inclusive;

Defendants.

Case No.: CIVSB2308809
*[Assigned to Hon. Jessica Morgan, Dept S26,
for all purposes]*

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

1 This Class Action Settlement Agreement and Release of Claims is entered into by and
2 between Plaintiff Manuel Burgos, individually and on behalf of all others similarly situated, and
3 on behalf of the State of California, and Defendants Destiny Hospice Care, Inc., Udoekpo Ekpo,
4 and Joy Ekpo, and is approved by their respective counsel of record, subject to the terms and
5 conditions hereof and the Court's approval.

6 **A. Definitions**

7 1. "Action" or "Lawsuit" means and refers to the case entitled *Burgos v. Destiny*
8 *Hospice Care, Inc.*, San Bernardino County Superior Court, Case No. CIVSB2308809.

9 2. "Administrator" means and refers to Phoenix Settlement Administrators, the
10 third-party class action settlement administrator agreed to by the Parties, that will provide the
11 Notice to the Class Members and distribute the settlement amounts as described in this
12 Agreement.

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

21 4. "Aggrieved Employee(s)" means all current and former nonexempt employees
22 employed by Defendants in California at any time during the PAGA Period.

23 5. "Agreement" or "Settlement Agreement" or "Settlement" shall mean this Class
24 Action and PAGA Settlement Agreement and Release of Claims.

25 6. "Class" is defined all current and former nonexempt employees employed by
26 Defendants in California at any time during the Class Period.

27 7. "Class Member(s)" refers to individual members of the Class.
28

1 8. “Class Counsel” refers to Brian Mankin and Peter Carlson of Lauby, Mankin &
2 Lauby LLP.

3 9. “Class Data” means a complete list that Defendants will diligently and in good
4 faith compile from their records and provide to the Administrator on one spreadsheet which shall
5 include, for each Class Member, the individual’s full name, last known address, Social Security
6 Number, total Pay Periods Worked during the PAGA Period and Work Weeks within the Class
7 Period..

8 10. “Class Period” is deemed to be any time during the period of May 1, 2019,
9 through April 15, 2024.

10 11. “Class Representative” or “Plaintiff” means and refers to Plaintiff Manuel
11 Burgos.

12 12. “Complaint” refers to the operative first amended class and PAGA representative
13 action complaint filed in the Action, along with the Doe amendments thereto.

14 13. “Court” (or “Judge”) means the California Superior Court, County of San
15 Bernardino.

16 14. “Defendants” means and refers to Destiny Hospice Care, Inc., Udoekpo Ekpo,
17 and Joy Ekpo.

18 15. “Defendants’ Counsel” or “Defense Counsel” means and refers to Fisher &
19 Phillips LLP.

20 16. “Effective Date” means the latest of the following dates: (i) if no Class Member
21 timely and properly intervenes, or files a motion to vacate the judgment approving the Settlement
22 Agreement under Code of Civil Procedure § 663, then the date of the Court’s Notice of Entry of
23 Order regarding Final Approval of the Settlement; (ii) if a Class Member intervenes, or files a
24 motion to vacate the judgment approving the Settlement Agreement, then sixty-one (61) calendar
25 days following the date the Court enters an order granting Final Approval, assuming no appeal is
26 filed; or (iii) if a timely appeal is filed, then the date of final resolution of that appeal or other
27 collateral attack (including any requests for rehearing and/or petitions for *certiorari*), resulting in
28 final judicial approval of the Settlement.

1 17. “Escalator Clause:” Defendants represent that there are approximately 330 Class
2 Members, who collectively worked a total of 20,000 Workweeks during the Class Period. If the
3 number of Weeks Worked by Class Members during the Class Period is more than 15% then, at
4 Defendants’ election, either (a) the Settlement Amount shall be increased in proportion to the
5 percentage increase in the number of Weeks Worked in excess of 15% or (b) the ending date of
6 the Class Period shall be changed to an earlier date as of which the number of Work Weeks
7 encompassed within the Class Period does not exceed more than 15%, but under no circumstance
8 shall the Class Period end prior to February 6, 2024 (the date of mediation).

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

12 19. “Individual Class Payment” refers to each Participating Class Members share of
13 the Net Settlement Amount, as further discussed in Paragraph 49(c) below.

14 20. “Individual PAGA Payment” refers to each Aggrieved Employees share of the
15 PAGA Penalties, as further discussed in Paragraph 49(c) below.

16 21. “Net Settlement Amount” shall have the meaning ascribed to it in Paragraph 49(b)
17 below.

18 22. “Notice” means the notice of proposed class settlement that will be sent to the
19 Class Members and which will advise each Class Member of the settlement and his or her
20 estimated Individual Class Payment and Individual PAGA Payment and will further advise of the
21 setting of a Final Approval Hearing.

22 23. “Response Deadline” is 30 calendar days from the date the Notice is mailed to the
23 Class Members.

24 24. “Objecting Class Member” means a Class Member, other than Plaintiff, who
25 submits a valid and timely objection to the terms of this Agreement, pursuant to Paragraph 70(c)
26 below.

1 25. “Pay Periods” in the context of an Aggrieved Employee means any and all pay
2 periods during the PAGA period during which the Aggrieved Employee worked at least one day
3 in California for Defendants.

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

8 27. “PAGA Period” is deemed to be any time during the period of May 1, 2022,
9 through April 15, 2024.

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

13 29. “Parties” means Plaintiff and Defendants, collectively.

14 30. “Preliminary Approval Date” means the date the Court approves the Settlement
15 Agreement and enters the Preliminary Approval Order.

16 31. “Preliminary Approval Order” means the judicial Order to be entered by the
17 Court, upon the application or motion of the Plaintiff, preliminarily approving this Settlement
18 and providing for the issuance of the Notice Packet to the Class, an opportunity to opt out of the
19 Settlement, an opportunity to submit timely objections to the Settlement, and setting a final
20 approval hearing on the fairness of the terms of Settlement, including approval of attorneys’ fees
21 and costs. Provided that the motion is consistent with the terms herein, Defendants will not
22 object to Plaintiff’s motion for preliminary approval but will be provided with an opportunity to
23 review and comment upon the motion before it is filed.

24 32. “QSF” means the Qualified Settlement Fund set up by the Administrator for the
25 benefit of the Participating Class Members and Aggrieved Employees, and from which the
26 settlement payments shall be made.

27 33. “Released Class Claims” or “Class Claims” by the Participating Class Members
28 upon Final Approval of the Settlement will include all claims alleged in the Complaint or which

could have been alleged based solely upon the facts in the Complaint, including but not limited to: (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 timely pay wages upon separation of employment, (g) failure to provide accurate itemized wage statements, and (h) unfair and unlawful competition.

34. “Released PAGA Claims” or “PAGA Claims” means any and all PAGA claims that Plaintiff alleged against the Released Parties, on behalf of the Aggrieved Employees and the State of California, based on the facts stated in the Complaint and in the relevant LWDA notice letters, including all PAGA claims seeking civil penalties 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 timely pay wages each period, (g) failure to timely pay wages upon separation of employment, (h) failure to provide accurate itemized wage statements, and (i) 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. The time period governing the Released PAGA Claims shall be any time during the PAGA Period.

35. “Released Parties” means Defendants and their parents, subsidiaries, directors, owners, shareholders, officers, agents, attorneys, servants, joint employers and employees, professional employer organizations past and present, and each of them and anyone acting in concert with foregoing.

36. “Release” shall mean the release and discharge of the Released Class Claims by Plaintiff and all Participating Class Members and their assignees.

37. “Release Period” shall be the time period governing the Released Class Claims, which shall be the same as the Class Period.

38. “Request for Exclusion” shall have the meaning ascribed to it in Paragraph 70(a) below.

39. “Service Payment” or “Service Award” means the amount approved by the Court to be paid to Class Representative Manuel Burgos in addition to his Individual Class Payment as a Participating Class Member and Individual PAGA Payment as an Aggrieved Employee.

40. “Settlement Amount” is \$450,000.00, subject to the Escalator Clause and exclusive of Defendants’ obligation to fund their share of payroll taxes, as further discussed in Paragraph 17 above.

41. “Work Weeks” or “Weeks Worked” in the context of a Class Member means any and all work weeks during the Class Period during which the Class Member worked at least one day in California for Defendants.

B. General Terms

42. On May 1, 2023, Plaintiff filed a putative class action complaint against Defendants in San Bernardino County Superior Court. Plaintiff later filed the operative First Amended Complaint, alleging putative class and representative PAGA claims, including: (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 timely pay wages upon separation of employment, (g) failure to provide accurate itemized wage statements, (h) unfair and unlawful competition, and (i) related claims under PAGA.

43. Defendants deny Plaintiff’s claims and allegations and contends that the Action is not suitable for class certification.

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

45. The Parties have conducted a thorough investigation into the facts of the Action. This includes conducting an extensive exchange of informal discovery, including a sampling of payroll and timekeeping records for 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 Class. Class Counsel has diligently pursued an investigation of the Class Members’ claims against Defendant. Based on the foregoing data and on their own independent investigation and evaluation, Class Counsel is of the opinion that the settlement with Defendants

1 for the consideration and on the terms set forth in this Settlement Agreement is fair, reasonable,
2 and adequate and is in the best interest of the Class Members in light of all known facts and
3 circumstances, including the risk of significant delay and uncertainty associated with litigation,
4 various defenses asserted by Defendants, and numerous potential appellate issues.

