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and BELINDA LECHUGA individually and on behalf of similarly situated employees

SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

SHIELA KEE and SILBIA GUTIERREZ and
BELINDA LECHUGA, individually and on
behalf of all other similarly situated
employees,

Plaintiffs,

vs.

DR. JEFFREY A. SALADIN, DENTAL
CORPORATION (D/B/A CHILDREN'S
CHOICE PEDIATRIC DENTAL CARE), a
California Corporation; CC AMULET
MANAGEMENT, LLC, a Delaware Limited
Liability Company; and DOES 1 to 100,
inclusive,

Defendants.

Case No. 34-2020-00290072

CLASS ACTION

*Assigned for All Purposes to Hon. Lauri A. Damrell,
Department 28*

**[PROPOSED] ORDER GRANTING
PLAINTIFFS' MOTION FOR FINAL
APPROVAL OF CLASS ACTION AND PAGA
SETTLEMENT**

Reservation No. 2678139

Date: January 13, 2023

Time: 9:00 a.m.

Dept: 28

Judge: Hon. Lauri A. Damrell

Filed: December 8, 2020

FAC Filed: March 2, 2021

Trial Date: None Set

1 TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

2 The Motion for Final Approval of Class Action and PAGA Settlement (“Motion”) in the above
3 referenced case came before this Court, on January 13, 2023, at 9:00 a.m., in Department 28 before the
4 Honorable Lauri A. Damrell, presiding. Named Plaintiffs Shiela Kee, Silbia Gutierrez, and Belinda
5 Lechuga (“Plaintiffs”) filed this lawsuit on December 8, 2020. The operative Complaint alleges class
6 action claims against Defendants Dr. Jeffrey A. Saladin, Dental Corporation (D/B/A Children’s
7 Choice Pediatric Dental Care) and CC Amulet Management, LLC (“Defendants”) and states
8 Defendants violated California law by 1) failing to pay overtime wages, 2) failing to pay minimum
9 wages, 3) failing to provide meal periods or pay meal period premiums in lieu thereof, 4) failing to
10 provide rest periods or pay rest period premiums in lieu thereof, 5) failing to provide accurate wage
11 statements, 6) failing to timely pay final wages, 7) failing to reimburse expenses, 8) and engaging in
12 unfair competition. Plaintiffs have also alleged Defendants are liable for civil penalties under the
13 Private Attorneys General Act (“PAGA”) based on these violations. Plaintiffs sought attorneys’ fees
14 and costs as part of this Action. Defendants denied all of Plaintiffs’ claims and denied that this case
15 was appropriate for class treatment. No class has been certified. The class settlement was preliminary
16 approved by this Court on September 16, 2022.

17 The parties have agreed to settle the class and PAGA claims. Defendants will provide
18 monetary consideration in exchange for a release of claims consistent with the terms of the proposed
19 settlement as set forth in the Joint Stipulation Regarding Class Action and PAGA Settlement and
20 Release (“Agreement”). Any capitalized terms herein shall have the same meaning as set forth in the
21 Agreement. The Court, having received and considered Plaintiffs’ Motion for Final Approval of Class
22 Action and PAGA Settlement, the declarations in support, the Agreement, the Class Notice of
23 Settlement, and other evidence, HEREBY ORDERS AND MAKES DETERMINATIONS AS
24 FOLLOWS:

25 **I. CERTIFYING A SETTLEMENT CLASS; APPOINTMENT OF CLASS**
26 **REPRESENTATIVES; APPOINTMENT OF CLASS COUNSEL**

27 The Court finds that certification of the following class for settlement purposes only is
28 appropriate under the California Code of Civil Procedure and related case law:

1 All non-exempt employees who have worked, or continue to work, for
2 Defendants in California from December 8, 2016, through August 30,
3 2022.

4 The Court recognizes that the foregoing definition is for Class Member identification purposes
5 only and is not intended to capture the claims at issue or limit or alter the released claims under the
6 Agreement. The Settlement Class shall not include the four individuals who timely opted out of the
7 class settlement, which include Jordan Clark, Angelica Pickens, Brinda Wagner, and Stephanie Larson.
8 These individuals shall not be bound by the Agreement or any of the releases or obligations therein
9 except for the releases and covenants regarding to the PAGA claims as set forth in section 1.33 and 6.2
10 as they are still Aggrieved Employees under the Agreement and there is no ability to opt out of a PAGA
11 settlement.

