

PAGA SETTLEMENT AND GENERAL RELEASE AGREEMENT

This Private Attorneys General Act ("PAGA") Settlement and General Release Agreement ("Agreement") is made by and between Kimberly Tanner ("Plaintiff"), in a representative capacity on behalf of all current and former aggrieved employees, on the one hand, and Robert K. Schaffer, DDS, Inc. and Robert K. Schaffer ("Defendants") on the other. Plaintiff and Defendants will be referred to collectively as the "Parties" and may individually be referred to as a "Party."

This Settlement shall be binding on Plaintiff and the allegedly aggrieved employees ("PAGA Members") (as defined below) whom Plaintiff purports to represent; and on Defendants and any present and former parent companies, subsidiaries, divisions, related or affiliated companies, shareholders, officers, directors, employees, agents, attorneys, insurers, successors and assigns, and any individual or entity which could be jointly liable with Defendants, subject to the terms and conditions hereof and the approval of the Court.

RECITALS

A. WHEREAS on or about October 13, 2020, Plaintiff submitted a letter with the California Labor and Workforce Development Agency ("LWDA") alleging violations of the California Labor Code. On October 14, 2020, Plaintiff filed a lawsuit against Defendants in San Diego County Superior Court, Case No. 37-2020-00037134-CU-OE-CTL (the "Action"). On January 6, 2021, Plaintiff filed a First Amended Complaint in the Action, alleging causes of action for: (1.) Private Attorneys General Act ("PAGA") Claim – LC § 2699, (2.) Failure to Pay Wages Including Minimum Wages – LC § 1194, (3.) Failure to Pay Overtime Wages – LC § 1194, (4.) Failure to Provide Meal Periods – LC § 226.7, (5.) Failure to Provide Rest Periods – LC § 226.7, (6.) Failure to Provide Compliant Wage Statements and Keep Records – LC § 226, (7.) Waiting Time Penalties – LC § 203, (8.) Failure to Indemnify Business Expenses – LC § 2802, (9.) Unfair Business Practices – BPC § 17200, (10.) Retaliation – LC 1102.5, (11.) Retaliation – LC § 12940(m)(2), (12.) Failure to Make Reasonable Accommodation for Disability – GC § 12940(m)(1), (13.) Disability Discrimination – GC § 12940(a), (14.) Failure to Make Reasonable Accommodation for Pregnancy – GC § 12945(a)(3)(A), (15.) Sex/Pregnancy Discrimination – GC § 12940(a), and (16.) Wrongful Termination in Violation of Public Policy (the "Action"). The Action sought civil penalties under PAGA for the specified violations of the California Labor Code pursuant to Industrial Welfare Commission ("IWC") Wage Order 4-2001, §§ 3, 4, 7, 11, 12, 20, and pursuant to Labor Code §§ 7, 98, 98.6, 98.7, 200, 201, 202, 203, 204, 210, 212, 215, 216, 218.6, 221, 222, 223, 224, 225, 225.5, 226, 226.3, 226.7, 230.8, 232.5, 233, 246, 246.5, 247, 247.5, 248.5, 256, 351, 500, 510, 512, 516, 558, 558.1, 1102.5, 1174, 1174.5, 1175, 1182.12, 1193.6, 1194, 1194.2, 1194.3, 1197, 1197.1, 1198, 1199, 2502, 2751, 2802, 2698, 2699, 2699.3, and 2699.5 et al (the "PAGA Claim"). On March 26, 2021, Defendants answered Plaintiff's Complaint, asserting a general denial and specific affirmative defenses.

B. WHEREAS Plaintiff shall be deemed to have accepted the Agreement as of the date the Agreement is signed by Plaintiff and her attorney. This Agreement shall not become effective or enforceable until the day the Court signs an order approving the

Agreement and shall be designated as the "Effective Date" of the Agreement. On the Effective Date, the Agreement shall become the "PAGA Settlement."

C. WHEREAS Defendants deny any liability or wrongdoing of any kind associated with the claims alleged in the Action.

D. WHEREAS the Parties desire to fully and finally resolve, settle, compromise, and discharge all differences and controversies between and among themselves, so as to avoid any further disputes, costs, inconveniences or expenses of litigation, and substantially increased risks created by COVID-19.

E. WHEREAS the Parties have separately entered into a Confidential Settlement and General Release Agreement in full satisfaction of Plaintiff's individual claims against Defendants ("Individual Settlement Agreement").