5 46. On February 6, 2024, Plaintiff and Defendants participated in a full-day mediation
6 with Kevin Barnes, Esq., a well-respected wage-and-hour mediator. At the conclusion of
7 mediation, extensive arms-length negotiations, and after issuance of a mediator's proposal, the
8 Parties reached a global settlement and entered into this Settlement.

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

13 48. Stipulation for Class Certification. For settlement purposes only, Defendants will
14 stipulate that the Participating Class Members may be conditionally certified as a Class. This
15 stipulation to certification is in no way an admission that class action certification is proper and
16 shall not be admissible in this or in any other action except for the sole purposes of enforcing this
17 Agreement. Should, for whatever reason, the Court fail to issue Final Approval, the Parties'
18 stipulation to class certification as part of the Settlement shall become null and void ab initio and
19 shall have no bearing on, and shall not be admissible in connection with, the issue of whether
20 certification would be appropriate in a non-settlement context. Defendants expressly reserve
21 their rights and declare that they would continue to oppose class certification and the substantive
22 merits of the case should the Court fail to issue Final Approval. Plaintiff expressly reserves his
23 rights and declares that he will continue to pursue class certification and a trial should the Court
24 fail to issue Final Approval.

25 **C. Terms of Settlement**

26 49. The financial terms of the Settlement are as follows:

27 (a) Settlement Amount: The Parties agree to settle this Action for the
28 Settlement Amount, subject to the Escalator Clause and Defendants' obligation to separately pay

1 the share of payroll taxes owed on the wage portion of the Individual Class Payments, which is
2 the maximum amount that will be paid by Defendants and includes Individual Class Payments,
3 Class Counsel's Attorneys' Fees and Costs Award, the Service Payment to the Class
4 Representative, Administration Costs, and PAGA Penalties.

5 (b) Net Settlement Amount: The "Net Settlement Amount" is defined as the
6 Settlement Amount less the Attorneys' Fees and Costs Award, the Service Payment to the Class
7 Representative as awarded by the Court, the Administration Costs, and PAGA Penalties. If the
8 Court reduces the Attorneys' Fees and Costs Award, Service Award, or Administrator Costs, or
9 either increases or decreases the amount allocated to the PAGA Penalties, the difference shall be
10 placed in the Net Settlement Amount and allocated to the Class.

11 (c) Calculation of Individual Class Payments: Individual Class Payments for
12 each Class Member will be calculated by the Administrator using the Class Data provided by
13 Defendants as follows. Compensable workweeks will be all Weeks Worked by the Class
14 Members during the Class Period. The dollars per compensable work week will be calculated by
15 dividing the total Weeks Worked by Class Members into the Net Settlement Amount to
16 determine a per work week value ("Workweek Value"). The Workweek Value will be
17 multiplied by the number of Weeks Worked by a Participating Class Member during the Class
18 Period to determine the distribution for a Participating Class Member. If there are any timely
19 submitted Requests for Exclusion, the Administrator shall proportionately increase the Individual
20 Class Payments for each Participating Class Member so that the amount actually distributed to
21 Participating Class Members equals 100% of the Net Settlement Amount. Class Members are
22 not required to submit a claim form to receive an Individual Class Payment

23 (d) Allocation of Individual Class Payments: The Individual Class Payments
24 to Participating Class Members will be allocated as follows: 20% will be allocated as wages
25 subject to withholding of all applicable local, state and federal taxes; and 80% will be allocated
26 for interest and statutory penalties (pursuant to, e.g., California Labor Code sections 203, 210,
27 226) from which no taxes will be withheld. The Administrator will issue to each Participating
28 Class Member an Internal Revenue Service Form W-2 and comparable state forms with respect

1 to the wage allocation and a Form 1099 with respect to the penalties and interest allocations.

2 (e) Service Payment to Class Representative: The amount, if any, awarded to
3 the Class Representative as a Service Payment will be set by the Court in its discretion, not to
4 exceed \$10,000, in exchange for the service that Plaintiff performed on behalf of the Class.
5 Defendants agree not to oppose this request. The Service Payment to the Class Representative
6 will be paid out of the Settlement Amount. The Class Representative will be issued an IRS Form
7 1099 in connection with this payment and shall be solely and legally responsible to pay all
8 applicable taxes on this payment. The Parties agree that any amount awarded as the Service
9 Payment to the Class Representative less than the requested amount shall not be a basis for Class
10 Counsel to void this Settlement Agreement. Should the Court approve a lesser amount for the
11 Service Payment, the difference shall be added to the Net Settlement Amount to be distributed to
12 the Participating Class Members.

13 (f) Attorneys' Fees and Costs Award: Defendants agrees to not oppose a
14 request by Class Counsel to the Court for an award of attorneys' fees of one-third of the
15 Settlement Amount, plus reasonable litigation costs not to exceed \$25,000 ("Attorney's Fees and
16 Cost Award"). Defendants agrees not to oppose any contention by Class Counsel that attorneys'
17 fees should be based on the common fund theory. The Attorney's Fee and Cost Award shall be
18 paid from the Settlement Amount, and, except for this award, Defendants shall have no further
19 obligation to pay any attorneys' fees, costs, or expenses to Class Counsel. Should the Court
20 approve a lesser amount than what is sought by Class Counsel, the difference shall be added to
21 the Net Settlement Amount to be distributed to the Participating Class Members. Any Court
22 order awarding less than the amount sought by Class Counsel shall not be grounds to rescind the
23 Settlement Agreement or otherwise void the Settlement. The Administrator shall issue to Class
24 Counsel an IRS Form 1099 reflecting the amount of attorneys' fees and costs awarded by the
25 Court.

26 (g) Administration Costs: The fees and other charges of the Administrator
27 will be paid from the Settlement Amount, not to exceed \$9,000, unless (1) the Escalator Clause
28 is triggered (whereby any reasonable increase in Administration Costs shall be paid from the

increased Settlement Amount, subject to Court approval), or (2) as otherwise approved by all Parties and the Court.

(h) PAGA Penalties: The Parties agree that \$30,000 is allocated to PAGA Penalties, and is to be paid from the Settlement Amount, subject to Court approval. Of this amount, \$22,500 (75%) shall be paid to the LWDA in satisfaction of civil penalties under the Private Attorney General Act of 2004 (“PAGA”) and \$7,500 (25%) will form the Individual PAGA Payments to the Aggrieved Employees, which shall be calculated and allocated pro-rata on a Pay Period basis, which will be treated entirely as civil penalties and shall be reported as required on an IRS Form 1099. Class Counsel shall give proper notice to the LWDA of the Settlement.

(i) Tax Liability: Class Counsel and Defendants make no representations as to the tax treatment or legal effect of settlement amounts called for hereunder, and Plaintiff and the Class Members are not relying on any statement or representation by Class Counsel or Defendants in this regard. Plaintiff, Participating Class Members, and Aggrieved Employees understand and agree that they will be solely responsible for the payment of any taxes and penalties assessed on their respective Individual Class Payments and Individual PAGA Payments, described herein. Forms 1099 will be distributed in the manner required by the Internal Revenue Code of 1986 (the “Code”) and consistent with this Agreement. If the Code, the regulations promulgated thereunder, or other applicable tax law, is changed after the date of this Agreement, the processes set forth in this Section may be modified in a manner to bring Defendants into compliance with any such changes. Plaintiff, Participating Class Members, and Aggrieved Employees understand and agree that they will be solely responsible for the payment of any taxes and penalties assessed on their respective payments described herein.

(j) CIRCULAR 230 DISCLAIMER. EACH PARTY TO THIS AGREEMENT (FOR PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY” AND EACH PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN “OTHER PARTY”) ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR

1 DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND
2 OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH
3 COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE
4 RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES
5 TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE
6 ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS
7 OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX
8 ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO
9 THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY
10 OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT
11 ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY
12 ATTORNEY OR ADVISOR TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY
13 THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO
14 ATTORNEY OR ADVISOR TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION
15 THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR
16 ADVISOR'S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS
17 LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF
18 THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING
19 ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

20 (k) "Non-Reversionary" Settlement. This is a "non-reversionary" settlement.
21 Under no circumstances will any portion of the Settlement Amount revert to Defendant.
22 Participating Class Members and Aggrieved Employees will not have to make a claim in order to
23 receive an Individual Class Payment or Individual PAGA Payment. Distributions, in the form of
24 Individual Class Payment or Individual PAGA Payments will be made directly to each
25 Participating Class Member and Aggrieved Employee. The Administrator shall be responsible
26 for accurately and timely reporting and remittance obligations with respect to unclaimed funds as
27 a result of a Participating Class Member and/or Aggrieved Employee not cashing any checks
28 delivered pursuant to the Settlement by the check cashing deadline, as set forth herein.

1 (l) Class Counsel and Plaintiff believe that the Settlement is fair and
2 reasonable and will so represent same to the Court.

3 **D. Release by the Participating Class Members**

4 50. Upon entry of the Final Approval Order and Defendants' funding of the
5 Settlement Amount and the required employer-side payroll taxes, and except as to such rights or
6 claims as may be created by this Agreement, Plaintiff and the Participating Class Members will
7 forever completely release and discharge the Released Parties from the Released Class Claims
8 for the Class Period.

