

SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS - PAGA

This *Settlement Agreement and Release of Claims – PAGA* (hereafter “PAGA Agreement”) is made and entered into by and between defendants Gregory L. McEwen DDS, Inc. and Gregory L. McEwen (collectively referred to hereafter as “Company”), and plaintiff Sarah Avilarios (“Plaintiff”), on behalf of herself and all other similarly aggrieved employees of Company (“Aggrieved Employees”) and the State of California (aggrieved PAGA employees and the State collectively referred to hereafter as “PAGA Settlement Members”).

WITNESSETH:

WHEREAS, Plaintiff was previously employed by defendant Gregory L. McEwen DDS, Inc.;

WHEREAS, Plaintiff thereafter commenced a lawsuit against Company, in Sacramento County Superior Court, case no. 34-2020-00285631, in which she filed a Complaint against Company in on or around September 23, 2020 (the “Action”), seeking in her Tenth Cause of Action civil penalties, costs and attorneys’ fees for Labor Code violations pursuant to the Private Attorneys General Act on behalf of herself, other allegedly Aggrieved Employees and the State of California (hereafter “PAGA Claim”);

Whereas the Aggrieved Employees covered by the PAGA Claim consist of all non-exempt full time employees, which Company estimates to be 11 plus or minus employees during the PAGA period from July 13, 2019 to August 7, 2020 (“Settlement Period”) who were subjected to Company’s alleged underpayment of wages.

WHEREAS, Company denies the allegations made by Plaintiff and that it engaged in any unlawful conduct whatsoever; and

WHEREAS, the parties desire to settle fully and finally all differences between them, including but not limited to those differences and actions described above;

NOW, THEREFORE, in consideration of the mutual covenants and promises herein contained and other good and valuable consideration, receipt of which is hereby acknowledged, and to avoid unnecessary litigation, it is hereby agreed by and between the parties as follows:

1. This Agreement and compliance with this Agreement shall not be construed as an admission by Company of any liability whatsoever, of any violation of the rights of Plaintiffs or any person, or of violation of any order, law, constitution, statute, ordinance, public policy, wage and hour law, wage payment law, tort law, common law, contract or any other unlawful conduct, liability, wrongdoing or breach of duty whatsoever against Plaintiffs or any person. Company specifically disclaims any liability or wrongdoing to Plaintiffs or any other person for any alleged violation of the rights of Plaintiffs or any other person or for any alleged violation of any order, law, constitution, statute, ordinance, public policy, wage and hour law, wage payment law, tort law, common law, contract or

any other unlawful conduct, liability, wrongdoing or breach of duty on the part of Company or its officers, agents, directors, supervisors, contractors, employees or representatives.

2. Plaintiffs' counsel shall prepare a motion for court approval of this PAGA settlement and the judgment on the settlement. Plaintiff hereby agrees to take all actions necessary to obtain Court approval of the PAGA settlement including the judgment. Company agrees to cooperate in obtaining Court approval.

3. In consideration for Plaintiff's execution of and compliance with this Agreement, and contingent on the Court's approval of this PAGA Agreement and all of the terms herein as required by law, Company agrees that it will pay ten thousand dollars (\$10,000.00) in settlement of this PAGA Claim, with three thousand three hundred three dollars and sixty-seven cents (\$3,303.67) of this amount allocated to Plaintiff's attorney fees and eighty-nine dollars and zero cents (\$89.00) allocated to Plaintiff's costs, if and when the settlement terms herein are approved by the Court and conditioned on Plaintiff providing counsel for Company a fully executed original or copy of this Agreement. If the Court approves the settlement terms herein, upon that occurrence, Company shall pay the aforementioned ten thousand dollars (\$10,000.00) as follows:

A. Company will be solely responsible for any costs of administration incurred as a result of this PAGA Agreement. No such costs shall be deducted from the PAGA settlement. Company and/or Company's counsel may act as the PAGA Claims Administrator and handle the claims administration of this PAGA settlement themselves, or may hire a third party PAGA claims administrator for this matter, subject to the approval by the Court.