F. WHEREAS this Agreement relates solely to the PAGA Claim raised by Plaintiff and the PAGA Members whom Plaintiff purports to represent in the Action. For purposes of this settlement, the "PAGA Members" are defined as: all individuals employed by Defendants from October 13, 2019, to the Effective Date of the Settlement ("Covered Period"). This includes Plaintiff.

G. WHEREAS because Plaintiff alleges claims under PAGA, the Parties acknowledge this Agreement must be approved by the San Diego Superior Court. Accordingly, the Parties enter into this Agreement on a conditional basis subject to the terms and conditions below.

NOW, THEREFORE, to avoid the substantial expense and inconvenience of possible litigation, and in consideration of the promises and agreements set forth below, the Parties agree:

1. **Settlement Payment.** Defendants will furnish a total payment of \$5,000.00 (the "Settlement Payment") to be paid as follows to resolve the PAGA Claim:

1.1 Within 30 days after the Effective Date, the sum of \$5,000.00 in PAGA civil penalties, payable as follows:

(a) Payment of \$1,000 for attorney's fees made payable to "W Law Inc.";

(b), \$3,000 (75% of the \$4,000.00 PAGA civil penalties) by check made out to the "Labor and Workforce Development Agency (LWDA)", and sent to Department of Industrial Relations, Accounting Unit, 455 Golden Gate Avenue, 10th Floor, San Francisco, CA 94102;

(c) Payment of \$1,000.00 (25% of the \$4,000.00 PAGA civil penalties) by check made out to all PAGA Members divided equally, and mailed to their last known address (Defendants must mail Plaintiff's share to Plaintiff's counsel's office at 1916 Third Avenue, San Diego, CA 92101);

(d) Should Defendants decide to use a claims administrator instead of distributing Settlement Payment checks themselves to the LWDA and PAGA Members, Defendants shall be responsible for the full cost of the claims administrator in addition to and separate from the

\$5,000.00 PAGA civil penalties, costs and fees;

(e) Within fourteen (14) days after completing the payment obligations under this section, Defendants (or the Settlement Administrator if Defendants elect to hire one) shall email a Declaration to Plaintiff's counsel at thom@diachenkolaw.com verifying that all Settlement Payment checks have been sent to PAGA Members and the LWDA;

(f) All checks will remain valid for no less than ninety (90) calendar days after Defendants (or the Settlement Administrator if Defendants elect to hire one) mail the checks. If any checks remain uncashed or expire, Defendants (or the Settlement Administrator if Defendants elect to hire one) will distribute the funds associated with such expired checks to the LWDA.

2. Reasonableness and Allocation of Settlement. The Parties believe that this is a fair, reasonable and adequate settlement of Plaintiff's PAGA Claim, and have arrived at this settlement through arms-length negotiations, taking into account all relevant factors, present and potential, including the legal issues involved, evidence available to establish PAGA Claim violations, Defendants' ability to pay, COVID-19, and the uncertainty of trial. The Parties recognize and agree that the value of the claims in the PAGA Claim are difficult to determine with any certainty and are subject to differing calculations. The Parties hereby agree that the formula for allocating the Settlement Payment is reasonable and that the payments provided herein are designed to provide fair settlement with respect to the PAGA Claim.

3. Approval of Settlement. The Parties, by Joint Stipulation Requesting Approval of PAGA Settlement; and [Proposed] Order, shall apply for approval of this Agreement by the San Diego Superior Court in accordance with Labor Code section 2699(l) and for the Court to retain jurisdiction pursuant to Civil Code § 664.6 to enforce the terms of the Agreement for purposes of effectuating this Agreement. If, for any reason, the Court declines to approve this Agreement, the Parties agree to use their best efforts to address the issues raised by the Court and renew their request for court approval. If, for any reason, the Court does not ultimately approve this Agreement, this Agreement shall be null and void, and shall not be referred to or utilized for any purpose. In that event, Defendants shall have no obligation to make any payment under this Agreement or its Individual Settlement Agreement with Plaintiff. Defendants also do not waive but rather expressly reserve all rights to challenge Plaintiff's PAGA Claim and allegations on all procedural, legal and factual grounds, and to assert all applicable defenses if this Agreement is not approved by the Court.

