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SUPERIOR COURT OF THE STATE OF CALIFORNIA
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 the Hon. Christian Towns, Dept.
S26, for all purposes]*

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

Hearing:
Date: October 8, 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 am a partner with the law firm of Lauby Mankin Lauby LLP, which has offices in Orange County and Riverside County, and I manage the firm's employment law practice. I am thoroughly familiar with and have personal knowledge of all of the facts set forth herein. I submit this declaration in support of Plaintiff's Motion for Final Approval of this Class Action Settlement. If called as a witness, I could and would competently testify thereto.

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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 15 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 in excess of \$250
14 million in damages for my clients and the class members (who often work as nurses, ambulance
15 drivers, technicians, warehouse workers, truck drivers, sales, professional occupations and
16 countless other trades). My team and I once held the record for the largest known PAGA-only
17 case in California’s history - a \$12.5 million-dollar court approved settlement, which followed
18 extensive litigation, summary adjudication and writs to the CA Supreme Court against a Fortune
19 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. In
21 2018, I was lead counsel in a PAGA case that my firm tried in the Orange County Superior Court
22 and received a \$425,000 judgment. In 2019, I was co-counsel in a class action case against
23 Walmart in District Court, wherein the jury awarded Plaintiffs and the class over \$6 million.
24 Both cases were appealed.

25 6. I was named by the LA Times as one “Southern California Leading Lawyers” in
26 the May 2023 issue of Consumer Attorney’s of Southern California (a recognition given to 17
27 employment/labor law attorneys in 2023). Additionally, over the last five consecutive years, I
28 have been selected by my peers as a “Super Lawyer” in Employment Litigation, a distinction that

only 5% of lawyers receive.

ADEQUACY OF THE SETTLEMENT

7. The Class, as conditionally certified by this Court, consists of 343 current and former nonexempt employees employed by Defendant Destiny Hospice Care, Inc., in California at any time during the Class Period of May 1, 2019, through April 15, 2024.

8. As set forth in the Declaration of the Administrator, the Net Settlement Amount is approximately \$236,414.75, after the deductions set forth in the chart below:

<i>Settlement Amount</i>	\$ 450,000.00
Attorneys' Fees (1/3)	\$ 150,000.00
Litigation Costs	\$ 14,585.25
Administrator Costs	\$ 9,000.00
PAGA Penalties	\$ 30,000.00
Class Representative Service Award	\$ 10,000.00
<i>Net Settlement Amount</i>	\$ 236,414.75

9. The process of mailing the Notice Packets was very successful, as all Class Notices were determined to be deliverable, resulting in a 100% success rate in mailing the notices.

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

11. As discussed at length in Plaintiffs' motion for preliminary approval, as well as in the Motion for Final Approval, this Settlement is favorable to the Class and the release is narrowly limited to the claims alleged.

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

13. I believe that the Settlement is fair, reasonable and adequate, and in the best interests of the Class, given the litigation risks and delay inherent in further litigation and possible appeals. As set forth in Plaintiff's motion for preliminary approval and the declarations

submitted in support thereof, Defendants vigorously contested Plaintiff's claims, and Plaintiff faced real challenges in certifying the Class and obtaining a recovery on the claims in this matter. Nonetheless, the Parties concluded that further litigation would be protracted and expensive, and that it is desirable that the action be fully and finally settled in the manner and upon the terms and conditions set forth in the Settlement Agreement in order to limit further expense, inconvenience and distraction, to dispose of burdensome and protracted litigation, and to permit the operation of Defendants' business without further expensive litigation and the distraction and diversion of its personnel with respect to matters at issue. All parties took into account the uncertainty of risks inherent in any litigation, especially in complex cases such as this case. The parties determined that it is desirable and beneficial to both the Class and Defendants that this case be settled. Risks on both sides were considered in reaching the Settlement Agreement. The recoveries contemplated by the Settlement represent a good result for the Class, fairly proportioned to the likely risk-adjusted recovery in litigation.

