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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF SAN BERNARDINO**
11

12 COLEMAN ANDRE BLACKMAN, an
13 individual, on behalf of themself and all
others similarly situated,

14 Plaintiffs,
15

16 vs.

17 DISCUS DENTAL, LLC a California
18 limited liability company, and DOES 1-
50, inclusive,

19 Defendants.
20

Case No. CIVSB2104596

**JOINT STIPULATION FOR CLASS AND
REPRESENTATIVE ACTION
SETTLEMENT AND RELEASE**

Complaint Filed: May 26, 2021

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17 *Counsel for Defendant Discus Dental, LLC*

1 **JOINT STIPULATION FOR CLASS AND REPRESENTATIVE**
2 **ACTION SETTLEMENT AND RELEASE**

3
4 **I. INTRODUCTION**

5 1. This Joint Stipulation of Class Action Settlement and Release is made and entered
6 into by and between Plaintiff Coleman Andre Blackman (“Plaintiff”), an individual, on behalf of
7 himself and all others similarly situated, aggrieved employees, and the State of California as Private
8 Attorney General, on the one hand, and Defendant Discus Dental, LLC (“Defendant”), on the other
9 hand.

10 2. This Agreement is made for the sole purpose of attempting to consummate
11 settlement of this putative wage and hour class action on a class-wide basis, as well as the action
12 brought by Plaintiff under the Labor Code Private Attorney General Act of 2004 (“PAGA”). As
13 detailed below, in the event that the Court does not execute and file an order granting Final
14 Approval of Settlement, or in the event that the associated Judgment does not become final for any
15 reason, this Agreement shall be deemed null and void and shall be of no force or effect whatsoever.

16 **II. DEFINITIONS**

17 3. “Action” means the lawsuit entitled *Andre Coleman Blackman v. Discus Dental,*
18 *LLC*, pending in the Superior Court of California, County of San Bernardino, CIVSB2104596.

19 4. “Agreement” and “Settlement” means the Joint Stipulation of Class Action
20 Settlement and Release.

21 5. “Class Counsel” and “Plaintiff’s Counsel” means Nazo Koulloukian of Koul Law
22 Firm, Inc. and Sahag Majarian II of Law Office of Sahag Majarian II.

23 6. “Class Counsel Fees” means the amount up to \$206,500 (i.e., thirty-five percent of
24 the Gross Fund Value) to compensate Class Counsel for their attorneys’ fees incurred in connection
25 with the Action, including their pre-filing investigation, their filing of the Action and all related
26 litigation activities, this Settlement, and all post-Settlement compliance procedures.

1 7. “Class Counsel Expenses” means the amount of reasonable litigation expenses Class
2 Counsel incurred in connection with this Action, up to \$20,000, including their pre-filing
3 investigation, their filing of the Action and all related litigation activities, this Settlement, and all
4 post-Settlement compliance procedures.

5 8. “Class Information” means information regarding Class Members that Defendant
6 will in good faith compile from their records and provide to the Settlement Administrator in a secure
7 manner on a confidential basis. It shall include each Class member’s full name, social security
8 number, last known address, and the dates of employment that each Class Member worked during
9 the Class Period.

10 9. “Class” or “Class Members” means all current and former hourly, non-exempt
11 California employees of Defendant at any time within the period beginning May 26, 2017 and
12 ending the date the Court grants preliminary settlement approval.

13 10. “Class Notice” means the Notice of Proposed Class Action Settlement (substantially
14 in the form attached as **Exhibit A**).

15 11. “Class Period” means the period from May 26, 2017 and ending the date the Court
16 grants preliminary settlement approval.

17 12. “Class Representative” or “Plaintiff” refers to Andre Coleman Blackman.

18 13. “Incentive Award” means an amount of up to \$10,000 that the Court authorizes to
19 be paid to the Class Representative in recognition of his effort and risk in assisting with the
20 prosecution of the Action and in return for executing a general release of Defendant.

21 14. “Complaint” means the First-Amended Complaint filed in this Action in the
22 Superior Court of California, County of San Bernardino, CIVSB2104596.

23 15. “Court” means the Superior Court of California, County of San Bernardino.

24 16. “Defendant” refers to Discus Dental, LLC.

25 17. “Defendant’s Counsel” refers to McGuireWoods LLP.

26 18. “Effective Date” The effective date means the date by which this Settlement is
27 finally approved as provided herein and the Court’s Final Approval Order becomes binding. For
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1 purposes of this Settlement Agreement, the Final Approval Order becomes binding upon the later
2 of: (1) the day after the last day by which a notice of appeal of the Final Approval Order and/or of
3 an order rejecting any motion to intervene may be timely filed, and none is filed; (2) if such an
4 appeal is filed, and the Final Approval Order is affirmed, the day after the last date for filing a
5 request for further review of the decision passes and no further review is requested; (3) if an appeal
6 is filed and further review of the decision affirming the Final Approval Order is requested, the day
7 after the request for review is denied with prejudice and/or no further review of the decision can be
8 requested, or (4) if review is accepted, the day after the United States or California Supreme Court
9 affirms the Settlement. The Effective Date cannot occur, and Defendant will not be obligated to
10 fund this Settlement, until and unless there is no timely possibility of an appeal or further appeal
11 that could potentially prevent this Settlement Agreement from becoming final and binding.

12 19. "Eligible Workweek" means any week during which a Class Member performed
13 work in California on behalf of Defendant during the Class Period, provided that for Participating
14 Class Members who also participated in the settlement of the *Lira* Action, Eligible Workweek shall
15 not include any workweeks prior to November 6, 2017.

16 20. "Request for Exclusion" means the written request by a Class Member to exclude
17 himself or herself from the Settlement submitted in accordance with the instructions in the Class
18 Notice.

19 21. "Exclusion List" means the list prepared by the Settlement Administrator listing all
20 Class Members requesting exclusion from the Settlement.