4. Dismissal of Pending Action. Plaintiff will file a Request for Dismissal with Prejudice for the PAGA Claim in the first cause of action in this Action within fourteen (14) days after Defendants: 1.) complete all payments due under this Agreement; 2.) complete all payments due under Plaintiff's Individual Settlement Agreement; and receive confirmation from Plaintiff's counsel of receipt of Defendants' Declaration (or by the Settlement Administrator if Defendants elect to hire one) that the total Settlement Payment in PAGA civil penalties have been transmitted to all PAGA Members and the LWDA in Section 1 above.

5. Taxability. Defendants make no representation on the taxability of the Settlement Payment. Plaintiff agrees to pay federal, state, and any other taxes required by law for Plaintiff to pay because of the share of the Settlement Payment which Defendants pay to Plaintiff.

Plaintiff further agrees to hold Defendants harmless from any interest, taxes, or penalties assessed against them by any governmental agency because of any non-payment of taxes by Plaintiff regarding the share of the Settlement Payment which Defendants pay to Plaintiff.

6. **PAGA Claim Release.** Subject to the Court entering an Order approving the PAGA Settlement, and in consideration for Defendants entering into this Agreement, Plaintiff, on behalf of herself and the State of California, and the PAGA Members as defined above, fully release and discharge the Defendants and their present or former parent and affiliated companies, subsidiaries, partners, agents, insurers and each of their respective officers, directors, shareholders, representatives successors and assigns ("Released Parties") from any and all claims, causes of action, debts, liabilities, demands, damages, penalties, costs, and attorneys' fees, whether known or unknown, secured or unsecured, suspected or unsuspected, contingent or vested, arising from or based on a claim for civil penalties under the Labor Code Private Attorneys General Act of 2004 ("PAGA") for any violations of the Labor Code or Wage Orders that were alleged by Plaintiff in the Action, or that could have been alleged based on the facts asserted in the Action, including but not limited to claims for the alleged failure to provide meal breaks, rest periods, accurate itemized wage statements and waiting time penalties; failure to compensate for all regular or overtime hours worked; failure to reimburse for business expenses; failure to maintain required records; and failure to timely pay wages during employment (the "Released Claims"). Plaintiff, PAGA Members, and the State of California shall be deemed to have expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights, and benefits they otherwise may have had related to the Released Claims. The res judicata effect of the Order approving the PAGA settlement will be the same as that of a release.

7. **General Releases.**

7.1 In consideration for the Settlement Payment and the benefit of this Agreement, Plaintiff unconditionally, irrevocably, and absolutely releases and discharges Defendants, and their parents, subsidiaries, divisions, and affiliates and each of its respective present and former owners, officers, directors, employees, agents, representatives, attorneys, insurers, administrators, predecessors, successors, assigns, and all other related persons, firms, and associations of the aforementioned business entities ("Released Parties"), from all losses, liabilities, claims, charges, demands and causes of action, known or unknown, suspected or unsuspected, arising directly or indirectly out of or in any way connected with the transactions and occurrences between the Parties, including Plaintiff's employment with Defendants. Notwithstanding the foregoing, the Parties agree and acknowledge that nothing in this Agreement releases or waives any rights or claims Plaintiff has or may have regarding: (i) benefits, or rights to seek benefits, under applicable workers' compensation and/or unemployment insurance; (ii) those which, by law, cannot be waived by signing this Agreement; or (iii) to enforce this Agreement. Barring those excluded rights, this release should have the broadest possible application and includes, but is not limited to, all torts, contract, common law, constitutional or other statutory claims, and all claims for attorney fees, costs, and expenses. This release includes any claim for personal recovery of any type, including damages or reinstatement, due to alleged employment discrimination and retaliation arising under federal, state, or local law, including the California Fair Employment & Housing Act, the California Family Rights Act, the Americans With Disabilities Act, the Family and Medical Leave Act, and Title VII of the Civil Rights Act of 1964. This release further applies to any claims arising out of or based on the Rehabilitation Act of 1973, the California Labor

Code, including, without limitation, any claims that were or could have been brought under California Labor Code sections 132a, 201, 202, 203, 204, 216, 218 218.5, 218.6, 225.5, 226, 226.3, 226.7, 432.5, 510, 512, 558, 1050, 1054, 1194, 1194.2, 1197, 118, 2698 et seq. ("PAGA"), 2800, et seq., other federal, local and/or applicable wage ordinances and statutes, and the California Business & Professions Code. This release includes any claims for any tortious conduct, wrongful discharge, and wrongful discharge in violation of public policy.