9 51. Each Participating Class Member will be deemed to have made the foregoing
10 Release as if by manually signing it.

11 52. Class Representative, on behalf of himself and the Class, acknowledges and
12 agrees that the claims for unpaid wages and untimely payment of wages in the Action are
13 disputed, and that the payments set forth herein constitute payment of all sums allegedly due to
14 them. Class Representative, on behalf of himself and the Class, acknowledges and agrees that
15 Labor Code § 206.5 is not applicable to the Parties or Settlement. Labor Code § 206.5 provides
16 in pertinent part as follows: "An employer shall not require the execution of any release of any
17 claim or right on account of wages due, or to become due, or made as an advance on wages to be
18 earned, unless payment of those wages has been made."

19 **E. Release of PAGA Claims**

20 53. Upon entry of the Final Approval Order and Defendants' funding of the
21 Settlement Amount and the required employer-side payroll taxes, Plaintiff – in his individual
22 capacity and on behalf of the State of California and LWDA – shall completely release and
23 discharge the Released Parties from the Released PAGA Claims for the PAGA Period.

24 54. Regardless of submitting a valid Request for Exclusion, neither Plaintiff nor any
25 Aggrieved Employee shall have the right to opt-out or otherwise exclude themselves from
26 releasing the Released PAGA Claims.

27 55. It is the intent of the Parties that the Final Approval Order shall have full
28 equitable and collateral estoppel and res judicata effect to the fullest extent permitted by law.

1 **F. Release by Plaintiff and Class Representative**

2 56. Class Representative does hereby, for himself and his spouses, heirs, successors,
3 beneficiaries, devisees, legatees, executors, administrators, trustees, conservators, guardians,
4 personal representatives, and assigns forever and completely release and discharge the Released
5 Parties from any and all charges, complaints, claims, liabilities, obligations, promises,
6 agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs,
7 losses, debts, and expenses (including back wages, statutory penalties, civil penalties, liquidated
8 damages, exemplary damages, interest, attorneys' fees, and costs) of any nature whatsoever,
9 from the beginning of time through the execution of this Agreement, whether known or
10 unknown, suspected or unsuspected, including but not limited to all claims arising out of, based
11 upon, or relating to Class Representative's employment with Defendants or the remuneration for
12 or termination of such employment (the "Class Representative's Claims"). The Release of Class
13 Representative's Claims is expressly conditioned on and subject to the terms of the separate
14 individual settlement agreement entered into by and among Plaintiff and Defendants.

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

24 58. Plaintiff agrees that there is a risk that any injury that he may have suffered by
25 reason of the Released Parties' relationship with him might not now be known, and there is a
26 further risk that said injuries, whether known or unknown at the date of this Settlement
27 Agreement, might possibly become progressively worse, and that as a result thereof further
28 damages may be sustained. Nevertheless, Plaintiff agrees to forever and fully release and

1 discharge the Released Parties, and understands that by the execution of this Settlement
2 Agreement no further claims for any such injuries that existed at the time of the execution of this
3 Settlement Agreement may ever be asserted by Plaintiff with respect to claims arising in the time
4 period from the beginning of time to the execution of this Settlement Agreement.

5 59. Plaintiff expressly waives and relinquishes all rights and benefits afforded by
6 Section 1542 of the Civil Code of the State of California and does so understanding and
7 acknowledging the significance of the waiver of Section 1542. Section 1542 of the Civil Code
8 of the State of California states:

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

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

24 **G. Interim Stay of Proceedings**

25 60. Pending completion of all of the prerequisites necessary to effectuate this
26 Settlement, the Parties agree, subject to Court approval, to a stay of all proceedings in the Action
27 except such as is necessary to effectuate the Settlement.

28 ///

1 **H. Notice Process**

2 61. Appointment of Administrator. The Parties have agreed to the appointment of the
3 Administrator to perform the duties of a settlement administrator, including mailing the Notice,
4 using standard devices to obtain forwarding addresses, independently reviewing and verifying
5 documentation associated with any claims or opt-out requests, resolving any disputes regarding
6 the calculation or application of the formula for determining the Individual Class Payment and
7 Individual PAGA Payments, drafting and mailing the settlement checks to Participating Class
8 Members and Aggrieved Employees, issuing all necessary tax forms, and performing such other
9 tasks as set forth herein or as the Parties mutually agree or that the Court orders.

10 62. Disputes Regarding Administration. Any and all disputes relating to
11 administration of the Settlement by the Administrator (except for disputes regarding Class Data)
12 shall be referred to the Court, if necessary, which will have continuing jurisdiction over the terms
13 and conditions of this Agreement, until Plaintiff and Defendants notify the Court that all
14 payments and obligations contemplated by this Agreement have been fully carried out. Prior to
15 presenting any issue to the Court, counsel for the Parties will confer in good faith to resolve the
16 dispute without the necessity of Court intervention. The Administrator shall also be responsible
17 for issuing to Plaintiff, Participating Class Members, and Aggrieved Employees, and Class
18 Counsel any Tax Forms as may be required by law for all amounts paid pursuant to this
19 Agreement.

20 63. Class Data. Within fourteen (14) days after entry of the Preliminary Approval
21 Order, Defendants shall provide the Class Data to the Administrator. The Administrator will run
22 a check of the Class Members' addresses against those on file with the U.S. Postal Service's
23 National Change of Address List. The Class Data provided to the Administrator will remain
24 confidential and will not be used or disclosed to anyone, except as required by applicable tax
25 authorities, pursuant to Defendants' express written consent, or by order of the Court. Although
26 Class Counsel will not be provided with the list of Class Data, nothing herein shall prevent Class
27 Counsel from communicating with Class Members regarding the Action and Settlement.
28

1 64. Total Workweeks. At least 5 days prior to mailing the Notice, the Administrator
2 shall provide a spreadsheet to Class Counsel and Defense Counsel containing a preliminary
3 calculation of all payments to be paid from the Settlement Amount, including the estimated
4 Individual Class Payments to each Class Member and Individual PAGA Payments to each
5 Aggrieved Employee (a person's name shall be redacted and a control number used in place of
6 the name). In the event that the total Workweeks worked by all Class Members triggers the
7 Escalator Clause, the Administrator shall notify the Parties of the increased Settlement Amount,
8 and related increased payments from the Settlement Amount, including increased Attorneys'
9 Fees and Costs and any increased Administration Costs, all of which shall be subject to Court
10 approval.

11 65. Notice. The Notice, as approved by the Court, shall be sent by the Administrator
12 to the Class Members, by first class mail, in English and Spanish, within ten (10) calendar days
13 following the Administrator's receipt of the Class Data. The Administrator shall use standard
14 devices, including a skip trace, to obtain forwarding addresses of Class Members if any
15 envelopes are returned.

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

25 67. Presumption Regarding Receipt of Notice. It will be conclusively presumed that
26 if an envelope has not been returned to Administrator by the Response Deadline that the Class
27 Member received the Notice.
28

1 68. Disputes Regarding Class Data. Class Members are deemed to participate in the
2 Settlement unless they opt-out, and Aggrieved Employees may not opt out of the Released
3 PAGA Claims. The Notice will inform Class Members of his/her estimated Individual Class
4 Payment and Individual PAGA Payment, as well as the number of weeks he/she worked during
5 the Class Period and the PAGA Period. Class Members may dispute their Weeks Worked if they
6 feel they should be credited with more Weeks Worked in the Class Period and/or PAGA Period
7 in California than Defendants' records show by timely submitting evidence to the Administrator.
8 Defendants' records will be presumed determinative absent reliable evidence to rebut
9 Defendants' records, but the Administrator will evaluate the evidence submitted by the Class
10 Member and provide the evidence submitted to Class Counsel and Defense Counsel who agree to
11 meet and confer in good faith about the evidence to determine the Class Member's actual
12 number of Work Weeks and estimated Individual Class Payment and Individual PAGA Payment.
13 If Class Counsel and Defense Counsel are unable to agree, they agree to submit the dispute to the
14 Court to render a final decision. Class Members and Aggrieved Employees will have until the
15 Response Deadline to dispute Weeks Worked, object or opt out, unless extended by the Court.

16 69. Declaration of Due Diligence. The Administrator shall provide counsel for the
17 Parties, at least twenty-five (25) days prior to the final approval hearing, a declaration of due
18 diligence and proof of mailing with regard to the mailing of the Notice.

19 70. Class Members' Rights. Each Class Member will be fully advised of the
20 Settlement, the ability to object to the settlement, and the ability to opt-out or request exclusion
21 from the Class Claims portion of the Settlement. The Notice will inform the Class Members of
22 the Court-established deadlines for filing objections or requesting exclusion from the Settlement
23 in accordance with the following guidelines:

24 (a) Requests for Exclusion from Class. Any Class Member, other than
25 Plaintiff, may request to be excluded from the Class by submitting a "Request for Exclusion" to
26 the Administrator, postmarked on or before the Response Deadline. The Request for Exclusion
27 should state:
28

1 “I WISH TO BE EXCLUDED FROM THE CLASS IN THE
2 DESTINY HOSPICE LAWSUIT. I UNDERSTAND THAT IF I
3 ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I
4 WILL NOT RECEIVE MY INDIVIDUAL CLASS PAYMENT
5 FROM THIS LAWSUIT.”

