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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

LUIS MORALES, in a Representative capacity
only, and on behalf of other members of the
general public similarly situated,

Plaintiff,

v.

RICHARD J. HAGSTROM, DDS, INC., a
California Corporation; and DOES 1 - 10,
inclusive,

Defendant.

Case No. 37-2021-00026591-CU-OE-CTL

**SETTLEMENT AGREEMENT AND
RELEASE OF PAGA CLAIMS**

Date:
Time:
Judge: Hon. Richard S. Whitney
Dept.: C-68

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1 **SETTLEMENT AGREEMENT AND RELEASE OF PAGA CLAIMS**

2 Plaintiff Luis Morales (“Plaintiff”), individually and in his capacity as a representative of the
3 State of California on behalf of other aggrieved employees, and Defendant Richard J. Hagstrom,
4 DDS, Inc. (“Defendant”), enter into this Settlement Agreement and Release of PAGA Claims
5 (“Settlement”) as follows:

6 **I. DEFINITIONS**

7 As used in this Settlement, these terms shall have these meanings:

8 “Action” means this action, which Plaintiff filed in the San Diego County Superior Court,
9 Case No. 37-2021-00026591-CU-OE-CTL.

10 “Defendant” means Defendant Richard J. Hagstrom, DDS, Inc.

11 “Defense Counsel” means Stephen Thomas Davenport, Jr., and Jeffrey G. McClure of
12 Davenport Gerstner & McClure.

13 “Effective Date” shall mean the date the Court has (1) approved the settlement terms and (2)
14 issues a Judgment in the action. The parties agree that there is no right to object, opt-out, or appeal a
15 judgment that is entered in a PAGA only case. Nor shall the State of California or LWDA have any
16 right to appeal, especially considering Plaintiff will have timely notified them of the settlement and
17 approval hearing. Notwithstanding, and only in the event an appeal is nonetheless filed, then the
18 effective date will not trigger until the date all appeals from the Judgment have been full adjudicated.
19 The parties will work together to have any Appeal dismissed. However, to confirm, it is the intention
20 of the parties that so long as there is no objection, Defendant will fund the settlement within 14 days
21 of the Effective Date.

22 “LWDA” means the California Labor & Workforce Development Agency.

23 “PAGA” means the California Labor Code Private Attorneys General Act of 2004, codified
24 at California Labor Code §§ 2698 *et seq.*

25 “PAGA Notice(s)” means the letters Plaintiff filed with the LWDA on behalf of himself and
26 all other aggrieved employees alleging Defendant committed certain violations of the California
27 Labor Code.

28 “PAGA Period” means the time period from April 14, 2020 through the Effective Date.

1 “PAGA Settlement Members” means all non-exempt employees who worked in California
2 for Defendant during the PAGA Period. Defendant represents there are approximately 22 PAGA
3 Settlement Members.

4 “Plaintiff” means Luis Morales, individually and in his capacity of a representative of the
5 State of California on behalf of other aggrieved employees.

6 “Plaintiff Counsel” means William B. Sullivan, Eric K. Yaeckel, and Jason A. Baluarte of
7 Sullivan & Yaeckel Law Group, APC.

8 “Parties” means Plaintiff and Defendant.

9 “Released Claims” means all claims or causes of action for civil penalties, attorney fees, or
10 costs recoverable under PAGA alleged in the Action, or that could have been alleged in the Action,
11 that are based on alleged meal and rest breaks, meal and rest break premiums, minimum wage,
12 overtime compensation, wage statements, unreimbursed business expenses, and final pay violations,
13 and any resulting claims for penalties under PAGA alleged to have been violated in the Action
14 through the Date of Settlement Approval.

15 “Released Parties” means Defendant and all of its past and present owners, officers,
16 directors, shareholders, employees, agents, assigns, attorneys, insurers, parent companies,
17 subsidiaries, and affiliates, and their respective predecessors, successors, and assigns.

18 **II. RECITALS**

19 A. On March 29, 2021, Plaintiff’s Counsel sent a letter to the LWDA on behalf of
20 Plaintiff under California Labor Code § 2699.3. Plaintiff sought to represent himself and all PAGA
21 Settlement Members. At no time did the LWDA indicate its intention to investigate the alleged
22 violations referenced in the letter.

23 B. Thereafter, Plaintiff Counsel commenced this Action by filing a civil lawsuit alleging
24 the violations set forth in the PAGA Notices as grounds for recovering civil penalties.

25 C. The Parties subsequently agreed to engage in arms length settlement negotiations.
26 The Parties engaged in extensive informal discovery prior to the settlement. The Parties also engaged
27 in extensive settlement negotiations, which involved substantial offers and counteroffers between
28 the Parties.