21 22. "Final Approval" means the Court's final approval of the Settlement without
22 material change.

23 23. "Individual Settlement Payment" means the total, gross amount payable from the
24 Gross Net Value to a Participating Class Member, which shall be calculated for each Participating
25 Class Member as described in this Agreement.

26 24. "Judgment" means the judgment or order to be rendered and entered by the Court in
27 the Action upon and/or after granting Final Approval of the Settlement.
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1 25. “Gross Fund Value” means \$590,000, the total settlement value for all damages,
2 restitution, penalties, and interest, all payments to Participating Class Members, Class Counsel
3 Fees, Class Counsel Expenses, Settlement Administration Costs, PAGA Payment, and the Incentive
4 Award.

5 26. “Gross Net Value” means the Gross Fund Value, less the following: (a) Class
6 Counsel Fees; (b) Class Counsel Expenses; (c) Incentive Award; (d) Settlement Administration
7 Costs; and (e) PAGA Payment. The Gross Net Value shall be used to satisfy Individual Settlement
8 Payments to Participating Class Members in accordance with the terms of this Agreement.

9 27. “*Lira Action*” means the action captioned *Maria Lira v. Discus Dental, LLC, et*
10 *al.* filed in the San Bernardino County Superior Court, No. CIVDS1620402 on or about
11 December 2, 2016.

12 28. “PAGA Members” means all of Defendant’s non-exempt employees who worked
13 for Defendant in California during the PAGA Period. PAGA Members are a subset of the Class
14 Members.

15 29. “PAGA Period” means from November 30, 2019 to the date of Preliminary
16 Approval.

17 30. “PAGA Payment” means the \$30,000 the Parties have agreed to allocate to civil
18 penalties in order to settle claims arising under the Private Attorneys General Act of 2004 (Labor
19 Code sections 2698, et seq.). “LWDA Payment” means the amount paid to the Labor and
20 Workforce Development Agency (“LWDA”) as its portion (75%) of the total PAGA penalties
21 allocated to it in this Agreement and approved by the Court. “Net PAGA Amount” means the
22 amount paid to PAGA Members as their portion (25%) of the total PAGA penalties allocated to
23 them in this Agreement and approved by the Court.

24 31. “Parties” means Plaintiff and Defendants, collectively, and “Party” shall mean either
25 Plaintiff or Defendants.

32. “Participating Class Member” means a Class member who does not submit a valid Request for Exclusion requesting to be excluded from the Settlement, consistent with the terms set forth in the Agreement.

33. “Preliminary Approval” means the Court’s preliminary approval of the Settlement without material change.

34. “Released Claims” shall have the meaning set forth in Paragraph 48.

35. "Released Parties" means Defendant and its past, present, and future agents, employees, officers, directors, partners, trustees, shareholders, attorneys, parents, subsidiaries, related corporations, divisions, joint venturers, assigns, predecessors, successors, affiliated organizations, and all persons acting by or through or in concert with any of them, and each of them.

36. “Response Deadline” means the date sixty (60) calendar days after the Settlement Administrator mails Class Notices to Class members and the last date on which Class members may: (a) postmark Requests for Exclusion, or (b) postmark Objections to the Settlement, except that if a Class Member submits an objection to her Individual Settlement Payment amount, then 10 days from the date the Claims Administrator mails an adjusted Notice or notice of rejection of the challenge.

37. “Request for Exclusion” means the means the written request by a Class Member to exclude himself or herself from the Settlement submitted in accordance with the instructions in the Class Notice.

38. "Settlement Administration Costs" means the amount to be paid to the Settlement Administrator from the Gross Fund Value for administration of this Settlement. The Settlement Administration Costs are not to exceed \$20,000, and shall be paid out of the Gross Fund Value.

39. “Settlement Administrator” means the settlement administration company agreed to by the Parties after obtaining competitive bids and approved by the Court for the purposes of administering this Settlement.

III. RECITALS

1 40. Class Certification. The Parties stipulate to class certification for purposes of
2 settlement only. If the Court does not grant either Preliminary Approval or Final Approval and
3 Judgment of this Settlement, the Parties stipulate that class certification will be revoked. The
4 Parties shall cooperate in good faith to secure a court order staying the Action and all deadlines,
5 including the deadline for class certification and discovery deadlines, pending implementation of
6 the Settlement. The fact that the Parties were willing to stipulate to class certification as part of the
7 Settlement shall have no bearing on, or be admissible in connection with, the issue of whether the
8 Class or any other putative class could be certified in a non-settlement context or be considered
9 admissible for any other purpose in any matter.

10 41. Procedural History. Plaintiff filed this Action in the San Bernardino County
11 Superior Court on January 17, 2020, Case No. CIVSB2104596 as a PAGA representative action
12 lawsuit. A First Amended Class Action Complaint adding class claims was filed on June 10, 2021
13 corresponding to those outlined in the PAGA Complaint. The addition of Class Claims is for
14 Settlement purposes only.

15 42. Mediation. The Parties participated in a private mediation on December 8, 2021
16 with experienced mediator, David Rotman, Esq. Prior to the mediation, Plaintiff propounded
17 written discovery and Defendant produced extensive time and payroll records to Plaintiff, which
18 Plaintiff thoroughly analyzed with the help of a retained expert. Although the Parties did not settle
19 at mediation, they continued protracted settlement negotiations and with the expert assistance of
20 the mediator ultimately reached this Settlement.