7.2 In consideration for the benefit of this Agreement, Defendants unconditionally, irrevocably, and absolutely releases and discharges Plaintiff from all losses, liabilities, claims, charges, demands and causes of action, known or unknown, suspected or unsuspected, arising directly or indirectly out of or in any way connected with the transactions and occurrences between the Parties, including Plaintiff's employment with Defendants. This release should have the broadest possible application and includes, but is not limited to, all torts, contract, common law, constitutional or other statutory claims, and all claims for attorney fees, costs, and expenses.

7.3 The Parties acknowledge they may discover facts or law different from, or in addition to, the facts or law they know or believe to be true regarding the Claims released in this Agreement and agrees nonetheless this Agreement, and the release contained in it, will be and remain effective in all respects, notwithstanding such different or additional facts or the discovery of them.

8. **Waiver of California Civil Code § 1542.** The Parties agree it is their intention that this Agreement will be effective as a full and final accord and satisfaction and settlement of, and as a bar to, every claim, demand, action, contract, covenant, cause of action, obligation, debt, controversy, promise, agreement, liability, cost, expense, and lien, as referred to and released above, that they have or may have against the other Parties. In furtherance of this intention, the Parties expressly, knowingly, and voluntarily waives all rights and benefits conferred upon them by California Civil Code § 1542, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

The Parties knowingly abandon, release, waive, and relinquish all rights and benefits they may acquire under California Civil Code § 1542 pertaining to the subject of the Claims and this Agreement.

9. **Warranty of No Pending Claims.** Other than the Action, Plaintiff warrants and represents that she has contacted no governmental agency for the purpose of initiating a claim against any of the Released Parties or reporting potential legal violations by any of the Released Parties. Except as may be necessary to enforce this Agreement, and to the fullest extent permitted by law, Plaintiff agrees not to permit, authorize, initiate, encourage, support, join or continue any lawsuit, administrative charges or complaints (including charges of discrimination), arbitrations or proceedings (collectively, "Proceedings") against any of the Released Parties based in whole or in part on any claim covered by this Agreement. If, without prior knowledge and consent, Plaintiff is made a member or representative of a class in any

proceeding, she agrees to opt out of the class at the first opportunity. Notwithstanding the above, nothing in this Agreement shall be construed to prohibit Plaintiff from filing a charge with or participating in an investigation or proceeding conducted by the EEOC, NLRB, DFEH, or comparable state or federal agency. Plaintiff understands that she has waived and released any and all claims for money damages and equitable relief that Plaintiff may recover from the Defendants pursuant to the filing or prosecution of any administrative charge against Defendants by Plaintiff, or any resulting civil proceeding or lawsuit brought on Plaintiff's behalf for the recovery of such relief, and which arises out of the matters that are and may be released or waived by this Agreement.

10. **No Admissions.** In entering this Agreement, Defendants and the Released Parties make no admission that any of them have engaged, or is now engaging, in any unlawful conduct. Defendants dispute that any unlawful conduct occurred. This Agreement does not admit liability but is a compromise of disputed claims that remain untested. It is understood there has been no trial or adjudication of any issue of fact or law relating to Plaintiff's claims, and that Defendants want to avoid further time and expense by entering this Agreement.

11. **No Waiver.** No waiver by any Party of any breach of any term or provision of this Agreement will be construed to be, nor will be, a waiver of any preceding, concurrent, or succeeding breach of that term or provision, or any other term or provision, of the Agreement. No waiver will be binding unless in writing and signed by the Party waiving the breach.

12. **Severability.** Should it be determined by a court that any term of this Agreement is unenforceable, that term will be deemed deleted. However, the validity and enforceability of the remaining terms will not be affected by the deletion of the unenforceable term.

13. **Applicable Law and Venue.** The Parties agree that the Court shall retain jurisdiction with respect to interpretation, implementation, and enforcement of the terms of this Agreement and all orders and judgments entered in connection therewith, and the Parties hereto submit to the jurisdiction of the Court for purposes of interpreting, implementing and enforcing the settlement embodied in this Settlement and all orders and judgments entered in connection therewith pursuant to Civil Code section 664.6. The validity, interpretation, and performance of this Agreement will be construed and interpreted according to the laws of the State of California. Any litigation arising out of this Agreement, including an action to enforce its terms, will be brought in San Diego County. In the event any controversy claim, arbitration, or dispute arises relating to this Agreement or the breach of this Agreement by the other Party, the prevailing party shall be entitled to recover its reasonable attorney fees and other costs incurred in litigating that controversy, claim, arbitration, or dispute, in addition to any other relief to which the party may be entitled. As used in this section, the term "prevailing party" means the party to a lawsuit, arbitration, or other similar proceeding who successfully prosecutes the proceeding or successfully defends against it.