1 D. Counsel for all Parties have thoroughly investigated the facts relating to the claims
2 alleged in the operative Complaint and made a thorough study of the legal principles applicable to
3 the claims asserted against Defendant. Plaintiff's Counsel concluded the Settlement is fair,
4 reasonable, and adequate in light of all known facts and circumstances, including the defenses
5 asserted by Defendant, potential adverse findings regarding liability, and numerous potential
6 appellate issues.

7 E. Defendant denies, and continues to deny, each and every claim and contention alleged
8 in the PAGA Notices, and have always maintained that it has never engaged in any unlawful acts
9 regarding any of the matters alleged in the PAGA Notices.

10 NOW, THEREFORE, in consideration of the mutual covenants, promises, and conditions set
11 forth, the Parties agree as follows:

12 **III. NON-ADMISSION OF LIABILITY**

13 Based on the factual and legal issues involved, the expense and time necessary to prosecute
14 the Action through trial, the risks, uncertainty, and costs of further prosecution, the financial status
15 of Defendant, the difficulty of proof necessary to establish a class or manageable group for purposes
16 of liability, and the relative benefits to the PAGA Settlement Members of an expeditious resolution
17 to the Action, the Parties have concluded that the terms set forth in this Settlement are fair,
18 reasonable, adequate, and in the best interests of the PAGA Settlement Members.

19 By entering into this Settlement, Defendant denies any liability for any of the claims in the
20 Action, as well as any other potential or unknown claims based on wage and hour violations under
21 California or federal law. Neither this Settlement, nor any document referred to or contemplated
22 herein, nor any action taken to carry out this Settlement, may be construed as, or may be used as, an
23 admission, concession, or indication by or against Defendant of any unlawful conduct, fault,
24 wrongdoing or liability whatsoever. Defendant specifically denies that it engaged in any unlawful or
25 wrongful conduct against Plaintiff or the PAGA Settlement Members.
26
27
28

1 **IV. TERMS OF THE PAGA SETTLEMENT**

2 **A. Gross Settlement Amount**

3 Defendants shall pay a non-reversionary monetary settlement payment in a total amount not
4 to exceed \$60,000.00 ("Gross Settlement Amount"). The Gross Settlement Amount is the maximum
5 amount Defendant can be required to pay under this Settlement. Defendant shall pay the Gross
6 Settlement Amount within 7 calendar days of the Court's approval of this Settlement ("Final Payment
7 Date").

8 **B. Attorneys' Fees and Costs**

9 Subject to Court approval, a total of up to one-third of the settlement amount (\$20,000.00)
10 shall be allocated as Plaintiff's attorneys' fees and costs. Specifically, \$1,500.00 shall be allocated
11 as costs, and \$18,500.00 shall be allocated as attorneys' fees. Defendant shall provide the attorneys'
12 fees and costs to Plaintiff's counsel, within 7 calendar days of the Court's approval of this Settlement.

13 **C. PAGA Fund**

14 After the attorneys' fees and costs are deducted, the balance will total approximately
15 \$40,000.00 and shall be allocated toward payment to the LWDA and PAGA Settlement Members
16 ("PAGA Fund"). 75% of the PAGA Fund will be sent to the LWDA and 25% of the PAGA Fund
17 will be allocated among the PAGA Settlement Members as set forth in Section V.B., *infra*.

18 **V. COMPUTATION AND DISTRIBUTION OF PAGA FUND**

19 **A. Payment of PAGA Fund**

20 Within 7 calendar days after the Court's approval of this Settlement, Defendant shall
21 distribute the PAGA Fund to the LWDA and to the PAGA Settlement Members. Payments to PAGA
22 Settlement Members shall be made via U.S. Mail to their last known addresses.

23 **B. Formula for Calculating Share of PAGA Fund**

24 The portion of the PAGA Fund to be paid to each PAGA Settlement Member shall be
25 determined based on this formula:

26 The payments to PAGA Settlement Members are determined by dividing the total amount
27 allocated in the PAGA Fund for the PAGA Settlement Members by the number of PAGA Settlement
28 Members in the PAGA Period.

1 The resulting value will then be allocated to each PAGA Settlement Member as the member's
2 individual PAGA payment ("Individual Payment"). The Individual Payment to each PAGA
3 Settlement Member is approximately \$454.55.