21 43. Benefits of Settlement to Class Members. Plaintiff and Class Counsel recognize the
22 expense and length of continued proceedings necessary to litigate their disputes through trial and
23 through any possible appeals. Plaintiff and Class Counsel have also taken into account the
24 uncertainty and risk of the outcome of further litigation, and the difficulties and delays inherent in
25 such litigation. Plaintiff and Class Counsel are also aware of the burdens of proof necessary to
26 establish liability for the claims asserted in the Action, both generally and in response to
27 Defendant's defenses thereto (many of which have been shared at the mediation and in settlement
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1 discussions), and the obligation to establish liability and damages for the Class Members. Plaintiff
2 and Class Counsel have also taken into account the extensive settlement negotiations conducted.
3 Further, Plaintiff and Class Counsel have taken into account Defendant's agreement to enter into a
4 settlement that confers substantial relief upon the Class members. Based on the foregoing, Plaintiff
5 and Class Counsel have determined that the Settlement is a fair, adequate and reasonable settlement,
6 and is in the best interests of the Class members.

7 44. Defendant's Reasons for Settlement. Defendant has concluded that any further
8 defense of this litigation would be protracted and expensive for all Parties. Substantial amounts of
9 time, energy and resources of Defendant, unless this Settlement is made, will be devoted to the
10 defense of the claims asserted by Plaintiff. Defendant has also taken into account the risks of further
11 litigation in reaching their decision to enter into this Settlement. Despite continuing to contend that
12 they are not liable for any of the claims set forth by Plaintiff, Defendant has, nonetheless, agreed to
13 settle in the manner and upon the terms set forth in this Agreement to put to rest the claims as set
14 forth in the Action. Defendant claims and continues to claim that the Released Claims have no
15 merit and do not give rise to liability. This Agreement is a compromise of disputed claims. Nothing
16 contained in this Agreement and no documents referred to herein and no action taken to carry out
17 this Agreement may be construed or used as an admission by or against the Parties as to the merits
18 or lack thereof of the claims asserted.

19 45. Claims in the Action. The First Amended Complaint alleges seven causes of action:
20 (1) failure to pay wages, including overtime wages, (2) failure to timely pay all wages owed, (3)
21 failure to provide and/or authorize rest breaks, (4) failure to provide and/or authorize uninterrupted
22 meal breaks and second meal breaks, (5) failure to provide timely, accurate, itemized wage
23 statements, (6) engaging in unlawful business practices for unfair competition in violation of
24 Business and Professions Code section 17200, *et seq.*; and (7) Civil Penalties for Violation of the
25 Private Attorneys General Act of 2004 (Labor Code §2698 *et seq.*). Plaintiff asserts all causes of
26 action on behalf of himself, on a class and representative basis, and acting as a Private Attorney
27 General for the State of California pursuant to PAGA.
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1 46. Solely for the purposes of this Settlement, the Parties agree that the Class will be
2 certified. Neither Party is conceding, and this Agreement shall not be used to support arguments
3 that (a) class certification of any claim is appropriate or inappropriate; or (b) that PAGA claims are
4 manageable or need or need not be certified in order to proceed on a representative basis.
5

6 **I. TERMS OF AGREEMENT**

7 47. Consideration. Defendant agrees to pay \$590,000 as the Gross Fund Value amount
8 in the manner described in this Agreement as full consideration for settlement of the action and for
9 Participating Class Members' agreement to release the Released Parties from the Released Claims.
10 Participating Class Members are not eligible to receive any amounts other than their Individual
11 Settlement Payment(s) by virtue of this Settlement. Defendant represents that, as of May 10,
12 2022, the Class consists of 192 individuals who worked approximately 24,500 workweeks during
13 the Class Period.

14 48. Released Claims. Released Claims with respect to the Participating Class Members
15 (other than Plaintiff) means wage and hour claims, rights, demands, liabilities and causes of action,
16 whether known or unknown, arising during the Class Period, that were asserted or could have been
17 asserted in the Action against Defendant based on the facts alleged or ascertained during the
18 pendency of the Action, under federal and state laws, including statutory, or common law claims
19 for wages, penalties, liquidated damages, interest, attorneys' fees, litigation costs, restitution,
20 equitable relief or other relief under Business & Professions Code section 17200, et seq. based on
21 the alleged Labor Code violations, including, without limitations, the following categories: (a) any
22 and all claims involving any alleged failure to pay minimum wage; (b) any and all claims involving
23 any alleged failure to pay employees for all hours worked, including but not limited to any claim
24 for minimum, straight time, or overtime wages; (c) any and all claims involving any alleged failure
25 to pay overtime wages; (d) any and all claims arising under state law involving any alleged failure
26 to properly provide meal periods and/or authorize and permit rest periods, to pay premiums for
27 missed, late, short or interrupted meal and/or rest periods, or to pay such premiums as required by
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1 Labor Code section 226.7; (e) any and all claims involving any alleged failure to keep accurate
2 records or to issue proper wage statements to employees; (f) any and all claims involving any
3 alleged failure to timely pay wages, including but not limited to any claim that Defendant violated
4 Labor Code sections 201, 202, or 204, and any claim for waiting time penalties under Labor Code
5 section 203; (g) any and all claims for unfair business practices in violation of Business and
6 Professions Code sections 17200, et seq.; and (h) any and all penalties pursuant to the Private
7 Attorneys General Act ("PAGA") of 2004 arising out of any or all of the aforementioned claims.
8 The release expressly excludes all other claims, including claims for vested benefits, wrongful
9 termination, unemployment insurance, disability, social security, workers' compensation, and
10 claims outside of the Class Period. This release shall be referred to herein as the "Released Class
11 Claims."

12 49. Tax Liability. The Parties make no representations as to the tax treatment or legal
13 effect of the payments called for hereunder, and Class Members are not relying on any statement
14 or representation by the Parties in this regard. Participating Class Members understand and agree
15 that they will be responsible for the payment of taxes and penalties they owe and that are assessed
16 on the payments described herein, and will hold the Defendant free and harmless from and against
17 any claims, liabilities, costs and expenses, including attorney's fees, resulting in any way from
18 personal tax treatment of the payments made pursuant to this Agreement, including the treatment
19 of such payments as not subject to withholding or deduction for payroll and employment taxes.
20 Each Party to this Agreement acknowledges and agrees that no provision of this Agreement, and
21 no written communication or disclosure between or among the Parties or their attorneys and other
22 advisers, is or was intended to constitute or be construed or be relied upon as, tax advice.