6 To be valid, any Request for Exclusion must include the full name, address, telephone
7 number, last four digits of the social security number or date of birth, and signature of the Class
8 Member requesting exclusion. The Request for Exclusion must be returned by mail to the
9 Administrator at the specified address set forth in the Notice. Any such Request must be made in
10 accordance with the terms set forth in the Notice. A Request for Exclusion will be timely only if
11 postmarked by the Response Deadline, unless the Parties otherwise agree in writing. Any Class
12 Member who timely requests exclusion in compliance with these requirements: (i) will not have
13 any rights under this Agreement, including the right to object, appeal or comment on the
14 Settlement; (ii) will not be entitled to receive the Individual Class Payment under this
15 Agreement; and (iii) will not be bound by this Agreement, or the Judgment. Any Class Member
16 who is an Aggrieved Employee who requests timely exclusion will still be subject to the
17 Released PAGA Claims to the fullest extent permitted by law and receive an Individual PAGA
18 Payment. All Parties and their counsel, including Defendants’ respective members, member
19 managers, owners, officers, and directors, shall not encourage or solicit opt-outs or objections,
20 directly or indirectly, through any means.

21 (b) Binding Effect on Participating Class Members. All Participating Class
22 Members will: (i) be bound by the terms and conditions of this Agreement, the Judgment, and
23 the releases set forth herein; and (ii) except as otherwise provided herein, will be deemed to have
24 waived all objections and oppositions to the fairness, reasonableness, and adequacy of the
25 Settlement.

26 (c) Objections to Settlement. Any Class Member, other than Plaintiff, who
27 does not submit a valid and timely Request for Exclusion may object to the terms of this
28 Agreement. To object, a Class Member shall inform the Administrator, in writing, of his or her

1 objection which must be postmarked by the Response Deadline at the address set forth in the
2 Notice. Such objection shall include the Objecting Class Member's full name, address,
3 telephone number, last four digits of the social security number or date of birth, signature, and
4 dates of employment with Defendants, in addition to the case name and number, the basis for the
5 objection, including any legal support and each specific reason in support of the objection, as
6 well as any documentation or evidence in support thereof, and, if the Objecting Class Member is
7 represented by counsel, the name and address of his or her counsel. The Administrator shall
8 provide objections, if any, to Class Counsel and Defense Counsel within three (3) calendar days
9 of receipt, and the Administrator shall attach the same to its declaration of due diligence and file
10 with the Court prior to the Final Approval Hearing. An Objecting Class Member remains
11 eligible to receive monetary compensation from the Settlement. Plaintiff and Defendants shall
12 not be responsible for any fees, costs, or expenses incurred by an Objecting Class Member
13 and/or his or her counsel related to any objections to the Settlement. Submitting an objection
14 does not preserve the right to appeal a final judgment. Rather, the right to appeal is preserved by
15 becoming a party of record by timely and properly intervening or filing a motion to vacate the
16 judgment under Code of Civil Procedure § 663.

17 (d) Failure to Object. Any Class Member who does not timely and properly
18 become a party of record by intervening or filing a motion to vacate the judgment waives any
19 and all rights to appeal from the Judgment, including all rights to any post-judgment proceeding
20 and appellate proceeding, such as a motion to vacate judgment, motion for new trial, a motion
21 under California Code of Civil Procedure section 473, and extraordinary writs.

22 (e) Responses to Objections. Counsel for the Parties may file a response to
23 any objections submitted by an Objecting Class Member at least five (5) court days before the
24 date of the Final Approval Hearing.

25 (f) Class Members will have until the Response Deadline to object or submit
26 a Request for Exclusion to the Administrator by U.S. Mail. The Administrator shall disclose
27 jointly to Class Counsel and Defense Counsel what objections or Requests for Exclusion were
28 timely submitted on a weekly basis, and upon the request of Class Counsel or Defense Counsel.

1 (g) If the number of valid Requests for Exclusion exceeds 5% of the total of
2 all Class Members, Defendants may, but are not obligated to, elect to withdraw from the
3 Settlement. The Parties agree that, if Defendants withdraw, the Settlement shall be void ab initio,
4 have no force or effect whatsoever, and that neither Party will have any further obligation to
5 perform under this Agreement; provided, however, Defendants will remain responsible for
6 paying all Settlement Administration Expenses incurred to that point. Defendants must notify
7 Class Counsel and the Court of its election to withdraw not later than ten days after the
8 Administrator sends the final list of all exclusions to Counsel; late elections will have no effect.

9 71. Funding of the Settlement Amount. Defendants shall, jointly and severally,
10 deposit the Settlement Amount, plus Defendants' share of payroll taxes owed on Individual Class
11 Payments, with the Administrator within fifteen (15) days after the Effective Date.

12 72. Distribution of Funds. No later than ten (10) calendar days after the deposit of the
13 Settlement Amount by Defendants, the Administrator shall mail the Individual Class Payments
14 to the Participating Class Members, the Individual PAGA Payments to the Aggrieved
15 Employees, the payment to Class Counsel for the Attorneys' Fees and Costs Award, any Service
16 Payment to the Class Representative, the payment to the LWDA for PAGA Penalties, and will
17 pay itself the Administration Costs.

18 73. Deadline for Cashing Settlement Checks. Participating Class Members and
19 Aggrieved Employees shall have 180 calendar days after mailing by the Administrator to cash
20 their settlement checks. The release will be binding upon all Participating Class Members who
21 do not cash their checks within the 180-day period. In the event that any settlement check is
22 returned to the Administrator within 180 days of mailing, the Administrator will, within five (5)
23 business days of receipt of the returned settlement check, perform a skip trace to locate the
24 individual, and notify Defense Counsel and Class Counsel of the results. If a new address is
25 located by these means, the Administrator will have ten (10) business days to re-issue the check.
26 Neither Defendants, Defense Counsel, Class Counsel, Plaintiff, nor the Administrator will have
27 any liability for lost or stolen settlement checks, forged signatures on settlement checks, or
28 unauthorized negotiation of settlement checks. Without limiting the foregoing, in the event a

1 Participating Class Member and/or Aggrieved Employee notifies the Administrator that he or she
2 believes that a settlement check has been lost or stolen, the Administrator shall immediately stop
3 payment on such check. If the check in question has not been negotiated prior to the stop
4 payment order, the Administrator will issue a replacement check.

5 (a) If any Participating Class Member's check is not cashed within the time
6 periods noted above, the check will be void and a stop-payment will be issued, and the
7 Administrator shall issue the unclaimed funds to the California State Controller's Office in the
8 name of the Class Member.

9 (b) If any Aggrieved Employee's check is not cashed within the time periods
10 noted above, the check will be void and a stop-payment will be issued, and the Administrator
11 shall issue the unclaimed funds to the California State Controller's Office in the name of the
12 Aggrieved Employee.

13 **I. Duties of the Parties Prior to the Court's Approval**

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

- 17 (a) Approving as to form and content the proposed Notice;
18 (b) Directing the mailing of the Notice by first class mail to the Class
19 Members;
20 (c) Preliminarily approving this Settlement;
21 (d) Preliminarily certifying the class for purposes of this Settlement;
22 (e) Advising the LWDA of the proposed Settlement; and
23 (f) Scheduling the Final Approval Hearing on the issue of whether this
24 Settlement should be finally approved as fair, reasonable and adequate.

25 **J. Duties of the Parties Following Court's Final Approval**

26 75. In connection with the Final Approval Hearing provided for in this Agreement,
27 Class Counsel shall submit a proposed Final Approval Order:
28

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

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

6 (c) Entering judgment approving settlement.

7 **K. Voiding the Agreement**

8 76. If the Court fails or refuses to issue the Final Approval Order or fails to approve
9 any material condition of this Agreement which effects a fundamental change of the Settlement,
10 the entire Agreement shall be rendered voidable and unenforceable as to all Parties herein at the
11 option of either Party.

12 77. If the Settlement is voided or fails for any reason, Plaintiff and Defendants will
13 have no further obligations under the Settlement, including any obligation by Defendants to pay
14 the Settlement Amount, or any amounts that otherwise would have been owed under this
15 Settlement.

16 78. If the Settlement is voided or fails for any reason, any costs incurred by the
17 Administrator shall be borne equally by Defendants and Plaintiff, unless otherwise specified in
18 this Agreement.

19 **L. Other Terms**

20 79. Waiver. The waiver by one Party of any breach of this Agreement by another
21 Party shall not be deemed a waiver of any other prior or subsequent breach of this Agreement.

22 80. Parties' Authority. The signatories hereto represent that they are fully authorized
23 to enter into this Agreement and bind the Parties hereto to the terms and conditions hereof.

24 81. Mutual Full Cooperation. The Parties agree to fully cooperate with each other to
25 accomplish the terms of this Agreement, including but not limited to, execution of such
26 documents and to take such other action as may reasonably be necessary to implement the terms
27 of this Agreement. The Parties to this Agreement shall use their best efforts, including all efforts
28 contemplated by this Agreement and any other efforts that may become necessary by order of the

1 Court, or otherwise, to effectuate this Agreement and the terms set forth herein. As soon as
2 practicable after execution of this Agreement, Class Counsel shall, with the assistance and
3 cooperation of Defendants and Defense Counsel, take all necessary steps to secure the Court's
4 preliminary and final approval of the settlement, and the final entry of judgment.