12 The Court finds that Class Members meet the ascertainability and numerosity requirements since
13 the parties can identify with a matter of certainty, based on payroll records, individuals who fall within
14 the definition and the number of Class Members would make joinder impractical. The commonality and
15 predominance requirements are met for settlement purposes since there are questions of law and fact
16 common to Class Members. The common questions of law or fact in this case all stem from Plaintiffs'
17 contentions that Defendants caused the violations outlined above by 1) failing to properly pay overtime
18 and premium pay due to Defendants' failure to incorporate non-discretionary remuneration (bonuses)
19 into the Regular Rate of Pay ("RROP"); 2) failing to provide rest periods in compliance with California
20 law; 3) failing to provide all meal periods and pay adequate premiums in lieu thereof; 4) failing to pay
21 employees for all hours worked due their failure to pay for time employees spent waiting to clock into
22 work; 5) failing to pay reimbursements for business-related cell phone use and/or mileage; and 6) failing
23 to accurately itemize the hours and wages earned on paystubs issued to class members. The PAGA,
24 waiting time penalty, wage statement violation, and unfair competition claims also derive from these
25 violations. Additionally, Class Members seek the same remedies under state law. The typicality
26 requirement for settlement purposes is also satisfied since the claims of the Class Representatives are
27 based on the same facts and legal theories as those applicable to the class members.

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1 The Court also finds that certifying the settlement class is required to avoid each Class Member
2 from litigating similar claims individually. This settlement will achieve economies of scale for Class
3 Members with relatively small individual claims and conserve the resources of the judicial system.

4 The Court finds that Plaintiffs Shiela Kee, Silbia Gutierrez, and Belinda Lechuga and Plaintiffs'
5 counsel, Galen T. Shimoda and Justin P. Rodriguez of Shimoda & Rodriguez Law, PC, to be adequate
6 representatives of the settlement class. The Court confirms their appointments as Class Representatives
7 and Class Counsel, respectively.

8 **II. APPROVING CLASS ACTION AND PAGA SETTLEMENT**

9 The Court has again reviewed the preliminarily approved Agreement, which was submitted with
10 Plaintiffs' Motion as Exhibit A. The Court finds that final approval is warranted as the Agreement falls
11 within the range of reasonableness and is fair, reasonable, and adequate for the class. The Court also
12 finds the Settlement was agreed upon only after extensive investigation, litigation, and arms-length
13 negotiations by counsel experienced in complex litigation, who took reasonable steps and measures to
14 weigh the potential value of the disputed claims against the risks of continued litigation. Class Members
15 were able to object to the Agreement and its terms through the administration process and at a fairness
16 hearing or opt-out of being bound by the preliminarily approved Agreement. No objections were made
17 by Class Members and only four (4) Class Members opted out of the settlement, which is less than one
18 percent (1%). Because the Court finds the Parties' settlement to have been agreed upon only after an
19 extensive investigation and arms-length negotiations, and in an attempt to avoid further delays and costs,
20 the Court gives final approval to the Agreement and all terms therein as if stated here in full, including
21 the \$675,000 Gross Settlement Amount.

22 The Court approves of the \$10,000 PAGA Payment, which shall be paid from the Gross
23 Settlement Amount, not in addition to the Gross Settlement Amount, to resolve the alleged PAGA
24 claims. Seventy-Five percent (75%) of the PAGA Payment will be paid to the Labor and Workforce
25 Development Agency ("LWDA") and Twenty-Five percent (25%) will be paid to Aggrieved Employees
26 on a pro rata basis as described in the Agreement. The Court also finds that, based on the facts of this
27 case and the disputed issues, the Agreement provides a recovery that creates an effective substantial
28 deterrent to any potential future non-compliance, furthering the purpose of the Labor Code and LWDA.

1 The Court approves of the identified *cy pres* distribution plan wherein any checks issued to
2 Qualified Claimants and/or Aggrieved Employees that are not cashed by the deadline to do so shall be
3 donated equally, *i.e.* 50/50, to Capital Pro Bono, Inc., and the Center for Workers' Rights. No portion of
4 the Gross Settlement Amount will revert to Defendants for any reason.

5 The releases and waivers for Class Members who do not opt out of being bound by the
6 Agreement (*i.e.* Qualified Claimants), Aggrieved Employees, and the Class Representatives are also
7 approved by the Court as set forth in the Agreement.