B. Within fourteen (14) days after the Court's approval of the PAGA settlement, Company shall provide in spreadsheet form the Aggrieved Employees' names, last-known addresses, social security numbers, and start and end dates of employment to the PAGA Claims Administrator. The Parties agree the social security numbers will be used only by the Administrator for the sole purpose of effectuating the Agreement and will not be provided to Plaintiff's Counsel at any time or in any form. The spreadsheet shall be based on Company's payroll and other business records.

C. Within thirty (30) days after the Court's approval of the PAGA settlement, the PAGA Claims Administrator shall disburse net PAGA settlement funds via first class mail. The net PAGA settlement amount is six thousand six hundred and seven dollars and thirty-three cents (\$6,607.33). The Net PAGA settlement amount shall be paid as follows: (1) 75% of the net PAGA settlement amount shall be paid to the California Labor and Workforce Development Agency ("LWDA"), and (2) 25% of the net PAGA settlement amount shall be paid to the Aggrieved Employees, with allocation between the Aggrieved Employees based on the number of pay periods worked by each such employee during the relevant time period of July 13, 2019 to August 7, 2020. In other words, each Aggrieved Employee shall receive a percentage of the 25% net PAGA settlement funds consistent with the percentage of total pay periods at issue that their respective pay

periods worked represents. The Administrator shall send a letter to the PAGA Settlement Members setting forth a Notice of Court Approved Settlement prepared and agreed to by the Parties, along with the relevant tax forms and the PAGA Settlement amount to the Aggrieved Employees.

D. Within fourteen (14) days after the Court's approval of the PAGA settlement, Company shall tender a check to Plaintiff's counsel in the amount of three thousand three hundred ninety-two dollars and sixty-seven cents (\$3,392.67), for the portion of the PAGA settlement allocated for attorney fees and costs.

Plaintiff agrees the foregoing payments shall constitute the entire amount of monetary consideration to be provided to her under this Agreement, and Plaintiff will not seek any further compensation for any other penalties, costs or attorney fees in connection with the matters encompassed in Plaintiff's PAGA Claim. Plaintiff agrees she is not owed anything else from Company other than as provided for in this PAGA Agreement and the separate *Individual Settlement Agreement and Release of All Claims*.

4. The parties shall each bear their own attorneys' fees and costs except as otherwise provided in this Agreement.

5. No portion of the settlement described above is or shall be deemed compensation in lieu of wages. Rather, the settlement is considered payment for penalties, costs and attorneys' fees under PAGA and is taxable to the Aggrieved Employees. Company shall make no withholdings in relation to the payments to the PAGA settlement members. Company shall report such payments by use of the IRS 1099-miscellaneous form to each Aggrieved Employee, which shall be issued to each Aggrieved Employee at the same time the settlement checks are issued. Plaintiff acknowledges and agrees Company has made no representations regarding the tax consequences of any amounts paid for settlement of the PAGA Claim pursuant to this PAGA Agreement. Plaintiff agrees to pay federal or state taxes, if any, which are required by law to be paid by her with respect to any portion of the settlement payment described herein that is received by her.

6. The Parties agree they have not and will not hereafter disclose the fact, terms or amount of this PAGA Agreement to any third-party, except as necessary for obtaining Court approval of this settlement, the disbursement of settlement funds to the PAGA Settlement Members or to answer questions from the PAGA Settlement Members in connection with the receipt of the settlement funds. They further agree, that it shall not be a violation of this paragraph should they disclose the fact, terms or amount of this Agreement as required by law, as commanded by subpoena or court order, or to immediate family members or third-party professionals engaged to provide tax, financial or legal advice.

7. PAGA Settlement Members, including but not limited to Plaintiff, irrevocably and unconditionally waive, release and forever discharge Company and each and all of Company's officers, agents, directors, supervisors, employees, representatives, insurers and their successors and assigns and all persons acting by, through, under or in

concert with any of them from all known and unknown claims for civil penalties under PAGA that were pled in the Tenth Cause of Action in the Complaint, including without limitation, all claims for or related to PAGA penalties, costs and attorneys' fees stemming from an alleged failure to pay overtime, furnish accurate wage statements, waiting time penalties, failure to provide meal periods, and failure to provide rest breaks in violation of the Labor Code under the Private Attorneys General Act (Labor Code Sections 2698, *et seq.*) for the period July 13, 2019 to August 7, 2020.

