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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
CIVIL DIVISION

OCT 24 2024

By: Stephanie Reed
Stephanie Reed, Deputy

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]*

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

1 Plaintiff Manuel Burgos' Motion for Final Approval of the Settlement (the "Final
2 Approval Motion"), as set forth in the Class Action Settlement Agreement and Release of Claims
3 ("Settlement Agreement"), came for a hearing in Department S26 of the above-entitled court.
4 The Final Approval Motion was unopposed by Defendants Destiny Hospice Care, Inc., and its
5 owners Udokpo and Joy Ekpo ("Defendants").

6 Having considered the Final Approval Motion, the Settlement Agreement, the
7 Declarations, and all other materials properly before the Court and having conducted an inquiry
8 pursuant to California Rules of Court, rule 3.769(g), the Court finds that the Settlement
9 Agreement was entered by all parties in good faith, and the Settlement Agreement is approved.
10 Due and adequate notice having been given to the Class, and the Court having considered the
11 Settlement Agreement, all papers filed and proceedings had herein and all oral and written
12 comments received regarding the proposed settlement, and having reviewed the record in this
13 Action, and good cause appearing,

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

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

17 2. The Court has jurisdiction over the subject matter over this Action, the
18 Plaintiff/Class Representative Manuel Burgos, the Class Members, and Defendants. The Court
19 finally appoints Plaintiff as Class Representative, and further appoints Brian Mankin and Peter
20 Carlson of Lauby Mankin Lauby LLP as Class Counsel.

21 3. For purposes of effectuating this Order and Judgment, this Court has certified the
22 following class: "All current and former nonexempt employees employed by Defendants in
23 California at any time during the Class Period of May 1, 2019, through April 15, 2024." The
24 Court deems this definition sufficient for purposes of California Rules of Court, rule 3.765(a).

25 4. As set forth in the Settlement Agreement, Aggrieved Employees includes: "All
26 current and former nonexempt employees employed by Defendants in California at any time
27 during the PAGA Period of May 1, 2022, through April 15, 2024."
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1 5. The Court finds that the distribution of the Class Notice, as provided for in the
2 Order Granting Preliminary Approval for the Settlement, constituted the best notice practicable
3 under the circumstances to all Class Members and fully met the requirements of California law
4 and due process under the California and United States Constitution. Based on evidence and
5 other material submitted, the actual notice to the class was adequate.

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

8 7. The Released Class Claims on behalf of the Participating Class Members
9 includes:

10 All claims alleged in the Complaint or which could have been
11 alleged based solely upon the facts in the Complaint, including but
12 not limited to: (a) failure to pay minimum wages, (b) failure to pay
13 overtime wages, (c) failure to provide meal periods, (d) failure to
14 provide rest breaks, (e) failure to reimburse business expenses, (f)
15 failure to timely pay wages upon separation of employment, (g)
16 failure to provide accurate itemized wage statements, and (h)
17 unfair and unlawful competition. The time period governing the
18 Released Class Claims shall be any time during the Class Period.

16 8. The Released PAGA Claims on behalf of the Aggrieved Employees includes:

17 All PAGA claims that Plaintiff alleged against the Released
18 Parties, on behalf of the Aggrieved Employees and the State of
19 California, based on the facts stated in the Complaint and in the
20 relevant LWDA notice letters, including all PAGA claims seeking
21 civil penalties premised upon: (a) failure to pay minimum wages,
22 (b) failure to pay overtime wages, (c) failure to provide meal
23 periods, (d) failure to provide rest breaks, (e) failure to reimburse
24 business expenses, (f) failure to timely pay wages each period, (g)
25 failure to timely pay wages upon separation of employment, (h)
26 failure to provide accurate itemized wage statements, and (i) all
27 other claims for civil penalties recoverable under the Private
28 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.

9. There were no Objections to the Settlement, and no Requests for Exclusion. As
such, all Class Members are Participating Class Members, who are entitled to an Individual Class

1 Payment pursuant to the Settlement and this Judgment. Likewise, all Aggrieved Employees are
2 entitled to an Individual PAGA Payment, constituting a pro rata share of PAGA Penalties.

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

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

9 12. With respect to the Class and for purposes of approving this Settlement, this Court
10 finds and concludes as follows: (a) the Class Members are ascertainable and so numerous that
11 joinder of all members is impracticable; (b) there are questions of law or fact common to the
12 Class Members, and there is a well-defined community of interest among the Class Members
13 with respect to the subject matter of the Action; (c) the claims of the Class Representative are
14 typical of the claims of the Class Members; (d) the Class Representative has fairly and
15 adequately protected the interests of the Class Members; (e) a class action is superior to other
16 available methods for an efficient adjudication of this controversy; and (f) Class Counsel are
17 qualified to serve as counsel for the Plaintiff in his individual and representative capacity and for
18 the Class.