ADEQUACY OF COUNSEL AND
REASONABLENESS OF REQUESTED FEE AND COST AWARDS

14. As set forth above, I have handled well over 250 class and representative actions, have been appointed as class counsel and have successfully resolved over half of those cases, and many others remain pending and will successfully resolve in the future while recovering hundreds of millions of dollars for my clients and Class Members. This is substantially better than average accordingly to Mayer Brown LLP's study entitled, *An Empirical Analysis of Class Actions*, cited in *Laguna v. Coverall North America, Inc.*, No. 12-55479 (9th Cir. 2014), which found that only one-third of class actions are successful, compared to two-thirds that are defeated and result in no payment to the class members.¹

15. When this case was taken on a contingency fee basis, with Plaintiff's counsel agreeing to assume responsibility for all litigation costs, the ultimate result was far from certain. In the course of this litigation, Class Counsel paid all costs including filing fees, court costs,

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

1 research fees, and mediation costs. There was never a guarantee that we would recoup those
2 expenditures.

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

7 17. There are several additional factors why I believe that the Court should award
8 one-third of the common fund as reasonable attorneys' fees. First, Class Counsel's efforts
9 resulted in a common fund settlement amount of \$450,000, whereby the Class Members will
10 receive approximately \$689.26 on average and up to a maximum of \$2,789.59 for those
11 employees that worked the entire Class Period. This is an good result in light of the disputed
12 nature of the claims alleged. This result was achieved by the work and success of my office,
13 who negotiated the settlement after extensive litigation, discovery, preparation, investigation,
14 mediation, and substantial work thereafter.

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

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

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

1 my office, which is a small firm. If, despite these hardships and risks, the best my office could
2 hope for is merely to be paid our hourly rate, then Class Counsel would not be compensated for
3 the hardships and serious risks we faced litigating this contingency case, and would not be
4 incentivized to take on similar cases in the future. Indeed, not all class/PAGA cases are
5 successful. Many cases end with no fees or a greatly reduced fee that is far less than lodestar,
6 often due to no fault of counsel (i.e., bankruptcy, change in the law, consolidation- coordination-
7 preemption, being top filed, etc.). As noted in the Mayer Brown LLP's study discussed above,
8 only one-third of class actions are successful, compared to two-thirds that are defeated and result
9 in no payment to the class members.

10 21. Fifth, the request for attorney's fees in the amount of one-third of the common
11 fund falls well within the norms accepted by state and federal courts in California in comparable
12 wage and hour actions actually handled by my office. Moreover, the award of a one-third fee
13 recovery under the common fund doctrine was approved by the California Supreme Court in
14 *Laffitte, supra*, 1 Cal.5th 480, 503.

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

17 23. At my office, through mediation this case was primarily handled by my senior
18 associate attorney, Peter Carlson, while I performed the role of the supervising attorney, but after
19 mediation I took on a leading role in handling the case so that Mr. Carlson could focus on new
20 cases. As set forth in his declaration, Mr. Carlson works exclusively with me on employment
21 law matters and has been in practice for 10 years. He bills at the hourly rate of \$650/hour. I
22 have been in practice for 23 years, with most of those years handling complex litigation and for
23 over the last 15 years, my practice has almost entirely consisted of handling class action wage
24 and hour matters. My billing rate is \$775/hour. I believe these rates are consistent with Plaintiff
25 and Defense attorneys who handle complex class action litigation, if not somewhat lower.