23 50. Circular 230 Disclaimer. Each Party to this Agreement (for purposes of this section,
24 the "acknowledging party" and each Party to this Agreement other than the acknowledging party,
25 an "other party") acknowledges and agrees that: (1) no provision of this Agreement, and no written
26 communication or disclosure between or among the Parties or their attorneys and other advisers, is
27 or was intended to be, nor shall any such communication or disclosure constitute or be construed
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1 or be relied upon as, tax advice within the meaning of United States Treasury Department circular
2 230 (31 CFR part 10, as amended); (2) the acknowledging party (a) has relied exclusively upon his,
3 her or its own, independent legal and tax counsel for advice (including tax advice) in connection
4 with this Agreement, (b) has not entered into this Agreement based upon the recommendation of
5 any other Party or any attorney or advisor to any other Party, and (c) is not entitled to rely upon any
6 communication or disclosure by any attorney or adviser to any other party to avoid any tax penalty
7 that may be imposed on the acknowledging party, and (3) no attorney or adviser to any other Party
8 has imposed any limitation that protects the confidentiality of any such attorney's or adviser's tax
9 strategies (regardless of whether such limitation is legally binding) upon disclosure by the
10 acknowledging party of the tax treatment or tax structure of any transaction, including any
11 transaction contemplated by this Agreement.

12 51. Preliminary Approval of Settlement. Simultaneous with the filing of the Settlement
13 and solely for purposes of this Settlement, Plaintiff will file a Motion for Preliminary Approval
14 requesting the Court grant preliminary approval of this Settlement, certify the Class for settlement
15 purposes only, and set a date for the final settlement approval hearing. The order for Preliminary
16 Approval shall provide for the Class Notice to be sent to all Class Members as specified herein. At
17 the same time that Plaintiff files the Motion for Preliminary Approval, Plaintiff shall also submit
18 to the LWDA a copy of the proposed settlement pursuant to Labor Code § 2699, *et seq.*

19 52. Settlement Administrator's Duties. The Settlement Administrator shall be
20 responsible for: preparing, printing, and mailing the Class Notices to the Class Members; receiving
21 and reporting any Requests for Exclusion submitted by Class members; establishing the Qualified
22 Settlement Fund; calculating, processing, and mailing payments to Plaintiff, Class Counsel,
23 Participating Class Members, PAGA Members, and the LWDA; withholding any legally mandated
24 withholdings or deductions from the Individual Settlement Payments and remitting tax
25 withholdings to the applicable tax authorities; performing all tax reporting duties required by law,
26 including distributing all necessary tax forms; providing declaration(s) as necessary in support of
27 preliminary and/or final approval of this Settlement; and other tasks as the Parties mutually agree
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1 upon or as the Court orders the Settlement Administrator to perform. The Settlement Administrator
2 will be responsible for keeping the Parties timely apprised of the performance of all Settlement
3 Administrator responsibilities.

4 53. Settlement Administration. Within ten (10) calendar days after the Court grants
5 Preliminary Approval of this Agreement, Defendants shall provide the Settlement Administrator
6 with the Class Information for purposes of mailing Class Notices to Class Members. The Class
7 Information shall be kept confidential by the Settlement Administrator.

8 54. Allocation of the Gross Net Value. Within fourteen (10) calendar days after
9 receiving the Class Information from Defendants as provided herein, the Settlement Administrator
10 shall calculate the Individual Settlement Payment for each Class Member and provide the
11 calculations to the Parties *without* any personal identifying information (e.g., name, social security
12 number, last known address) about Class Members. The Settlement Administrator shall compute
13 the Individual Settlement Payment for each Class Member pursuant to the following formula:

- 14 a. Add all Eligible Work Weeks for all Class Members together to obtain the
15 “Denominator”;
- 16 b. Divide the number of Eligible Work Weeks for each Class Member by the
17 Denominator to obtain each Class Member’s “Payment Ratio”; and
- 18 c. Multiply each Class member’s Payment Ratio by the Gross Net Value to determine
19 his or her Individual Settlement Payment.
- 20 d. Final Allocation of Gross Net Value. If any Class Member submits a timely and
21 valid Request for Exclusion, the Settlement Administrator shall, within fourteen
22 (14) calendar days after the Response Deadline, reallocate their Individual
23 Settlement Payment amounts among all Participating Class Members on a *pro rata*
24 basis pursuant to the formula set forth in section 51(a)(i)-(iii), above, and provide
25 the final Individual Settlement Payment calculations to the Parties.

26 55. Class Notices. The Class Notice shall inform the Class Members of the number of
27 Eligible Work Weeks applicable to them based on Defendant’s pay records and their estimated
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1 Individual Settlement Payment. The Notice shall provide a procedure for challenging such
2 information.

3 56. Participating Class Members. All Class Members who do not submit a valid and
4 timely Request for Exclusion will be eligible to receive Individual Settlement Payments from the
5 Gross Net Value and be subject to the releases as provided herein.

6 57. Exclusions. The Class Notice shall state that Class Members who wish to exclude
7 themselves from the Settlement must submit a completed Request for Exclusion form by the
8 Response Deadline. The Request for Exclusion: (a) must contain the name and number of the
9 Action; (b) must contain the name, address, telephone number and the last four digits of the Social
10 Security number of the person requesting exclusion; (c) must be signed and dated by the Class
11 member; and (d) must be postmarked by the Response Deadline and returned to the Settlement
12 Administrator at the specified address. The Request for Exclusion will be rejected if it does not
13 contain a Class member's telephone number, the last four digits of the Social Security number, and
14 a statement that the Class member wishes to opt out of the Settlement. The date of the postmark
15 on the return mailing envelope on the Request for Exclusion shall be the exclusive means used to
16 determine whether a Request for Exclusion has been timely submitted. Any Class member who
17 requests to be excluded from the Class will not be entitled to recovery under the Settlement, except
18 for their share of the Net PAGA Amount, and will not be bound by the terms of the Settlement or
19 have any right to object, appeal or comment thereon. Class Members who do not submit a valid
20 and timely Request for Exclusion on or before the Response Deadline shall be bound by all terms
21 of the Settlement, bound by the releases, and bound by any Judgment entered in this Action if the
22 Settlement is approved by the Court, even if they do not cash or otherwise negotiate their Individual
23 Settlement Payment check.