5 82. Confidentiality Prior to Preliminary Approval. Plaintiff, Class Counsel,
6 Defendants and Defense Counsel separately agree that, until the Motion for Preliminary
7 Approval of Settlement is filed, they and each of them will not disclose, disseminate and/or
8 publicize, or cause or permit another person to disclose, disseminate or publicize, any of the
9 terms of the Agreement directly or indirectly, specifically or generally, to any person,
10 corporation, association, government agency, or other entity except: (1) to the Parties' attorneys,
11 accountants, or spouses, all of whom will be instructed to keep this Agreement confidential; (2)
12 counsel in a related matter; (3) to the extent necessary to report income to appropriate taxing
13 authorities; (4) in response to a court order or subpoena; (5) in response to an inquiry or
14 subpoena issued by a state or federal government agency, or (6) the Court and LWDA. Each
15 Party agrees to immediately notify each other Party of any judicial or agency order, inquiry, or
16 subpoena seeking such information. Plaintiff, Class Counsel, Defendants and Defense Counsel
17 separately agree not to, directly or indirectly, initiate any conversation or other communication,
18 before the filing of the Motion for Preliminary Approval, any with third party (except the LWDA
19 and Court) regarding this Agreement or the matters giving rise to this Agreement except to
20 respond only that "the matter was resolved," or words to that effect. This paragraph does not
21 restrict Class Counsel's communications with Class Members in accordance with Class
22 Counsel's ethical obligations owed to Class Members.

23 83. No Prior Assignments. The Parties hereto represent, covenant, and warrant that
24 they have not, directly or indirectly, assigned, transferred, encumbered, or purported to assign,
25 transfer, or encumber to any person or entity any portion of any liability, claim, demand, action,
26 cause of action or rights released and discharged by this Agreement.

27 84. No Admission. Defendants deny any and all liability to Plaintiff and/or any Class
28 Member and/or Aggrieved Employee in this Action, as to any and all causes of action that were

1 asserted or that might have been asserted in this Action. Nonetheless, Defendants wish to settle
2 and compromise the matters at issue in the Complaint to avoid further substantial expense and
3 the inconvenience and distraction of protracted and burdensome litigation. Defendants have
4 taken into account the uncertainty and risks inherent in litigation, and without conceding any
5 infirmity in the defenses that they has asserted or could assert against Plaintiff, have determined
6 that it is desirable and beneficial that Plaintiff' claims be settled in the manner and upon the
7 terms and conditions set forth in this Agreement.

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

20 86. Deadlines falling on a Holiday or Weekend. If any deadline or due date discussed
21 herein falls on either a holiday or weekend, it shall fall to the next business day.

22 87. No Publicity. The Parties will not publicize the Settlement or disclose it to third
23 parties prior to the Court granting Preliminary Approval, except as required or necessary to
24 effectuate its terms and comply with law. After the Final Approval Date, Class Counsel and
25 Class Representative agree that they will not discuss the Settlement with the media, any
26 settlement and verdict reporting service, any social media postings or other Internet postings.
27 Nothing herein shall be construed to prevent Class Counsel from the public filing of motions or
28 other case materials in the Action related to seeking and obtaining Court approval of this

1 Settlement and the related awards of attorneys' fees and costs, or to communications with Class
2 Members or their representatives about this Settlement, including through the posting of Court-
3 filed documents on Class Counsel's websites for access solely by the Class Members, or to
4 prevent the Parties or their representatives from communicating with financial or legal advisors
5 regarding the Settlement. In response to any media inquiry, Class Counsel may state only that
6 the Action has been settled on terms mutually agreeable to the Parties.

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

11 *To the Class:*

12 Brian J. Mankin
13 *brian@lmlfirm.com*
14 Lauby, Mankin & Lauby LLP
15 5198 Arlington Ave, PMB 513
16 Riverside, CA 92504
17 Tel: (951) 320-1444 | Fax: (951) 320-1445

18 *To Defendant:*

19 Tyler Rasumssen
20 *trasmussen@fisherphillips.com*
21 FISHER & PHILLIPS LLP
22 2050 Main Street, Suite 1000
23 Irvine, California 92614-8240
24 Telephone: (949) 851-2424
25 Facsimile: (949) 851-0152

26 89. Construction. The Parties hereto agree that the terms and conditions of this
27 Agreement are the result of lengthy, intensive arms' length negotiations between the Parties and
28 that this Agreement shall not be construed in favor of or against any Party by reason of the extent
to which any Party or his or its counsel participated in the drafting of this Agreement. Plaintiff
and Defendants expressly waive the common-law and statutory rule of construction that
ambiguities should be construed against the drafter of an agreement and further agree, covenant,
and represent that the language in all parts of this Agreement shall be in all cases construed as a

1 whole, according to its fair meaning.

2 90. Captions and Interpretations. Paragraph titles or captions contained herein are
3 inserted as a matter of convenience and for reference, and in no way define, limit, extend, or
4 describe the scope of this Agreement or any provision hereof. Each term of this Agreement is
5 contractual and not merely a recital.

6 91. Modification. This Agreement may not be changed, altered, or modified, except
7 in writing and signed by the Parties hereto, and approved by the Court. This Settlement
8 Agreement may not be discharged except by performance in accordance with its terms or by a
9 writing signed by all of the Parties hereto.

10 92. Dispute Resolution. Prior to instituting legal action to enforce the provisions of
11 this Agreement or to declare rights and/or obligations under this Agreement, a Party shall
12 provide written notice to the other Party and allow an opportunity to cure the alleged
13 deficiencies, and Plaintiff and Defendants may agree to seek the help of the Mediator to resolve
14 any dispute they are unable to resolve informally. During this period, the Parties shall bear their
15 own attorneys' fees and costs. This provision shall not apply to any legal action or other
16 proceeding instituted by any person or entity other than Plaintiff or Defendant.

17 93. Choice of Law. This Settlement Agreement shall be governed by and construed,
18 enforced and administered in accordance with the laws of the State of California, without regard
19 to its conflicts-of-law rules.

20 94. Integration Clause. This Settlement Agreement contains the entire agreement
21 between the Parties relating to the settlement and transaction contemplated hereby, and all prior
22 or contemporaneous agreements, understandings, representations, and statements, whether oral
23 or written and whether by a Party or such Party's legal counsel, are merged herein. No rights
24 hereunder may be waived except in writing.

25 95. Binding On Assigns. This Agreement shall be binding upon and inure to the
26 benefit of the Parties hereto and their respective heirs, trustees, executors, administrators,
27 successors and assigns.
28

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

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

11
12 Dated: _____ **PLAINTIFF AND CLASS REPRESENTATIVE**

13
14 _____
15 Manuel Burgos

16 Dated: _____ **DEFENDANT DESTINY HOSPICE CARE, INC.**

17
18 _____
19 By: _____ (name)
20 _____ (title)
21

22 Dated: _____ **DEFENDANT UDOEKPO EKPO**

23
24 _____
25 Udoekpo Ekpo

26 Dated: _____ **DEFENDANT JOY EKPO**

27
28 _____
Joy Ekpo

1 **APPROVED AS TO FORM:**

2
3 Dated: _____

CLASS COUNSEL
LAUBY, MANKIN & LAUBY LLP

4
5 _____
6 Brian J. Mankin
Attorneys for Plaintiff

7
8 Dated: _____

DEFENSE COUNSEL
FISHER & PHILLIPS LLP

9
10 _____
11 Tyler T. Rasmussen, Esq.
Attorneys for Defendant

EXHIBIT “2”

COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT

Burgos v. Destiny Hospice Care, Inc., et al.

(San Bernardino County Superior Court, Case No. CIVSB2308809)

***The San Bernardino County Superior Court authorized this Notice. Read it carefully!
It's not junk mail, spam, an advertisement, or solicitation by a lawyer. You are not being sued.***

You may be eligible to receive money from an employee class action lawsuit (“Action”) against Defendant Destiny Hospice Care, Inc. and its Owners (Udoekpo Ekpo and Joy Ekpo) (collectively “Destiny Hospice” or “Defendant”) for alleged violations of the California Labor Code.

The Action was filed by Manuel Burgos (“Plaintiff” or “Class Representative”) and seeks payment of (1) unpaid wages, statutory damages and penalties, interest and attorneys’ fees on behalf of a class of nonexempt employees employed by Defendant California (“Class Members”) during the Class Period (May 1, 2019, through April 15, 2024); and (2) penalties under the California Private Attorneys General Act (“PAGA”) for all nonexempt employees employed by Defendant in California during the PAGA Period (May 1, 2022, to April 15, 2024) (“Aggrieved Employees”). (Plaintiff and Defendant shall be collectively referred to as the “Parties.”)

The proposed Settlement has two main parts: (1) a Class Settlement requiring Defendant to fund Individual Class Payments to Class Members, and (2) a PAGA Settlement requiring Defendant to fund Individual PAGA Payments to Aggrieved Employees and pay penalties to the California Labor and Workforce Development Agency (“LWDA”). Based on Defendant’s records, and the Parties’ current assumptions, your Individual Class and PAGA Payments are shown in the charts below, along with the applicable data points from which these estimates are derived.