26 24. The hourly rates above are comparable to those of other attorneys with equal or
27 similar experience, if not somewhat lower (i.e., the Laffey Matrix at www.laffeymatrix.com
28 indicates that the benchmark rates are: \$777/hour for an 8–10-year attorney, \$878/hour for a 11–

1 19-year attorney, and \$1,057/hour for a 20+ year attorney). Moreover, the Wolters Kluwer 2023
2 Real Rate Report (“Real Rate Report”) provides directly applicable information in this regard.
3 The Real Rate Report is based on an enormous and statistically significant compilation of data,
4 comprising millions of billing entries from a hundred thousand individual timekeepers who
5 worked at thousands of law firms. The Real Rate Report then compiles and analyzes this data to
6 provide the hourly rates for partners and associates in major metropolitan areas. For the southern
7 California area: (a) the rate for partners in Los Angeles is between \$840 and \$1,159 per hour for
8 the middle and upper quartiles, and (b) the rates for associates with seven or more years of
9 experience, the median rate is \$674 per hour, and the upper quartile rate is \$888 per hour. And,
10 perhaps most importantly, the information provided in the Real Rate Report is not based on self-
11 reported numbers, surveys, sampling, or reviews or other publications – instead, the Real Rate
12 Report is based on the actual hours and fees billed by law firms, which makes it “a much better
13 reflection of true market rates than self-reported rates in all practice areas.” *Brown v. CVS*
14 *Pharmacy, Inc.* (C.D. Cal. Apr. 24, 2017) 2017 U.S. Dist. LEXIS 182309, at *21; *PLCM Group*,
15 22 Cal.4th at 1085 (holding that rates should be premised upon precisely this form of
16 independent, “objective” rate data that reflects “fair market” rates actually billed to clients “in
17 the community for similar work”).

18 25. The table below includes a summary of the hours worked by my office, plus an
19 estimated 30 hours that I will bill in finalizing and filing the motion, preparing for and attending
20 the approval hearing, and working with the Settlement Administrator and defense counsel to
21 finalize this matter. Thus, the actual aggregated lodestar between the attorneys that have worked
22 on this case is approximately \$159,970, resulting in a *negative multiplier*, which is summarized
23 in the following table:

24 ///

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Attorney/Timekeeper	Role	Yrs Experience	Rate	Hours	Fee
Brian J. Mankin (Partner – LML)	Trial Counsel	23	\$775	77²	\$59,675
Peter Carlson (Senior Associate – LML)	Handling Attorney	10	\$650	154.3	\$100,295
Grand Total for All Attorneys					\$159,970

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

27. In the course of prosecuting this action, my office has incurred expenses that were incidental and necessary to the effective representation of the Class. These expenses included but were not limited to: court filings, messenger services, postage, fax transmission expenses, transportation, mediator fees, and other incidental expenses directly related to this action. The Settlement Agreement provided up to \$25,000 in costs. Through final approval, my office incurred \$14,585.25 in litigation costs (see Exhibit “B” attached hereto). The saving will be placed in the Net Settlement Amount for payment to the Class Members. Defendants do not oppose this request for costs.

REASONABLENESS OF REQUESTED SERVICE AWARD

28. I also believe that the service award of \$10,000 to Plaintiff is fair and warranted for the reasons outlined in his declaration and in the motion. He came forward and worked directly with our offices in analyzing the claims and documents, providing valuable information. Indeed, his participation was an essential element of Defendants’ desire to mediate and of the pre and post mediation analysis that allowed Class Counsel to settle the case. In addition to foregoing to separate individual claims, he also took on various risks, including the risk that he could have been ordered to pay Defendants’ costs if he lost and the risk of retaliation and being black-balled in the industry. He also provided a full release of all claims. Defendants do not oppose the requested service award.

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30. A true and correct copy of the Settlement Agreement is attached hereto as Exhibit “A.”

30. A true and correct copy of the Settlement Agreement is attached hereto as Exhibit “A.”

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

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

By: Brian J. Mankin
Brian J. Mankin, Esq.