24 a. No later than fourteen (14) calendar days after the Response Deadline, the
25 Settlement Administrator shall provide counsel for the Parties with the number of
26 all Class Members who have timely submitted Requests for Exclusion. At no time
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1 shall any of the Parties or their counsel seek to solicit Class Members to submit
2 Requests for Exclusion from the Settlement.

3 b. The Settlement Administrator shall compile a list of all Class Members requesting
4 exclusion (the “Exclusion List”). The Settlement Administrator shall then remove
5 from the Class Member List all Class Members who appear on the Known Bad
6 Address List and Exclusion List. This new list shall be called the “Member
7 Distribution List.”

8 c. Payments shall only be made to Class Members appearing on the Member
9 Distribution List, also known as Participating Class Members.

10 d. Objections. The Class Notice shall state that Class Members who wish to object to
11 the Settlement may submit a written statement of objection (“Notice of Objection”)
12 by the Response Deadline and must not have submitted a Request for Exclusion. A
13 valid Notice of Objection must be postmarked by the Response Deadline and
14 returned to the Settlement Administrator at the specified address. The Notice of
15 Objection must be signed by the Class member and state: (a) the full name of the
16 Class Member; (b) the dates of employment of the Class Member; (c) the last four
17 digits of the Class Member’s Social Security number and/or any Employee ID
18 number; (d) the basis for the objection; and (e) whether the Class Member intends
19 to appear at the Final Approval hearing. All Class Members, regardless of whether
20 they have submitted a written objection pursuant to the requirements above, may
21 appear at the Final Approval hearing and have their objections heard by the Court.
22 Class Members who fail to make objections either in writing in the manner specified
23 above, or in person at the Final Approval hearing, shall be deemed to have waived
24 any objections and shall be foreclosed from making any objections (whether by
25 appeal or otherwise) to the Settlement.

26 e. At no time shall any of the Parties or their counsel seek to solicit or otherwise
27 encourage Class Members to submit written objections to the Settlement or appeal
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1 from the Judgment. Class Counsel shall not represent any Class Members with
2 respect to any such objections.

- 3 f. The Parties and their counsel shall use their best efforts to cause the Court to grant
4 Preliminary and Final Approval of the Settlement as promptly as practical, to
5 perform all acts and execute and deliver all documents, data, and declarations
6 necessary to effectuate this Settlement, including, but not limited to, declarations
7 from the Parties in support of class certification and court approval (Preliminary and
8 Final) of the Settlement, and to oppose any objection by an objector (including any
9 appeal by an objector).

10 58. Funding and Allocation of Gross Fund Value. This is a non-reversionary, non-
11 claims made, opt-out Settlement. Defendant shall transfer funds equal to the Gross Fund Value to
12 a Qualified Settlement Fund (“QSF”) to be established by the Settlement Administrator to fund the
13 Individual Settlement Payments, the Incentive Award, the Class Counsel Fees, the Class Counsel
14 Expenses, the PAGA Payment, and the Settlement Administration Costs as set forth in this
15 Agreement.

- 16 a. Defendant will fund the Gross Fund Value within 10 (ten) calendar days of the
17 Effective Date by electronic transfer to the Settlement Administrator (“Funding Date”).
18 b. Qualified Settlement Fund. The QSF will be established by the Settlement
19 Administrator and administered as a Qualified Settlement Fund pursuant to the Internal
20 Revenue Code. The QSF will be controlled by the Settlement Administrator subject to
21 the terms of this Settlement and the Court’s Order(s). Interest, if any, earned on monies
22 in the QSF will become part of the Gross Net Value. The Settlement Administrator
23 shall serve as Trustee of the QSF and shall act as a fiduciary with respect to the
24 handling, management, and distribution of the Gross Fund Value, including the
25 handling of tax related issues and payments. The Settlement Administrator shall act in
26 a manner as necessary to qualify the settlement fund as a Qualified Settlement Fund
27 and to maintain the qualification.
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- 1 c. Individual Settlement Payments. Individual Settlement Payments will be paid from the
2 Gross Net Value and shall be paid pursuant to the settlement formula set forth herein.
3 Individual Settlement Payments shall be mailed by regular First-Class U.S. Mail to
4 Participating Class Members on the Member Distribution List at the last known mailing
5 address maintained by the Settlement Administrator. Individual Settlement Awards
6 shall be allocated as follows: (i) 20% (twenty percent) as wages and (ii) 80% (eighty
7 percent) as penalties and interest. The Settlement Administrator shall issue a form W-
8 2 for amounts deemed “wages” that are paid under this Settlement and issue a form
9 1099 for the portions allocated to penalties and interest for each taxable year payments
10 are made.
- 11 d. With regard to the \$30,000 allocated to the PAGA Members for the claims asserted
12 under PAGA, the Claims Administrator shall determine each individual PAGA
13 Member’s *pro rata* basis based on the number of Eligible Work Weeks worked by each
14 PAGA Member during the PAGA Period, utilizing the same calculations set forth in
15 paragraph 54 above.