4 **C. Distribution of PAGA Fund**

5 Defendant shall pay an amount equivalent to 75% of the PAGA Fund to the LWDA, or as
6 otherwise directed by the Court. A copy of the check that the Defendant mails to the LWDA shall be
7 provided to Plaintiff's Counsel within five days of mailing.
8

9 Defendant shall also distribute each Individual Payment to each PAGA Settlement Member,
10 or as otherwise directed by the Court, by postmarked First Class U.S. Mail. Defendant shall maintain
11 a list of the postmarked dates for the original mailing of each Individual Payment to the PAGA
12 Settlement Members, and a list of PAGA Settlement Members who did not receive the Individual
13 Payment, if any, due to the inability to locate a valid address. A copy of the checks distributed to
14 each PAGA Settlement Member shall be provided to Plaintiff's counsel within 5 days of mailing.
15 Additionally, a copy of the list of PAGA Settlement Members who did not receive the Individual
16 Payment due to the inability to locate a valid address shall be provided to Plaintiff's counsel within
17 5 days of the mailing of Individual Payments.
18

19 All settlement checks will remain valid and negotiable for 180 days from the date of their
20 execution. After 180 days, any uncashed checks will be void and escheat to the State of California
21 Department of Industrial Relations, Unclaimed Wages Fund in the names of the PAGA Settlement
22 Members who did not cash such checks.
23

24 Defendant will prepare and issue IRS Form 1099s to PAGA Settlement Members who
25 received an Individual Payment.
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1 **VI. RELEASE OF CLAIMS**

2 **A. Claims Release by the LWDA and PAGA Settlement Members**

3 Upon the Effective Date, the LWDA and PAGA Settlement Members, including Plaintiff,
4 fully release and forever discharge the Released Parties from any and all Released Claims during the
5 PAGA Period. The Parties agree that the settlement of this Action shall be effective as a full and
6 final accord and satisfaction, settlement of, and as a bar to, the PAGA Claims alleged, or that could
7 have been alleged, by Plaintiff against Defendant arising out of the facts, circumstances, and primary
8 rights in the PAGA Notice. The Parties further agree the settlement of this Action shall be binding
9 on Plaintiff, the PAGA Settlement Members, the LWDA, the State of California, Defendant, and the
10 Released Parties. As a result of this release, the PAGA Settlement Members will be unable to bring
11 a claim under, or recover in any other claim brought under, the California Private Attorneys General
12 Act, California Labor Code §§ 2698 *et seq.*, for any violations of the Released Claims that took place
13 during the PAGA Period.

14 **B. Claims Release by Plaintiff**

15 Plaintiff will be deemed upon the Effective Date, to have released the Released Parties of and
16 from all of the Released Claims.

17 In further consideration of the above, and the benefit of this Agreement, Plaintiff
18 unconditionally, irrevocably, and absolutely releases and discharges Defendant, and the Released
19 Parties, from all losses, liabilities, claims, charges, demands and causes of action, known or
20 unknown, suspected or unsuspected, arising directly or indirectly out of or in any way connected
21 with the transactions and occurrences between the Parties, including Plaintiff's employment with
22 Defendant. Notwithstanding the foregoing, the Parties agree and acknowledge that nothing in this
23 Agreement releases or waives any rights or claims Plaintiff have or may have regarding: (i) benefits,
24 or rights to seek benefits, under applicable workers' compensation and/or unemployment insurance;
25 (ii) those which, by law, cannot be waived by signing this Agreement; or (iii) to enforce this
26 Agreement. Barring those excluded rights, this release should have the broadest possible application
27 and includes, but is not limited to, all torts, contract, common law, constitutional or other statutory
28 claims, and all claims for attorney fees, costs, and expenses. This release includes any claim for

1 personal recovery of any type, including damages or reinstatement, due to alleged employment
2 discrimination and retaliation arising under federal, state, or local law, including the California Fair
3 Employment & Housing Act, the California Family Rights Act, the Americans With Disabilities Act,
4 the Family and Medical Leave Act, and Title VII of the Civil Rights Act of 1964. This release further
5 applies to any claims arising out of or based on the Rehabilitation Act of 1973, the California Labor
6 Code, other local and/or applicable wage ordinances and statutes, and the California Business &
7 Professions Code. This release includes any claims for any tortious conduct, wrongful discharge, and
8 wrongful discharge in violation of public policy.

9 Plaintiff's releases set forth herein include a waiver of all rights under California Civil Code
10 § 1542, which provides:

11 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE**
12 **CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT**
13 **TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING**
14 **THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD**
15 **HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH**
16 **THE DEBTOR OR RELEASED PARTY.**

17 Upon the Effective Date, Plaintiff will be deemed to have waived his rights under Civil Code
18 § 1542. Such Released Claims include all known and unknown claims that were or could have been
19 alleged under any state or federal law (save for those expressly excluded above) and arising out of
20 the facts, circumstances, and primary rights in the Complaint.