DECLARATION OF BRIAN MANKIN IN SUPPORT OF MOTION FOR FINAL APPROVAL

EXHIBIT “A”

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Attorneys for Defendants Destiny Hospice Care, Inc., Udoekpo Ekpo, and Joy Ekpo

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]*

**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

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

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

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

(d) Allocation of Individual Class Payments: The Individual Class Payments to Participating Class Members will be allocated as follows: 20% will be allocated as wages subject to withholding of all applicable local, state and federal taxes; and 80% will be allocated for interest and statutory penalties (pursuant to, e.g., California Labor Code sections 203, 210, 226) from which no taxes will be withheld. The Administrator will issue to each Participating 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.

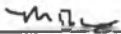
25 95. Binding On Assigns. This Agreement shall be binding upon and inure to the
26 benefit of the Parties hereto and their respective heirs, trustees, executors, administrators,
27 successors and assigns.
28

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

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

Dated: May 16, 2024

PLAINTIFF AND CLASS REPRESENTATIVE


Manuel Burgos (May 16, 2024 13:13 PDT)

Manuel Burgos

Dated: Jun 3, 2024

DEFENDANT DESTINY HOSPICE CARE, INC.


joyekpo (Jun 3, 2024 18:07 PDT)

By: Joy Ekpo (name)

Executive Director (title)

Dated: _____

DEFENDANT UDOEKPO EKPO


Udoekpo Ekpo

Dated: Jun 3, 2024

DEFENDANT JOY EKPO


joyekpo (Jun 3, 2024 18:07 PDT)

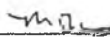
Joy Ekpo

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11
12 Dated: May 16, 2024

PLAINTIFF AND CLASS REPRESENTATIVE

13 
14 Manuel Burgos (May 16, 2024 13:13 PDT)

15 Manuel Burgos

16 Dated: _____

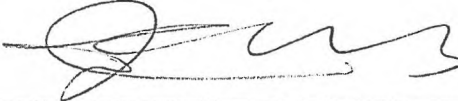
DEFENDANT DESTINY HOSPICE CARE, INC.

17
18
19 By: Udoekpo Ekpo (name)

20 CFO (title)

21
22 Dated: June 5, 2024

DEFENDANT UDOEKPO EKPO

23 

24 Udoekpo Ekpo

25
26 Dated: _____

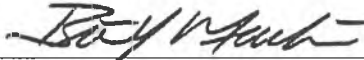
DEFENDANT JOY EKPO

27
28 Joy Ekpo

1 **APPROVED AS TO FORM:**

2
3 Dated: May 16, 2024

CLASS COUNSEL
LAUBY, MANKIN & LAUBY LLP



Brian J. Mankin
Attorneys for Plaintiff

7
8 Dated: June 5, 2024

DEFENSE COUNSEL
FISHER & PHILLIPS LLP



Tyler T. Rasmussen, Esq.
Attorneys for Defendant

EXHIBIT “B”

All Expenses
Lauby, Mankin & Lauby LLP

Staff Member = All (Inactive Included)
Group By Staff Member Group
Client - Project = 14000-00544 Burgos v Destiny
Hospice (Active Only)
Activity Code = All
Expense Code = All
View = Original
Approval Status = All
Selected Expenses = All
From Earliest To Latest

Entered	Status	Approval	BillableType	Expense	Staff Member	Price	Mark Up %	Qty	Amount
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Manuel Burgos
14000-00544 Burgos v Destiny Hospice

04-28-2023	Approved		Billable	E112 Court fees	Chiarto, Tracie	75.00	0.00	1.00	75.00
Fees to LWDA to submit PAGA letter									

04-28-2023	Approved		Billable	Attorney Service	Chiarto, Tracie	462.66	0.00	1.00	462.66
TurboCourt Order #7942028 - file complaint									

04-28-2023	Approved		Billable	E108 Postage	Chiarto, Tracie	28.02	0.00	1.00	28.02
Postage for May 2023									

04-28-2023	Approved		Billable	E101 Copying	Chiarto, Tracie	0.06	0.00	112.00	6.72
112 copies @ .06 each - initial letters to company									