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

23 14. Neither the Settlement Agreement nor the Settlement contained therein, nor any
24 act performed or document executed pursuant to or in furtherance of the Settlement Agreement
25 or the Settlement (i) is or may be deemed to be or may be used by the Class Representative or
26 Participating Class Members as an admission of, or evidence of, the validity of any of the
27 Released Class Claims, or of any wrongdoing or liability of Defendants or any of the other
28 Released Parties; or (ii) is or may be deemed to be or may be used by any of the Class

1 Representative or Participating Class Members as an admission of, or evidence of, any fault or
2 omission of Defendants or any of the other Released Parties in any civil, criminal, or
3 administrative proceeding in any court, administrative agency, or other tribunal. Defendants or
4 any of the other Released Parties may file the Settlement Agreement and/or the Judgment from
5 this Action in any other action that may be brought against it or them in order to support a
6 defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good
7 faith settlement, judgment bar or reduction, or any theory of claim preclusion or issue preclusion
8 or similar defense or counterclaim.

9 15. The Settlement Amount to be paid under the Settlement Agreement is \$450,000.
10 From this amount, Class Counsel sought a Class Counsel Fee Payment of \$150,000, Class
11 Counsel's litigation expenses of \$14,585.25, a Service Payment to Class Representative Plaintiff
12 Manuel Burgos of \$10,000, an Administrator Expenses Payment of \$9,000.00 to Phoenix
13 Settlement Administrators, and \$22,500 to the LWDA for PAGA penalties and \$7,500 to the
14 Aggrieved Employees for PAGA Penalties. Defendants do not oppose these requests. In
15 addition, and concurrently with paying the Settlement Amount, Defendants shall separately pay
16 all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, which
17 shall be reported through the Settlement Administrator. The Court finds that the Settlement
18 Amount is fair, reasonable and adequate, and awards the payments set forth below from the
19 Settlement Amount:

20 A) \$150,000.00 to Class Counsel for attorneys fees in light of the benefit
21 obtained on behalf of the Class;

22 B) \$14,585.25 to Class Counsel for litigation costs;

23 C) \$10,000 to Class Representative Manuel Burgos as a Service Award;

24 D) \$9,000.00 to the Settlement Administrator, Phoenix Settlement
25 Administrators;

26 E) \$22,500 to the LWDA;

27 F) \$7,500 to the Aggrieved Employees on a pro rata basis;

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

5 16. The Settlement Administrator is directed to calculate the Participating Class
6 Member's Individual Class Payments and the Aggrieved Employees' Individual PAGA
7 Payments and issue all payments within in accordance with the Settlement Agreement and this
8 Order/Judgment.

9 17. Concurrently with mailing the settlement checks to the Participating Class
10 Members and Aggrieved Employees, the Settlement Administrator shall include a Notice of
11 Entry of Judgment to all Class Members either on a postcard or as a detachable portion of the
12 check for the Participating Class Members, noting the following: "Please be advised that on
13 [insert date], the Superior Court of California for the County of San Bernardino entered
14 Judgment in the case entitled *Burgos v. Destiny Hospice Care, Inc., et al.*, pending in Superior
15 Court of the State of California, County of San Bernardino, Case No. CIVSB2308809, on behalf
16 of all current and former nonexempt employees employed by Defendants in California at any
17 time during the Class Period of May 1, 2019, through April 15, 2024."

18 18. The Class Members shall have 180 days to negotiate the settlement check from
19 the date of issuance by the Settlement Administrator. In the event that a Participating Class
20 Member or Aggrieved Employee does not negotiate his/her check within this time period, the
21 check will be canceled. The value of the unclaimed funds in the Settlement Administrator's
22 account as a result of a failure to timely cash a settlement check shall be issued to the State
23 Controller's Office for the State of California in the name of the person.

24 19. The following dates shall govern for purposes of this implementing this
25 Order/Judgment:
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October 24, 2024	The Final Order is entered and the Effective Date occurs.
November 8, 2024	Defendants shall wire the Settlement Amount, plus their share of payroll taxes, to the Settlement Administrator.
November 18, 2024	Settlement Administrator to issue all Individual Class Payments to the Participating Class Members, Individual PAGA Payments to the Aggrieved Employees, payment to Class Counsel for the Class Counsel Fee Payment and Litigation Expenses, the Service Payment to the Class Representative, the payment to the LWDA for PAGA Penalties, and pay itself the Administrator Costs.
180 days after payment is issued (approximately May 17, 2025)	Deadline for Participating Class Members and Aggrieved Employees to cash checks.
15 days before Hearing re Disbursement	Counsel to file a declaration from the Settlement Administrator setting forth the disbursements that were actually made, including any uncashed checks and status of process of forwarding unclaimed funds to the State Controller.
Date: <u>10/24</u> , 2025 Time: <u>8:30 am</u>	Hearing re: status of disbursements.

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

IT IS SO ORDERED.

Dated: 10/24/2024

C. Towns
HON. CHRISTIAN TOWNS

Christian Towns

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