[CLASS MEMBER NAME] [ID/CONTROL NUMBER]

<i>Calculations and Data Points for Estimated Individual Class Payment</i>	
Weeks Worked during Class Period	<i>Estimated Individual Class Payment</i>
INSERT	\$INSERT

<i>Calculations and Data Points for Estimated Individual PAGA Payment</i>	
Total Pay Periods during PAGA Period	<i>Estimated Individual PAGA Payment</i>
INSERT	\$INSERT

Please note that the actual amount you receive may be different from the above and will depend on several factors. (If no amount is stated for your Individual PAGA Payment, then according to Defendant’s records you are not eligible for an Individual PAGA Payment under the Settlement because you didn’t work during the PAGA Period.) If you believe that you worked more time during the periods discussed above, you can submit a challenge by **DATE, 2024** (“**Response Deadline**”). See **Section 4** of this Notice.

The Court has already preliminarily approved the proposed Settlement and approved this Notice. The Court has not yet decided whether to grant final approval. Your legal rights are affected whether you act or do not act. Read this Notice carefully. You will be deemed to have carefully read and understood it. At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement and how much of the Settlement will be paid to Plaintiff and Plaintiff’s attorneys (“Class Counsel”). The Court will also decide whether to enter a judgment that requires Defendant to make payments under the Settlement and requires Class Members and Aggrieved Employees to give up their rights to assert certain claims against Defendant.

If you worked for Defendant during the Class Period and/or the PAGA Period, you have a few options as shown in the Chart below:

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING AND RECEIVE A SETTLEMENT PAYMENT	If you want to receive your full settlement payment, then no further action is required on your part. You will automatically receive a settlement payment if the Settlement receives final approval by the Court. You will be bound by the terms of the Settlement Agreement and will give up your right to sue on the Released Class Claims described in Section 3 .
EXCLUDE YOURSELF	If you do not wish to participate in the settlement of the Class Claims, you may “opt-out” of the settlement of the Class Claims. If you choose to opt-out, you must submit a Request for Exclusion by [REDACTED], 2024 (see Section 6 for more details on how to opt-out). If you opt-out, you will no longer be a Class Member, and you will (1) <u>not</u> receive an Individual Class Payment, but you will preserve your right to pursue the Released Class Claims described below subject to applicable statutes of limitations, and (2) be barred from filing an objection to the settlement. You cannot opt-out of the PAGA portion of the proposed Settlement. Defendant must pay Individual PAGA Payments to all Aggrieved Employees and the Aggrieved Employees must give up their rights to pursue Released PAGA Claims. See Section 6 of this Notice.
OBJECT	If you decide to object to the settlement with respect to the Class Claims because you find it unfair or unreasonable, you must submit an Objection stating why you object to the settlement by [REDACTED], 2024 (see Section 7 for more details on how to object).
DISPUTE THE NUMBER OF WEEKS WORKED	If you believe the number of workweeks that you were credited with working in the chart above is incorrect, you may submit a written dispute to the Administrator (see Section 4 for more details on how to submit a Dispute Form). Defendant’s records will be presumed correct, but you may provide evidence to the Administrator showing how many Work Weeks you believe you should be credited.

YOU MAY ATTEND THE FINAL APPROVAL HEARING, BUT IT’S NOT REQUIRED	
DATE: [REDACTED], 2024 TIME: 8:30 A.M.	At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement. You don’t have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court’s virtual appearance platform. See Section 8 of this Notice.

1. WHAT IS THE ACTION ABOUT?

Plaintiff is a former employee of Destiny Hospice. The Action accuses Defendant of violating California labor laws by failing to pay minimum and overtime wages, failure to provide meal and rest breaks, failure to reimburse business expenses, failure to timely pay wages each period and upon separation of employment, and failure to provide accurate itemized wage statements. Based on the same claims, Plaintiff has also asserted a claim for civil penalties under PAGA).

Defendant strongly denies violating any laws or failing to pay any wages and contends it complied with all applicable laws.

Both Parties are represented by attorneys in the Action. See Section 9 below for their contact information.

2. WHAT DOES IT MEAN THAT THE ACTION HAS SETTLED?

So far, the Court has made no determination whether Defendant or Plaintiff is correct on the merits. In the meantime, Plaintiff and Defendant hired an experienced, neutral mediator in an effort to resolve the Action by negotiating to end the case by agreement (settle the case) rather than continuing the expensive and time-consuming process of litigation. The

negotiations were successful. By signing a lengthy written settlement agreement (“Agreement”), Plaintiff and Defendant have negotiated a proposed Settlement that is subject to the Court’s Final Approval. Both sides agree the proposed Settlement is a compromise of disputed claims. By agreeing to settle, Defendant does not admit any violations or concede the merit of any claims.

Plaintiff and Class Counsel strongly believe the Settlement is a good deal for you because they believe that: (1) Defendant has agreed to pay a fair, reasonable and adequate amount considering the strength of the claims and the risks and uncertainties of continued litigation; and (2) Settlement is in the best interests of the Class Members and Aggrieved Employees. The Court preliminarily approved the proposed Settlement as fair, reasonable and adequate, authorized this Notice, and scheduled a hearing to determine Final Approval.

3. WHAT ARE THE IMPORTANT TERMS OF THE PROPOSED SETTLEMENT?

1. Defendant Will Pay \$450,000 as the “Settlement Amount.” Defendant has agreed to pay a total Settlement Amount of \$450,000, and will deposit the Settlement Amount into an account controlled by the Administrator. The Administrator will use the Settlement Amount to pay the Individual Class Payments, Individual PAGA Payments, Class Representative Service Payment, Class Counsel’s attorney’s fees and expenses, the Administrator’s Costs, and PAGA Penalties to be paid to the California Labor and Workforce Development Agency (“LWDA”). Assuming the Court grants Final Approval, Defendant will fund the Settlement Amount approximately 15 days after the Judgment entered by the Court becomes final. The Judgment will be final on the date the Court enters Judgment, or a later date if the Judgment is appealed.

2. Court Approved Deductions from Gross Settlement. At the Final Approval Hearing, Plaintiff and/or Class Counsel will ask the Court to approve the following deductions from the Settlement Amount, the amounts of which will be decided by the Court at the Final Approval Hearing:

A. Up to one-third of the Settlement Amount (\$150,000.00) to Class Counsel for attorneys' fees and up to \$25,000 for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Action without payment.

B. Up to \$10,000 to the Class Representative as a Service Payment for litigating the Action, working with Class Counsel and representing the Class.

C. \$9,000 to the Settlement Administrator for services administering the Settlement.

D. Up to \$10,000 for PAGA Penalties, allocated 75% to the LWDA PAGA Payment and 25% in Individual PAGA Payments to the Aggrieved Employees based on their share of Pay Periods Worked during the PAGA Period.

E. Participating Class Members have the right to object to any of these deductions. The Court will consider all objections.

3. Net Settlement Distributed to Class Members. After making the above deductions in amounts approved by the Court, the Administrator will distribute the rest of the remainder (the “Net Settlement Amount”) by making Individual Class Payments to Participating Class Members based on their pro rata share of Weeks Worked during the Class Period.

4. Taxes Owed on Payments to Class Members. Plaintiff and Defendant are asking the Court to approve an allocation of 20% of each Individual Class Payment to taxable wages (“Wage Portion”) and 80% to penalties and interest (“Non-Wage Portion”). The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms. Defendant will separately pay employer payroll taxes they owe on the Wage Portion. The Individual PAGA Payments are counted as penalties rather than wages for tax purposes. The Administrator will report the Individual PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.

Although Plaintiff and Defendant have agreed to these allocations, neither side is giving you any advice on whether your Payments are taxable or how much you might owe in taxes. You are responsible for paying all taxes (including penalties and interest on back taxes) on any Payments received from the proposed Settlement. You should consult a tax advisor if you have any questions about the tax consequences of the proposed Settlement.

5. Need to Promptly Cash Payment Checks. The front of every check issued for Individual Class Payments and Individual PAGA Payments will show the date when the check expires (the void date). If you don't cash it by the void date, your check will be automatically cancelled, and the monies will be deposited with the California Controller's Unclaimed Property Fund in your name. If the monies represented by your check is sent to the Controller's Unclaimed Property Fund, you should consult the rules of the Fund for instructions on how to retrieve your money.

6. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated as a Participating Class Member, participating fully in the Settlement, unless you opt-out of the Settlement, not later than the Response Deadline. See Section 6 of this Notice for details on how to Opt-Out.

7. The Proposed Settlement Will be Void If the Court Denies Final Approval. It is possible the Court will decline to grant Final Approval of the Settlement or decline to enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiff and Defendant have agreed that, in either case, the Settlement will be void: Defendant will not pay any money and Class Members will not release any claims against Defendant.

8. Settlement Administrator. The Court has appointed a neutral company, Phoenix Settlement Administrators (the "Administrator") to send this Notice, calculate and make payments, and process Class Members' Requests for Exclusion. The Settlement Administrator will also decide any Disputes over weeks worked, mail and re-mail settlement checks and tax forms, and perform other tasks necessary to administer the Settlement. The Settlement Administrator's contact information is contained in Section 9 of this Notice.