05-08-2023	Approved		Billable	Attorney Service	Chiarto, Tracie	140.03	0.00	1.00	140.03
Bosco Inv #8807406									

Serve: Destiny Hospice Care, Inc., a California Corporation
Summons; Complaint; Civil Case Cover Sheet; Certificate of Assignment; ADR
Court: San Bernardino County Superior Court
Completed on: 05/04/2023

06-15-2023	Approved		Billable	E112 Court fees	Chiarto, Tracie	1,002.00	0.00	1.00	1,002.00
Receipt for San Bernardino Superior Court for complex fees									

06-22-2023	Approved		Billable	Attorney Service	Chiarto, Tracie	9.95	0.00	1.00	9.95
TurboCourt Order #8085796 - file Joint Statement									

07-03-2023	Approved		Billable	Attorney Service	Chiarto, Tracie	72.00	0.00	1.00	72.00
Courtcall ID #11714177 for 6/30/23 CMC									

07-03-2023	Approved		Billable	Attorney Service	Chiarto, Tracie	9.95	0.00	1.00	9.95
TurboCourt Order #8106018 - file FAC									

12-13-2023	Approved		Billable	E125 Mediation fees	Chiarto, Tracie	5,000.00	0.00	1.00	5,000.00
Kevin Barnes Inv #2023-517-KB for 2/7/24 mediation									

02-15-2024	Approved		Billable	E119 Experts	Chiarto, Tracie	6,930.00	0.00	1.00	6,930.00
Berger Consulting Inv #10384									

02-29-2024	Approved		Billable	Attorney Service	Chiarto, Tracie	6.30	0.00	1.00	6.30
LoopUp Inv #468543 Dated 2-29-24 for 2/26/24 conference call									

All Expenses
Lauby, Mankin & Lauby LLP

Staff Member = All (Inactive Included)
Group By Staff Member Group
Client - Project = 14000-00544 Burgos v Destiny Hospice (Active Only)
Activity Code = All
Expense Code = All
View = Original
Approval Status = All
Selected Expenses = All
From Earliest To Latest

Entered	Status	Approval	BillableType	Expense	Staff Member	Price	Mark Up %	Qty	Amount
<u>Manuel Burgos</u> 14000-00544 Burgos v Destiny Hospice									
03-11-2024	Approved		Billable	Attorney Service	Chiarito, Tracie	20.68	0.00	1.00	20.68
OneLegal Order #22332780 - file Joint Statement									
03-29-2024	Approved		Billable	Attorney Service	Chiarito, Tracie	20.68	0.00	1.00	20.68
OneLegal Order #22189835 - file Amendments to Complaint									
05-17-2024	Approved		Billable	Attorney Service	Chiarito, Tracie	212.70	0.00	1.00	212.70
Bosco Inv #11067522 File and conform. -Motion -Declaration x2 -Proposed Order * advance fees* Court: San Bernardino County Superior Court Completed on: 05/16/2024									
06-10-2024	Approved		Billable	Attorney Service	Chiarito, Tracie	72.55	0.00	1.00	72.55
Bosco Inv #11187009 File and conform in Dept. S26. -Supplemental Declaration Court: San Bernardino County Superior Court Completed on: 6/6/2024									
06-11-2024	Approved		Billable	Attorney Service	Chiarito, Tracie	72.00	0.00	1.00	72.00
Courtcall ID #11832872 for 6/10/24 MPA									
09-13-2024	Approved		Billable	Attorney Service	Chiarito, Tracie	300.00	0.00	1.00	300.00
Estimated costs to file MFA and supporting documents via Bosco									
09-13-2024	Approved		Billable	Attorney Service	Chiarito, Tracie	144.00	0.00	1.00	144.00
Estimated costs for Courtcall for MFA									

Project Total 14,585.24
Client Total 14,585.24
Grand Total 14,585.24

EXHIBIT “C”