16 59. Individual Settlement Payment Checks That Are Returned or Not Negotiated. A
17 Participating Class Member must cash his or her Settlement Share check within 180 days after it is
18 mailed to him or her. If a check is returned to the Settlement Administrator, the Settlement
19 Administrator will make all reasonable efforts to re-mail it to the Participating Class Member at his
20 or her correct address. If Participating Class Member’s Settlement Share check is not cashed within
21 120 days after its last mailing to the Participating Class Member, the Settlement Administrator will
22 send the Participating Class Member a letter informing him or her that unless the check is cashed
23 in the next 60 days, it will expire and become non-negotiable, and offer to replace the check if it
24 was lost or misplaced but not cashed. If the Settlement Share check of a Participating Class Member
25 remains uncashed by the expiration of the 180-day period, the uncashed funds shall be redistributed
26 to those Class Members who cashed their Individual Settlement Award checks. If any redistributed
27 amounts are not cashed, such check(s) shall be voided by the Settlement Administrator and
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distributed to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Civil Code Section 1500, *et seq.* for the benefit of those Participating Class Members who did not cash their Settlement Share checks until such time that they claim their property and who will remain bound by the Settlement. The Parties agree that this disposition results in no “unpaid residue” under California Civil Procedure Code Section 384, as the entire Net Settlement Amount will be paid out to Participating Class Members, whether or not they cash their Settlement Share checks.

60. Incentive Award. Subject to Court approval, in exchange for the release of all Released Claims, for the general release contained in paragraph 65, and for her time and effort in bringing and prosecuting this matter, Plaintiff Coleman Andre Blackman shall be paid an Incentive Award of up to \$10,000 (Ten Thousand Five Hundred Dollars), and Defendant will not oppose an Incentive Award up to such amount. The Settlement Administrator shall issue an IRS Form 1099 to Plaintiff for the Incentive Award. Plaintiff shall be solely and legally responsible to pay any and all applicable taxes on the Incentive Award and shall hold harmless Defendant from any claim or liability for taxes, penalties, or interest arising as a result of the Incentive Award. The Incentive Award shall be in addition to Plaintiff’s Individual Settlement Payment as a Participating Class Member. Any amount requested by Plaintiff for the Incentive Award and that is not granted by the Court shall return to the Gross Net Value and be distributed as provided in this Agreement.

61. Class Counsel Fees and Class Counsel Expenses. Defendant agrees not to oppose or object to any application or motion by Class Counsel for attorneys’ fees not to exceed \$206,500 (i.e., thirty-five percent of the Gross Fund Value), to be paid out of the Gross Fund Value. Defendant further agrees not to oppose any application or motion by Class Counsel for the reimbursement of reasonable costs associated with Class Counsel’s prosecution of this matter not to exceed \$20,000 (Twenty Thousand Dollars) from the Gross Fund Value. Class Counsel shall be solely and legally responsible to pay all applicable taxes on the payment made pursuant to this paragraph. The Settlement Administrator shall issue an IRS Form 1099 to Class Counsel for the payments made pursuant to this paragraph. This Settlement is not contingent upon the Court

1 awarding Class Counsel any particular amount in attorneys' fees and costs. Any amount requested
2 by Class Counsel for the Class Counsel Fees and Class Counsel Expenses that are not granted by
3 the Court shall return to the Gross Net Value and be distributed as provided in this Agreement.

4 62. PAGA Payment. Subject to Court approval, the Parties agree that the amount of
5 \$30,000 (Thirty Thousand Dollars) from the Gross Fund Value shall be designated for satisfaction
6 of Plaintiff's and PAGA Members' claims pursuant to the PAGA. Seventy-five percent (75%) of
7 the amount designated for satisfaction of the PAGA claim, amounting to \$22,500 (Twenty-Two
8 Thousand Five Hundred Dollars) shall be deducted from the Gross Fund Value. The remaining
9 twenty-five percent (25%) shall be allocated to PAGA Members based on the number of Eligible
10 Work Weeks worked within the PAGA Period. If the amount designated for satisfaction of the
11 PAGA claim and/or PAGA Payment are adjusted by the Court, it shall be adjusted by using funds
12 from the Gross Fund Value and in no event shall increase the Gross Fund Value.

13 63. Distribution Timing. Within twenty (10) calendar days of the Funding Date, as
14 defined in Paragraph 58, the Settlement Administrator shall issue payments to (a) Participating
15 Class Members and PAGA Members; (b) the LWDA; (c) Plaintiff; (d) Class Counsel; and (e) itself,
16 for Court-approved services performed in connection with the settlement.

17 64. Settlement Administration Costs. The Settlement Administrator shall be paid for
18 the costs of administration of the Settlement from the Gross Fund Value. No fewer than ten (10)
19 calendar days before the filing of the Final Approval Motion, the Settlement Administrator shall
20 provide the Parties with a statement detailing the costs of administration of the Settlement as well
21 as a declaration detailing the administration process. The Settlement Administrator, on the Parties'
22 behalf, shall have the authority and obligation to make payments, credits and disbursements,
23 including payments and credits in the manner set forth herein, to Participating Class Members
24 calculated in accordance with the methodology set out in this Settlement and orders of the Court.
25 The Parties agree to cooperate in the settlement administration process and to make all reasonable
26 efforts to control and minimize the cost and expenses incurred in administration of the Settlement.
27