8. Plaintiff specifically represents and agrees to the following:

a. Plaintiff has each reviewed all aspects of this PAGA Agreement;

b. Plaintiff has carefully read and understood all the provisions herein;

c. Plaintiff understands that by agreeing to the terms herein, she is releasing the Company from the claims asserted by Plaintiff in the PAGA Claim.

d. Plaintiff freely and voluntarily agrees to all the terms set forth in this PAGA Agreement, including but not limited to the waiver, release and covenants contained in it, and she knowingly and willingly intends to be bound by the same.

e. Plaintiff is signing this Agreement, including the waiver and release, in exchange for good and valuable consideration, which is in addition to any of value to which she is otherwise entitled.

f. Plaintiff has been given the opportunity to consider this PAGA Agreement and discuss it with her attorney of record, and she agrees the terms of this PAGA Agreement were determined through negotiation between each of the parties and their respective attorneys.

9. The parties represent and acknowledge that in executing this PAGA Agreement they do not rely and have not relied upon any representation or statement made by any of the parties or by any of the parties' agents, attorneys or representatives with regard to the subject matter, basis or effect of this Agreement or otherwise, other than those specifically stated in this written PAGA Agreement and in the separate *Individual Settlement Agreement and Release of All Claims* pertaining to Plaintiff's settlement of her individual claims against the Company.

10. This PAGA Agreement shall be binding upon the parties and their heirs, administrators, representatives, executors, successors and assigns and shall inure to the benefit of the parties and each of them and to their heirs, administrators, representatives, executors, successors and assigns. Plaintiff expressly warrants she has not transferred to any person or entity any rights, causes of action or claims released in this PAGA Agreement.

11. Should any provision of this Agreement be declared or determined by any court of competent jurisdiction to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remaining parts, terms or provisions shall not be affected thereby, and the illegal, unenforceable or invalid part, term or provision shall be deemed not to be a part of this Agreement.

12. This PAGA Agreement, and the separate *Individual Settlement Agreement and Release of All Claims*, set forth the entire agreement between the parties and together fully supersede any and all prior agreements or understandings, written or oral, between the parties pertaining to the subject matter hereof.

13. This PAGA Agreement shall be governed by and construed in accordance with the laws of the State of California (including its statutes of limitations), without regard to any conflicts of laws principles that would require the laws of any other jurisdiction to apply. The Sacramento County Superior Court shall maintain jurisdiction to enforce any of the provisions hereof.

14. No provision of this Agreement may be amended or modified unless the amendment or modification is agreed to in writing and signed by Plaintiff and by the owner of Company. No waiver by any party of any breach by any other party of any condition or provision of this Agreement, to be performed by the other party, shall be deemed a waiver of any similar or dissimilar provision or condition at the same or any prior or subsequent time. Nor shall the failure of or delay by any of the parties in exercising any right, power or privilege under this Agreement operate as a waiver to preclude any other or further exercise thereof or the exercise of any other such right, power or privilege.

15. This Agreement shall be interpreted in accordance with the plain meaning of its terms and not strictly for or against any of the parties.

16. It is further understood and agreed that if, at any time, a violation of any term of this PAGA Agreement is asserted by any party, that party shall have the right to seek specific performance of that term and/or any other necessary and proper relief, including but not limited to damages, from any court of competent jurisdiction, and the prevailing party shall be entitled to recover its or her reasonable costs and attorneys' fees.

Dated: _____

SARAH AVILARIOS

GREGORY L. McEWEN D.D.S., INC.

Dated: 4-1-21

By: _____

Dated: 4-1-21

GREGORY L. McEWEN

11. Should any provision of this Agreement be declared or determined by any court of competent jurisdiction to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remaining parts, terms or provisions shall not be affected thereby, and the illegal, unenforceable or invalid part, term or provision shall be deemed not to be a part of this Agreement.

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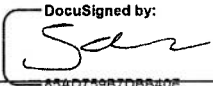
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3/31/2021

Dated: _____

DocuSigned by:


SARAH AVILARIOS

GREGORY L. McEWEN D.D.S., INC.

Dated: _____

By: _____

Dated: _____

GREGORY L. McEWEN