9. Participating Class Members' Release. After the Judgment is final and Defendant has fully funded the Settlement Amount and separately paid all employer payroll taxes, Participating Class Members will be legally barred from asserting any of the claims released under the Settlement. This means that unless you opted out by validly excluding yourself from the Class Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendant or related entities for wages based on the facts alleged in the Action for the duration of the Class Period and PAGA Period, which are resolved by this Settlement.

The Participating Class Members will be bound by the following release:

All Participating Class Members, on behalf of themselves and their respective representatives, agents, heirs, and assigns, release the Released Parties (which includes Defendants and their parents, subsidiaries, directors, owners, shareholders, officers, agents, attorneys, servants, joint employers and employees, past and present, and each of them and anyone acting in concert with foregoing) from all claims alleged in the Complaint or which could have been alleged based solely upon the facts in the Complaint, including but not limited to: (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 timely pay wages upon separation of employment, (g) failure to provide accurate itemized wage statements, and (h) unfair and unlawful competition (the "Released Class Claims"). The operative release period for the Released Class Claims is the Class Period. Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

10. Release of Released PAGA Claims. After the Court's judgment is final, and Defendant has paid the Settlement Amount (and separately paid the employer-side payroll taxes), Plaintiff on behalf of himself, the State of California and the LWDA shall release the Released Parties (which includes Defendants and their parents, subsidiaries, directors, owners, shareholders, officers, agents, attorneys, servants, joint employers and employees, past and present, and each of them and anyone acting in concert with foregoing) of all PAGA claims that Plaintiff alleged against the Released Parties, on behalf of the Aggrieved Employees and the State of California, based on the facts stated in the Complaint and in the relevant LWDA notice letters, including all PAGA claims seeking civil penalties 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 timely pay wages each period, (g) failure to timely pay wages upon separation of employment, (h) failure to provide accurate itemized wage statements, and (i) 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 (“Released PAGA Claims.”) The time period governing the Released PAGA Claims shall be any time during the PAGA Period.

4. WHAT ARE THE IMPORTANT TERMS OF THE PROPOSED SETTLEMENT?

1. Individual Class Payments. The Administrator will calculate Individual Class Payments by (a) dividing the Net Settlement Amount by the total number of Weeks Worked for all Participating Class Members during the Class Period, and (b) multiplying the result by the number of Share Points credited to each individual Participating Class Member during the Class Period.

2. Individual PAGA Payments. The Settlement Administrator will calculate Individual PAGA Payments by (a) dividing \$2,500 by the total number of Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by the number of Weeks Worked by each individual Aggrieved Employee during the PAGA Period.

3. Disputing Weeks Worked. The number of weeks you worked during the Class Period and number of Pay Periods Worked during the PAGA Period, as recorded in Defendant’s records, are stated in the tables on page 2 of this Notice. You have until **DATE** (“Response Deadline”) to dispute the number of Workweeks and Pay Periods credited to you by submitting evidence to the Administrator. Section 9 of this Notice has the Administrator’s contact information.

You need to support your dispute by sending copies of pay stubs or other records. The Administrator will accept Defendant’s calculation of weeks worked based on Defendant’s records as accurate unless you send copies of records containing contrary information. You should send copies rather than originals because the documents will not be returned to you. The Administrator will resolve challenges based on your submission and on input from Class Counsel and Defendant’s Counsel. The Administrator’s decision is final. You can’t appeal or otherwise challenge its final decision.

5. HOW WILL I GET PAID?

1. Participating Class Members and Aggrieved Employees. The Administrator will send, by U.S. mail, a single check to every Participating Class Member (which includes every Class Member who doesn’t opt-out) and Aggrieved Employee. The single check will combine the Individual Class Payment and the Individual PAGA Payment.

2. Aggrieved Employees Only. If you opted out of the Class settlement, but qualify as an Aggrieved Employee, then the Administrator will send, by U.S. mail, a single Individual PAGA Payment check to every Aggrieved Employee, including those who opt out of the Class Settlement.

Your check will be sent to the same address as this Notice. If you change your address, be sure to notify the Administrator as soon as possible. Section 9 of this Notice has the Settlement Administrator’s contact information.

6. HOW DO I OPT-OUT OF THE CLASS SETTLEMENT?

You will be treated as a Participating Class Member, participating fully in the Settlement, unless you opt-out of the Settlement, not later than the Response Deadline.

If you **do not** wish to take part in the release of the Class Claims in the Settlement, you may exclude yourself by sending to the Administrator a “Request for Exclusion” letter/card postmarked no later than , 2024 with your full name, address, telephone number, last four digits of your social security number or your date of birth, and signature. The Request for Exclusion should state:

“I WISH TO BE EXCLUDED FROM THE CLASS IN THE DESTINY HOSPICE LAWSUIT. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT RECEIVE MY INDIVIDUAL CLASS PAYMENT FROM THIS LAWSUIT.”

Any person who submits a timely Request for Exclusion from the Class Claims (1) will not have any rights under this Settlement, including the right to object, appeal or comment on the Settlement; (2) will not be entitled to receive an Individual Class Payment; (3) will preserve the right to pursue the Released Class Claims, and (4) will not be bound by this Settlement, or the Judgment.

You cannot opt-out of the PAGA portion of the Settlement. Class Members who exclude themselves from the Class Claims remain eligible to receive an Individual PAGA Payment.

If you do not want to participate in the Settlement, the Administrator will exclude you based on timely receipt of a writing communicating your request to be excluded. Be sure to personally sign your request, identify the Action as Burgos v. Destiny Hospice Care, Inc., and include your identifying information (full name, address, telephone number, approximate dates of employment, and last four digits of social security number or your date of birth for verification purposes). You must make the request yourself. If someone else makes the request for you, it will not be valid. **Send your request to be excluded to the Administrator by [REDACTED], 2024 (the “Response Deadline”), or it will be invalid.** Section 9 of the Notice has the Administrator’s contact information.

7. HOW DO I OBJECT TO THE SETTLEMENT?

Only Participating Class Members have the right to object to the Settlement. A Participating Class Member who disagrees with any aspect of the Settlement may wish to object. **The deadline for sending written objections to the Administrator is [REDACTED], 2024 (the “Response Deadline”).**

If you wish to object to the proposed Settlement, you or your own attorney must submit a written objection, and the objection must include your full name, address, telephone number, last four digits of the social security number or date of birth, signature, and dates of employment with Defendant, in addition to the case name and number (Burgos v. Destiny Hospice Care, Inc., Case No. CIVSB2308809), the basis for the objection, including any legal support and each specific reason in support of the objection, as well as any documentation or evidence in support thereof. Additionally, if you are represented by an attorney, the objection must include the name and address of your attorney. This objection and all supporting information must be sent to the Administrator at the address listed in Section 9, **postmarked** on or before [REDACTED], 2024.

If you do not comply with these procedures and the deadline for objections, the Court may not consider your objection at the Final Approval Hearing, and you may lose the right to contest the approval of the Settlement. You are still eligible to receive a settlement payment should the settlement become Final even if you object to the settlement. Submitting an objection does not preserve the right to appeal a final judgment. Rather, the right to appeal is preserved by becoming a party of record by timely and properly intervening or filing a motion to vacate the judgment before entry of judgment.

Alternatively, a Participating Class Member can object (or personally retain a lawyer to object at your own cost) by attending the Final Approval Hearing. You (or your attorney) should be ready to tell the Court what you object to, why you object, and any facts that support your objection. See Section 8 of this Notice (immediately below) for specifics regarding the Final Approval Hearing.

8. WHEN IS THE FINAL APPROVAL HEARING?

On [REDACTED], 2024, the Court will hold a public hearing in Department S26 of the Superior Court for the State of California, County of San Bernardino, 247 West 3rd Street, San Bernardino, CA 92415, for the purposes of determining whether the proposed Settlement is fair, adequate and reasonable and should be approved, whether to approve Class Counsel’s applications for attorneys’ fees and costs, whether to approve the payments to the LWDA, and whether to approve Plaintiff’s request for the service award. This hearing may be continued or rescheduled by the Court. Objectors to the proposed settlement will be provided notice in the event that the Final Approval Hearing is continued to a

later date. Class Members who support the proposed Settlement do not need to appear at the hearing and do not need to take any other action to indicate their approval. Class Members who object to the proposed Settlement are not required to attend the Final Approval Hearing.

9. HOW CAN I GET MORE INFORMATION?

If you have questions about this Notice, the process to Opt-Out or Object, or the Settlement, or if you did not receive this Notice in the mail and you believe that you are or may be a member of the Class, you may contact the Administrator for more information or to request that a copy of this Notice be sent to you in the mail. And you may also contact Class Counsel. Contact information for both the Administrator and Class Counsel is provided here:

Settlement Administrator	Class Counsel
Name Mailing Address Telephone Number	Brian Mankin, Esq. <i>brian@LMLfirm.com</i> Peter Carlson, Esq. <i>peter@LMLfirm.com</i> Lauby Mankin Lauby LLP 5198 Arlington Ave, PMB 513 Riverside, CA 92504 Tel: (951) 320-1444

You may also seek advice and guidance from your own private attorney at your own expense, if you so desire.

This Notice is only a summary. For more detailed information, you may review the Settlement Agreement, containing the complete terms of the proposed Settlement, which is on file with the Court and attached to the Declaration of Brian J. Mankin in Support of Motion for Preliminary Approval of Class Action Settlement filed on DATE, 2024 and available to be inspected at any time during regular business hours at the Office of the Clerk, San Bernardino County Superior Court, located at 247 West Third Street, San Bernardino, CA 92415.