1 65. General Release by Plaintiff. Plaintiff hereby unconditionally waives and forever
2 releases Defendants and the Released Parties from any and all claims, debts, liabilities, demands,
3 obligations, guarantees, costs, expenses, attorneys' fees, damages, action or causes of action
4 contingent or accrued for, or which arise from or are related to the allegations and claims asserted
5 in the Action, or any claims related to Plaintiff's employment with Defendant, including without
6 limitation any and all claims under state and federal law, including but not limited to claims for
7 unpaid wages, overtime compensation, premium payments, meal periods, rest periods, unsafe work
8 conditions, penalties of any kind, interest, attorneys' fees and expenses, whether known or
9 unknown arising or accruing at any time prior to the date of the entry of the final approval, claims
10 that have been raised, or that reasonably could have been raised, under the applicable Wage Orders
11 and California Labor Code Sections 200-204, 218, 218.5, 226, 226.7, 510, 512, 558, 1174, 1194,
12 1194.2, 1197, 1197.1, 1197.2, 1198, 1199, as well as all claims under PAGA (California Labor
13 Code section 2698 *et seq.*), whether or not he has standing to assert such claims under PAGA,
14 Business and Professions Code section 17200 *et seq.*, and claims for breach of any implied or
15 express contract or covenant; claims for promissory estoppel; claims of entitlement to any pay or
16 employee benefit, insurance or unit grants; claims of wrongful termination, retaliatory discharge or
17 public policy violations of whatever kind or nature, defamation, invasion of privacy, fraud,
18 misrepresentation, emotional distress or other common law or tort matters; assault, claims of
19 harassment, retaliation or discrimination based on age, race, color, religion, sex, sexual orientation,
20 national origin, ancestry, physical or mental disability, medical condition including genetic
21 characteristics, marital status, or any other protected status under federal or state law or regulation
22 or local ordinance; claims under the California Labor Code, Government, Business and Professions,
23 and Health and Safety Codes; claims based upon the California or Federal Constitutions; claims
24 based on any federal, state or other governmental statute, regulation or ordinance, including,
25 without limitation, the California Fair Employment & Housing Act, the California Family Rights
26 Act, Title VII of the Civil Rights Act, as amended, the Americans with Disabilities Act, the Labor
27 Management Relations Act, and the Family Medical Leave Act.

- 1 a. Release of Unknown Claims. Plaintiff acknowledges that he has had the opportunity
2 to review and has reviewed California Civil Code section 1542, which provides:

3 **A GENERAL RELEASE DOES NOT EXTEND TO**
4 **CLAIMS WHICH THE CREDITOR OR RELEASING**
5 **PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN**
6 **HIS OR HER FAVOR AT THE TIME OF EXECUTING**
7 **THE RELEASE, AND THAT IF KNOWN BY HIM OR**
8 **HER, WOULD HAVE MATERIALLY AFFECTED HIS OR**
9 **HER SETTLEMENT WITH THE DEBTOR OR**
10 **RELEASED PARTY.**

- 11 b. Being fully informed of this provision of the California Civil Code and
12 understanding its provisions, Plaintiff agrees to waive any rights under
13 Section 1542, and acknowledges that this Agreement and the releases
14 contained herein extends to all claims that they have or might have against
15 the persons and entities released, including those which are presently
16 unknown to them.

17 66. No Re-Application by Plaintiff. In consideration of the payments described herein,
18 Plaintiff agrees that he shall not apply for re-hire, reinstatement or employment with Defendant or
19 any of the Released Parties. If Plaintiff does apply for re-hire, reinstatement or employment with
20 Defendant or any of the Released Parties, he agrees that the covenant contained in this Paragraph
21 shall be adequate reason to reject his application.

22 67. Final Approval, Entry of Judgment, and Notice to Class Members. Class Counsel
23 shall draft the Motion for Final Approval. Then, a Final Approval hearing shall be conducted to
24 determine final approval of the Settlement along with the amounts properly payable for: (a) Class
25 Counsel Fees; (b) Class Counsel Expenses; (c) Incentive Award; (d) Settlement Administration
26 Costs; and (e) PAGA Payment. The Final Approval hearing date may be continued without further
27 notice to the Class.
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1 68. Entry of Judgment and Continued Jurisdiction of the Court. Concurrent with the
2 Motion for Final Approval, the Parties shall also jointly file a Proposed Final Judgment and seek
3 the entry of Judgment consistent with the terms of this Agreement substantially in the form
4 evidenced in **Exhibit B**.

5 69. Nullification of Settlement Agreement. In the event: (a) the Court does not enter
6 the order for Preliminary Approval substantially in the form attached hereto as **Exhibit B**; (b) the
7 number of Class Members who file timely Requests for Exclusion from the Settlement exceeds ten
8 percent (10%) of the total number of Class Members; (c) the Court does not finally approve the
9 Settlement as provided herein; (d) the Court does not enter a Judgment as provided herein
10 substantially in the form attached hereto as **Exhibit C**; or (e) the Settlement does not become final
11 for any other reason, either Party may terminate this Settlement. The terminating Party shall give
12 the other Party (through its counsel) written notice of its decision to terminate no later than ten (10)
13 calendar days after receiving notice that one of the above enumerated events have occurred.
14 Termination shall have the following effects:

- 15 a. The Settlement Agreement shall be null and void and any order or judgment entered
16 by the Court in furtherance of this Settlement shall be treated as void from the
17 beginning.
- 18 b. The Parties and any funds to be awarded under this Settlement shall be returned to
19 their respective statuses as of the date and time immediately prior to the execution
20 of this Agreement, and the Parties shall proceed in all respects as if this Agreement
21 had not been executed.
- 22 c. The Parties shall pay, in equal amounts, all Settlement Administration Costs.

23 70. Disputes Regarding Individual Settlement Payments. In the event that Class
24 Members have a dispute as to the data provided by the Defendants, Class Members will have the
25 opportunity to provide documentation and/or an explanation by the Response Deadline. If there is
26 a dispute, the Settlement Administrator will consult with the Parties to determine whether an
27 adjustment is warranted. The Settlement Administrator shall determine the eligibility for, and the
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1 amounts of, any Individual Settlement Payments under the terms of this Agreement, and that
2 determination shall be binding. In no event will the Gross Value Fund be altered as a result of any
3 such disputes.

4 71. Disputes Regarding Administration of Settlement. Any disputes not resolved by the
5 Settlement Administrator concerning the administration of the Settlement will be resolved by the
6 Court under the laws of the State of California. Prior to any such involvement of the Court, counsel
7 for Parties will confer in good faith to resolve the disputes without the necessity of involving the
8 Court.