14. **Attorney Fees and Costs for the Action.** Other than described in the Individual Settlement Agreement and section 1 of this PAGA Settlement Agreement, the Parties will bear their own attorney fees, expert fees, costs, and all other expenses resulting from this action and/or this Agreement beyond what has been agreed to herein.

15. **Binding on Successors.** The Parties agree this Agreement will be binding on, and inure to the benefit of, their successors, heirs, and/or assigns.

16. **No Assignment.** The Parties warrant and represent that they have not assigned or transferred to any person not a party to this Agreement, any released matter, or any right to any consideration provided in this Agreement. The Parties agree to hold each other harmless from all claims based on, in connection with, or arising out of, any such assignment or transfer made, purported, or claimed.

17. **Cooperation.** The Parties agree to do all things necessary, and to execute all further documents necessary and appropriate to carry out and effectuate the terms and purposes of this Agreement. The Parties agree to execute such other, further, and different documents as reasonably may be required to effectuate this Agreement. Without limiting the generality of the foregoing, the Parties agree to execute the forms necessary to dismiss the lawsuit with prejudice, as provided in paragraph 5 of this Agreement.

18. **Authority to Sign Agreement.** Any individual signing this Agreement on behalf of an entity represents and warrants she/he has full authority to do so.

19. **Consultation with Counsel and Voluntary Agreement.** The Parties, and each of them acknowledge that they have had the opportunity to consult with legal counsel of their choice before execution and delivery of this Agreement, and that they have in fact done so. The Parties represent that they have entered into this Agreement knowingly and voluntarily, after consulting with their attorneys, with a full understanding of all of its terms.

20. **Entire Agreement; Modification.** This Agreement contains the entire agreement between the Parties regarding the subject described herein. It is agreed there are no collateral agreements or representations, written or oral, which are not contained in this Agreement. This Agreement may be amended only by a written instrument executed by the Parties.

21. **Execution in Counterparts.** This Agreement may be executed in counterparts, and, if so executed, will have the same force and effect it would have if the Parties executed a single original of this Agreement. Each counterpart signature page will be considered an original, and all counterparts together will constitute one instrument. Execution and delivery of this Agreement by way of sending a facsimile, or emailing a PDF copy, of the signature page will constitute a valid and binding execution and delivery of this Agreement by such Party. Such facsimile copies, photocopies, or PDFs will constitute enforceable original documents. The Parties, with the benefit of representation and advice of counsel, have read this Agreement and fully understand every provision contained in it.

PLEASE READ CAREFULLY. THIS SETTLEMENT AGREEMENT INCLUDES A RELEASE
OF ALL KNOWN AND UNKNOWN CLAIMS.

SIGNATURES ON FOLLOWING PAGE

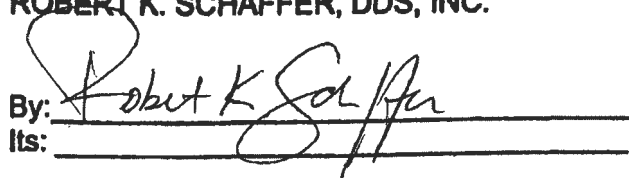
KIMBERLY TANNER

Dated: 12-27-2021



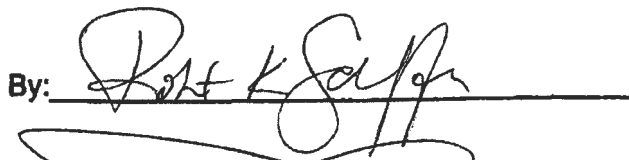
ROBERT K. SCHAFFER, DDS, INC.

Dated: 12-27-2021

By: 
Its: _____

ROBERT K. SCHAFFER

Dated: 12-27-2021

By: 

Approved as to form:

Dated: 12/27/21



Thomas M. Diachenko
Counsel for Plaintiff

Dated: 01/04/2022



Jason Whooper
Counsel for Plaintiff

Dated: 1/3/22



Nancy Rader Whitehead
Counsel for Defendants