21 **C. Tax Treatment and Indemnification**

22 PAGA Settlement Members, including Plaintiff, will assume any tax obligations or
23 consequences that may arise from this Settlement. PAGA Settlement Members release any and all
24 claims they have or may have against Defendant or Released Parties for any claims, demands,
25 deficiencies, levies, assessments, executions, judgments, penalties, taxes, indemnification, and any
26 other recoveries related to any payments made under this Settlement or any compensation provided
27 at any time by Defendant or any of the Released Parties. The PAGA Settlement Members shall not
28 contact Defendant, any of the Released Parties, or Defense Counsel.

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1 **VII. MISCELLANEOUS PROVISIONS**

2 **A. Mutual Full Cooperation**

3 Plaintiff, Defendant, Plaintiff Counsel, and Defense Counsel agree to cooperate fully with
4 each other to accomplish the terms of this Settlement, including, but not limited to, execution of such
5 documents, and to take such other action as may reasonably be necessary to implement the terms
6 herein. The Parties agree to use their best efforts and any other efforts that may become necessary
7 by Order of the Court, or otherwise, to effectuate this Settlement.

8 **B. Parties' Authority**

9 The signatories hereto represent they are authorized to enter into this Settlement.

10 **C. Binding Nature of the Settlement**

11 This Settlement shall be binding upon, and inure to the benefit of, the successors or assigns
12 of the Released Parties. Plaintiff represents, covenants, and warrants he has not directly or indirectly,
13 assigned, transferred, or encumbered any claim, demand, action, cause of action, or rights released
14 in the Released Claims in this Settlement. This Settlement shall be binding upon Plaintiff and the
15 PAGA Settlement Members. This Settlement may be amended or modified only by a written
16 instrument signed by Plaintiff and Defendant's duly authorized representatives. No rights under this
17 Settlement may be waived except in writing.

18 **D. Joint Drafting of Settlement Documents**

19 The Parties have arrived at this Settlement as a result of a series of arm's-length negotiations,
20 taking into account all relevant factors, present and potential. This Settlement has been drafted jointly
21 by Plaintiff Counsel and Defense Counsel and, therefore, in any construction or interpretation of this
22 Settlement, the same shall not be construed against any of the Parties.

23 **E. Execution of the Settlement Agreement**

24 All executed copies of this Settlement and photocopies thereof shall have the same force and
25 effect and shall be as legally binding and enforceable as the original.

26 **F. No Press Release or Publicity Regarding Terms of the Settlement**

27 Plaintiff and Plaintiff Counsel, as well as Defendant and Defense Counsel agree that they will
28 issue no media or press release, initiate any contact with the media or the press, respond to any media

1 or press inquiry, or have any communications with the media or the press about the fact, amount, or
2 terms of this Settlement. Plaintiff and Plaintiff Counsel shall not publicize or refer to the fact or
3 amount of the Settlement on their websites, social media, any other marketing materials, or legal
4 publications. Plaintiff and Plaintiff Counsel will not state on their websites, social media, any other
5 marketing materials, or legal publications, that Defendant engaged in any act contrary to California
6 law, or denied payment owed to its employees, or otherwise committed any violations of the
7 California Labor Code or any other local, state, or federal law, otherwise disparage Defendant, or
8 otherwise identify Defendant. Defendant may report the Settlement or results of this lawsuit if
9 required to do so by public disclosure regulatory requirements, or with respect to any financial or
10 other disclosures, which in their judgment are necessary.

11 **G. Continuing Jurisdiction of the Court**

12 The above-entitled Court shall retain jurisdiction over all disputes between and among the
13 Parties arising out of the Settlement, including but not limited to the interpretation and enforcement
14 of the terms herein.

15 **H. Advice of Counsel**

16 Each Party represents and agrees that they have been advised or are fully aware of their right
17 to discuss all aspects of this Agreement with their independent attorney prior to signing this
18 Agreement, that each Party has carefully read and fully understands all of the provisions of this
19 Agreement, and that each Party is voluntarily, and without fraud, duress or undue influence, entering
20 into this Agreement.

21 [SIGNATURES ON FOLLOWING PAGES]
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PLAINTIFF AND PLAINTIFF COUNSEL

DATED: August ___, 2021

Plaintiff Luis Morales

Approved as to form:

DATED: August ___, 2021

SULLIVAN & YAECKEL LAW GROUP, APC

By: _____

Eric K. Yaeckel
Jason A. Baluarte
Attorneys for Plaintiff

DEFENDANT AND DEFENSE COUNSEL

Richard J. Hagstrom, DDS, Inc.

DATED: August ___, 2021

By: _____

Its: _____

Approved as to form:

DATED: August ___, 2021

DAVENPORT GERSTNER & MCCLURE

By: _____

Stephen Thomas Davenport, Jr.
Attorneys for Defendant