9 72. No Publicity. Class Members and Class Counsel shall not make any public
10 statements, issue press release or provide media interviews regarding the Settlement or the terms
11 of Settlement, other than to state that the matter has been resolved on a classwide basis. Nothing
12 herein shall prohibit any disclosure of the terms of the Settlement to the Court for purposes of
13 Settlement approval or otherwise, to the Class Members or to any spouse, tax preparer, accountant,
14 attorney or financial adviser of any Class Member.

15 73. No Effect on Employee Benefits. Amounts paid to Plaintiff or other Class Members
16 pursuant to this Agreement shall be deemed not to be pensionable earnings and shall not have any
17 effect on the eligibility for, or calculation of, any of the employee benefits (e.g., vacations, holiday
18 pay, retirement plans, etc.) of Plaintiff or Class Members.

19 74. No Admission by the Parties. Defendant denies any and all claims alleged in this
20 Action and denies any and all alleged wrongdoing whatsoever. This Agreement is not a concession
21 or admission, and shall not be used against Defendant as an admission or indication with respect to
22 any claim of any fault, concession or omission by Defendant.

23 75. Disposition of Data. The Parties expressly agree that all data and information shared
24 by Defendants before, at, and after the Parties' mediation of this matter is considered confidential
25 settlement communications.

26 76. Exhibits and Headings. The terms of this Agreement include the terms set forth in
27 any attached Exhibits A-C, which are incorporated by this reference as though fully set forth herein.
28

1 Any Exhibits to this Agreement are an integral part of the Settlement. The descriptive headings of
2 any paragraphs or sections of this Agreement are inserted for convenience of reference only and do
3 not constitute a part of this Agreement.

4 77. Interim Stay of Proceedings. The Parties agree to stay all proceedings in the Action,
5 except such proceedings necessary to implement and complete the Settlement, in abeyance pending
6 the Final Approval hearing to be conducted by the Court.

7 78. Amendment or Modification. This Agreement may be amended or modified only
8 by a written instrument signed by all Parties or their successors-in-interest.

9 79. Entire Agreement. This Agreement and any attached Exhibits constitute the entire
10 Agreement among these Parties. No extrinsic oral or written representations or terms shall modify,
11 vary or contradict the terms of the Settlement Agreement unless made in writing and signed by duly
12 authorized representatives of all Parties.

13 80. No Prior Assignments. The Parties represent, covenant, and warrant that they have
14 not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or
15 encumber to any person or entity any portion of any claims, causes of action, demands, rights, and
16 liabilities of every nature and description released under this Settlement.

17 81. Authorization to Enter into Settlement Agreement. Counsel for all Parties warrant
18 and represent they are expressly authorized by the Parties whom they represent to negotiate this
19 Agreement and to take all appropriate actions required or permitted to be taken by such Parties
20 pursuant to this Agreement to effectuate its terms, and to execute any other documents required to
21 effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each other
22 and use their best efforts to affect the implementation of the Settlement. In the event the Parties
23 are unable to reach agreement on the form or content of any document needed to implement the
24 Settlement, or on any supplemental provisions that may become necessary to effectuate the terms
25 of this Settlement, the Parties may seek the assistance of the Court to resolve such disagreement.
26 The person signing this Agreement on behalf of Defendant represents and warrants that he or she
27 is authorized to sign this Agreement on behalf of Defendant. Plaintiff represents and warrants that
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1 he is authorized to sign this Agreement and that he has not assigned any claim, or part of a claim,
2 covered by this Settlement to a third-party.

3 82. Binding on Successors and Assigns. This Agreement shall be binding upon, and
4 inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

5 83. California Law Governs. All terms of this Agreement and the Exhibits hereto shall
6 be governed by and interpreted according to the laws of the State of California, without giving
7 effect to any conflict of law principles or choice of law principles.

8 84. Counterparts. This Agreement may be executed in one or more counterparts. All
9 executed counterparts and each of them shall be deemed to be one and the same instrument provided
10 that counsel for the Parties to this Agreement shall exchange among themselves original signed
11 counterparts.

12 85. This Settlement Is Fair, Adequate and Reasonable. The Parties believe this
13 Settlement is a fair, adequate, and reasonable settlement of this Action and have arrived at this
14 Settlement after extensive arms-length negotiations, taking into account all relevant factors, present
15 and potential.

16 86. Jurisdiction of the Court. The Court shall retain jurisdiction with respect to the
17 interpretation, implementation and enforcement of the terms of this Agreement and all orders and
18 judgments entered in connection therewith pursuant to California Code of Civil Procedure Section
19 664.6 and all other applicable statutes, and the Parties and their counsel hereto submit to the
20 jurisdiction of the Court for purposes of interpreting, implementing and enforcing the Settlement
21 embodied in this Agreement and all orders and judgments entered in connection therewith.

22 87. Invalidity of Any Provision. Before declaring any provision of this Agreement
23 invalid, the Court shall first attempt to construe the provisions valid to the fullest extent possible so
24 as to define all provisions of this Agreement valid and enforceable.

25
26 ***Plaintiff:***
27
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1 Date: 6/2/2022

DocuSigned by:
By: Coleman A. Blackman
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Coleman Andre Blackman

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3 ***Defendant Discus Dental, LLC***

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5 Date: 05/31/2022

By: MJ Kuhne
By: Michael-john Kuehne
Its: President

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7
8
9 ***Approved as to form only:***

10 Date: 06/2/2022

By: Nazo Koulloukian
Nazo Koulloukian
Attorney for Plaintiff

11
12
13 Date: 6/2/2022

DocuSigned by:
By: Sahag Majarian
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Sahag Majarian II
Attorney for Plaintiff

14
15
16 Date: June 1, 2022

By: Michael R. Phillips
Name: Michael R. Phillips
Attorney for Defendant