8 Class Counsel sought an award of attorneys' fees of \$236,250.00, attorney's costs of \$13,690.28,
9 Enhancement Payments to the Class Representatives in the amount of \$15,000 each, and for Claims
10 Administrator Costs in the amount of \$13,690.28. Defendants do not oppose these requests. The Notice
11 of Settlement sent to Class Members included information regarding these amounts, including the
12 possible maximum allocations in excess thereof for attorney's costs and Claims Administrator Costs.
13 The Notice of Settlement also stated these payments would be requested in connection with final
14 approval of the Agreement. Class Members have been given the opportunity to object to these amounts
15 and no objections have been submitted in any respect whatsoever. The Court has reviewed the evidence
16 submitted by Class Counsel regarding their hourly rates, including prior fee awards in Sacramento
17 County Superior Court at the requested rates, and the amount of time expended in the litigation for the
18 benefit of Class Members. The Court finds that the rates requested and hours expended are reasonable.
19 The Court has also reviewed the updated itemized costs submitted by Class Counsel, the information
20 provided by the Class Representatives regarding the efforts and burdens undertaken for the benefit of the
21 class, and the cost information provided by the Claims Administrator in its declaration. The Court finds
22 that these amounts requested for attorneys' fees and costs, the Enhancement Payments, and the Claims
23 Administrator Costs are fair and reasonable, and awarded as requested. This finding is further supported
24 by the lack of objection by Class Members to these amounts. The difference between the actual
25 attorney's costs and Claims Administrator Costs awarded and the originally allocated amounts for each
26 payment will be added to the Net Settlement Amount pursuant to the terms of the Agreement.

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1 **III. APPROVAL OF DISTRIBUTION TO THE CLASS, THE NOTICE OF SETTLEMENT,**
2 **OPPORTUNITY TO OPT OUT OF, AND OBJECT TO, THE SETTLEMENT**

3 The Court finds that the proposed Notice of Settlement, which was submitted with Plaintiffs'
4 Motion as Exhibit A to the Declaration of Madely Nava, fairly and adequately advised Class Members
5 of the terms of the preliminary approved Agreement, the rights being waived, their right to opt out, the
6 ability to dispute the number of workweeks worked during the Class Period, their pro rata share of the
7 Net Settlement Amount, how to participate in the settlement, how to file documentation in opposition to
8 the proposed settlement, and when to appear at the fairness hearing. The Court further finds that the
9 Notice of Settlement and distribution of such notice by first class mail to each identified Class Member
10 at his or her most recent address based on a National Change of Address database search from the Class
11 Members' last known address and a skip trace on any Class Members whose Notice of Settlement was
12 returned as "undeliverable" or "not at this address" comported with all constitutional requirements,
13 including those of due process.

14 **IV. IMPLEMENTATION SCHEDULE**

15 Accordingly, with good cause shown, the Court hereby approves and orders that the following
16 implementation schedule be adhered to:

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18 Last day for Claims Administrator to calculate the final Net Settlement Amount, the final Claim 19 Amounts for Qualified Claimants and/or 20 Aggrieved Employees, any applicable taxes 21 thereon, and report the results of these 22 calculations to Class Counsel and Defendants' 23 Counsel	Within 7 calendar days after the Effective Date
24 Last day for Defendants to fund settlement	Within 21 calendar days after the Effective Date
25 Last day for Claims Administrator to deliver 26 payment of Class Counsel's attorney's fees and 27 costs, Enhancement Payments, PAGA Payment, 28 Claims Administrator Costs, payment to Qualified Claimants, and payment to Aggrieved Employees	Within 7 calendar days after Defendants fund the settlement

Last day for Qualified Members and Aggrieved Employees to cash settlement checks	120 calendar days after issuance of checks to Qualified Members and Aggrieved Employees
Last day for Claims Administrator to deliver value of uncashed settlement checks to <i>cy pres</i> beneficiaries	Within 14 calendar days after settlement check cashing deadline
Last day for Claims Administrator to provide Parties with compliance declaration	Within 21 calendar days after settlement check cashing deadline

IT IS FURTHER ORDERED that the final approval order is effective as a judgment with each party to bear its own fees and costs outside of what has been ordered herein. This matter is subject to the Court's continuing jurisdiction to monitor and enforce the terms of this order and the approved Agreement.

IT IS SO ORDERED.

Date: _____

By: _____

Hon. Lauri A. Damrell
Judge of the Superior Court