DO NOT TELEPHONE THE COURT TO OBTAIN INFORMATION ABOUT THE SETTLEMENT

10. WHAT IF I LOSE MY SETTLEMENT CHECK?

If you lose or misplace your settlement check before cashing it, the Administrator will replace it as long as you request a replacement before the void date on the face of the original check. If your check is already void, you should consult the Unclaimed Property Fund for instructions on how to retrieve the funds.

11. WHAT IF I CHANGE MY ADDRESS?

To receive your check, you should immediately notify the Administrator if you move or otherwise change your mailing address.

EXHIBIT “3”



CASE ASSUMPTIONS

Class Members	400
Opt Out Rate	1%
Opt Outs Received	5
Total Class Claimants	395
Subtotal Admin Only	\$9,406.29

Flat Fee Total \$9,000.00

For 400 Class Members

Pricing Good for Scope of Estimate Only

All Aspects of Escheating to the State of CA Included

Language Translation, Printing & Mailing Included

March 5, 2024

Case: Burgos v. Destiny Hospice, Opt-Out Administration

Phoenix Contact: Michael E. Moore

Contact Number: 949.331.0131

Email: mike@phoenixclassaction.com

Requesting Attorney: Brian J. Mankin

Firm: Lauby, Mankin & Lauby

Contact Number: (951) 320-1444

Email: brian@lmfirm.com

Assumptions and Estimate are based on information provided by counsel. If class size changes, PHX will need to adjust this Estimate accordingly.

Estimate is based on **400** Class Members. Class data **Must** be sent in Microsoft Excel or uploaded in the same format. Class Data Must be sent in one spreadsheet, with no additional programming needed. A rate of \$150 per hour will be charged for any additional analysis or programming. Pricing good for 90 day

Case & Database Setup / Toll Free Setup & Call Center / NCOA (USPS)

Administrative Tasks:	Rate	Hours/Units	Line Item	Estimate
Programming Manager	\$100.00	2		\$200.00
Programming Database & Setup	\$100.00	2		\$200.00
Toll Free Setup*	\$100.00	1		\$100.00
Call Center & Long Distance	\$2.00	56		\$112.00
NCOA (USPS)	\$80.00	1		\$80.00
Total				\$692.00

* Up to 120 days after disbursement

Data Merger & Scrub / Notice Packet, Opt-Out Form & Postage / Language Translation / Website

Project Action	Rate	Hours/Units	Line Item	Estimate
Notice Packet Formatting	\$100.00	2		\$200.00
Language Translation	\$1,000.00	1		\$1,000.00
Data Merge & Duplication Scrub	\$0.10	400		\$40.00
Notice Packet & Opt-Out Form	\$1.35	400		\$540.00
Estimated Postage (up to 2 oz.)*	\$0.87	400		\$348.00
Static Website	\$200.00	1		\$200.00
Total				\$2,328.00

* Prices good for 90 days. Subject to change with the USPS Rate or change in Notice pages or Translation, if any.



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

Skip Tracing & Remailing Notice Packets / Tracking & Programming Undeliverables

Project Action:	Rate	Hours/Units	Line Item	Estimate
Case Associate	\$55.00	2		\$110.00
Skip Tracing Undeliverables	\$1.00	60		\$60.00
Remail Notice Packets	\$1.00	57		\$57.00
Estimated Postage	\$0.87	57		\$49.59
Programming Undeliverables	\$50.00	2		\$100.00
Total				\$376.59

Database Programming / Processing Opt-Outs, Deficiencies or Disputes

Project Action:	Rate	Hours/Units	Line Item	Estimate
Programming Database	\$150.00	1		\$150.00
Non Opt-Out Processing	\$200.00	1		\$200.00
Case Associate	\$55.00	4		\$220.00
Deficiency & Dispute Letters	\$10.00	5		\$50.00
Case Manager	\$85.00	3		\$255.00
Total				\$875.00

Calculation & Disbursement Programming/ Create & Manage QSF/ Mail Checks

Project Action:	Rate	Hours/Units	Line Item	Estimate
Programming Calculations	\$135.00	1		\$125.00
Disbursement Review	\$135.00	2		\$270.00
Programming Manager	\$95.00	2		\$190.00
QSF Bank Account & EIN	\$135.00	1		\$135.00
Check Run Setup & Printing	\$135.00	5		\$675.00
Mail Class Checks *	\$0.80	395		\$316.00
Estimated Postage	\$0.64	395		\$252.80
Total				\$1,963.80

* Checks are printed on 8.5 x 11 in. sheets with W2/1099 Tax Filing & Instructions for downloading tax forms from PHX secure portal



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

Tax Reporting & Reconciliation / Re-Issuance of Checks / Conclusion Reports and Declarations				
Project Action:	Rate	Hours/Units	Line Item	Estimate
Case Supervisor	\$115.00	2		\$230.00
Remail Checks (Postage Included)	\$2.00	83		\$165.90
Case Associate	\$55.00	4		\$220.00
Reconcile Uncashed Checks	\$85.00	5		\$425.00
Conclusion Reports	\$115.00	2		\$230.00
Case Manager Conclusion	\$85.00	3		\$255.00
Final Reporting & Declarations	\$115.00	3		\$345.00
IRS & QSF Annual Tax Reporting * (1 State Tax Reporting & Escheating to the State of CA Included)	\$1,300.00	1		\$1,300.00
Total				\$3,170.90

* All applicable California State & Federal taxes, which include SUI, ETT, and SDI, and FUTA filings. Additional taxes are Defendant's responsibility.

Estimate Total: \$9,406.29



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

TERMS AND CONDITIONS

Provisions: The case estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make any provision for any services or class size not delineated in the request for proposal or stipulations. Proposal rates and amounts are subject to change upon further review, with Counsel/Client, of the Settlement Agreement. Only pre-approved changes will be charged when applicable. No modifications may be made to this estimate without the approval of PSA (Phoenix Settlement Administrators). All notifications are mailed in English language only unless otherwise specified. Additional costs will apply if translation into other language(s) is required. Rates to prepare and file taxes are for Federal and California State taxes only. Additional charges will apply if multiple state tax filing(s) is required. **Pricing is good for ninety (90) days.**

Data Conversion and Mailing: The proposal assumes that data provided will be in ready-to-use condition and that all data is provided in a single, comprehensive Excel spreadsheet. PSA cannot be liable for any errors or omissions arising due to additional work required for analyzing and processing the original database. A minimum of two (2) business days is required for processing prior to the anticipated mailing date with an additional two (2) business days for a National Change of Address (NCOA) update. Additional time may be required depending on the class size, necessary translation of the documents, or other factors. PSA will keep counsel apprised of the estimated mailing date.

Claims: PSA's general policy is to not accept claims via facsimile. However, in the event that facsimile filing of claims must be accepted, PSA will not be held responsible for any issues and/or errors arising out of said filing. Furthermore, PSA will require disclaimer language regarding facsimile transmissions. PSA will not be responsible for any acts or omissions caused by the USPS. PSA shall not make payments to any claimants without verified, valid Social Security Numbers. All responses and class member information are held in strict confidentiality. Additional class members are \$10.00 per opt-out.

Payment Terms: All postage charges and 50% of the final administration charges are due at the commencement of the case and will be billed immediately upon receipt of the data and/or notice documents. PSA bills are due upon receipt unless otherwise negotiated and agreed to with PSA by Counsel/Client. In the event the settlement terms provide that PSA is to be paid out of the settlement fund, PSA will request that Counsel/Client endeavor to make alternate payment arrangements for PSA charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the settlement account is funded by Defendant, or no later than the time of disbursement. Amounts not paid within thirty (30) days are subject to a service charge of 1.5% per month or the highest rate permitted by law.

Tax Reporting Requirements

PSA will file the necessary tax returns under the EIN of the QSF, including federal and state returns. Payroll tax returns will be filed if necessary. Under the California Employment Development Department, all taxes are to be reported under the EIN of the QSF with the exception of the following taxes: Unemployment Insurance (UI) and Employment Training Tax (ETT), employer-side taxes, and State Disability Insurance (SDI), an employee-side tax. These are reported under Defendant's EIN. Therefore, to comply with the EDD payroll tax filing requirements we will need the following information:

1. Defendant's California State ID and Federal EIN.
2. Defendant's current State Unemployment Insurance (UI) rate and Employment Training Tax (ETT) rate. This information can be found in the current year DE 2088, Notice of Contribution Rates, issued by the EDD.
3. Termination dates of the class members, or identification of current employee class members, so we can account for the periods that the wages relate to for each class member.
4. An executed Power of Attorney (Form DE 48) from Defendant. This form is needed so that we may report the UI, SDI, and ETT taxes under Defendant's EIN on their behalf. If this form is not provided we will work with the EDD auditors to transfer the tax payments to Defendant's EIN.
5. Defendant is responsible for reporting the SDI portion of the settlement payments on the class member's W-2. PSA will file these forms on Defendant's behalf for an additional fee and will issue an additional W-2 for each class member under Defendant's EIN, as SDI is reported under Defendant's EIN rather than the EIN of the QSF. The Power of Attorney (Form DE 48) will be needed in order for PSA to report SDI payments.

EXHIBIT “4”