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

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

32 Plaintiff,

33 v.

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

37 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”), in a representative capacity only and as a representative
3 of the State of California on behalf of other aggrieved employees, and Defendant Richard J.
4 Hagstrom, DDS, Inc. (“Defendant”), enter into this Settlement Agreement and Release of PAGA
5 Claims (“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, a Professional Corporation.

13 “Effective Date” shall mean the date the Court (1) approves 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
15 a judgment that is entered in a PAGA only case. Nor shall the State of California or LWDA have
16 any right to appeal, especially considering Plaintiff will have timely notified them of the settlement
17 and 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 fully
19 adjudicated. The Parties will work together to have any Appeal dismissed. However, to confirm, it
20 is the intention of the Parties that so long as there is no objection, Defendant will fund the settlement
21 within 14 days 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 March 29, 2021 and June 10, 2021 letters Plaintiff filed with
26 the LWDA on behalf of himself and all other aggrieved employees alleging Defendant and Richard
27 J. Hagstrom, DDS committed certain violations of the California 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 PAGA Claims” means all claims or causes of action for civil penalties, attorney
10 fees, costs and other relief recoverable under PAGA for violations of the Labor Code during the
11 PAGA Period which are alleged in the PAGA Notices and/or the Action, or which could have been
12 alleged in the Action against Defendant and/or the Released Parties, or any of them, including but
13 not limited to all claims and causes of action arising during the PAGA Period out of the facts,
14 circumstances, and primary rights alleged in the PAGA Notices, and all claims and causes of action
15 that are based on alleged violations during the PAGA Period related to meal and rest breaks, meal
16 and rest break premiums, minimum wages, unpaid wages, overtime compensation, wage statements,
17 unreimbursed business expenses, and final pay.

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

21 **II. RECITALS**

22 A. On March 29, 2021 and June 10, 2021, Plaintiff’s Counsel sent letters to the LWDA
23 on behalf of Plaintiff under California Labor Code § 2699.3 (the “PAGA Notices”). Plaintiff sought
24 to represent himself and all PAGA Settlement Members. At no time did the LWDA indicate its
25 intention to investigate the alleged violations referenced in the letters.

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

28 C. The Parties subsequently agreed to engage in arms length settlement negotiations.

1 The Parties engaged in extensive informal discovery prior to the settlement. The Parties also engaged
2 in extensive settlement negotiations, which involved substantial offers and counteroffers between
3 the Parties.

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

10 E. Defendant denies, and continues to deny, each and every claim and contention alleged
11 in the PAGA Notices and in the Action, and has always maintained that it has never engaged in any
12 unlawful acts regarding any of the matters alleged in the PAGA Notices or in the Action.

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

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

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

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

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

2 **A. Gross Settlement Amount**

3 Defendant 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 fourteen (14) calendar days of the Effective Date ("Final Payment Date").

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

8 Subject to Court approval, a total of up to one-third of the settlement amount (\$20,000.00)
9 shall be allocated as Plaintiff's attorneys' fees and costs. Specifically, \$1,500.00 shall be allocated
10 as costs, and \$18,500.00 shall be allocated as attorneys' fees. Defendant shall pay the attorneys' fees
11 and costs to Plaintiff's counsel within fourteen (14) calendar days of the Effective Date. With this
12 express exception, the Parties shall each bear their own costs of suit and attorney's fees incurred in
13 the prosecution and defense of this Action and this Settlement Agreement.

14 **C. PAGA Fund**

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

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

21 **A. Payment of PAGA Fund**

22 Within 14 calendar days of the Effective Date, Defendant shall distribute the PAGA Fund to
23 the LWDA and to the PAGA Settlement Members. Payments to PAGA Settlement Members shall
24 be made via U.S. Mail to their last known addresses.

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

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

28 The payments to PAGA Settlement Members are determined by dividing the total amount

1 allocated in the PAGA Fund for the PAGA Settlement Members by the number of PAGA Settlement
2 Members in the PAGA Period.

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

6 **C. Distribution of PAGA Fund**

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

10 Defendant shall also distribute each Individual Payment to each PAGA Settlement Member
11 by postmarked First Class U.S. Mail. Defendant shall maintain a list of the postmarked dates for the
12 original mailing of each Individual Payment to the PAGA Settlement Members, and a list of PAGA
13 Settlement Members who did not receive the Individual Payment, if any, due to the inability to locate
14 a valid address. A copy of the checks distributed to each PAGA Settlement Member shall be provided
15 to Plaintiff's counsel within 5 days of mailing. Additionally, a copy of the list of PAGA Settlement
16 Members who did not receive the Individual Payment due to the inability to locate a valid address
17 shall be provided to Plaintiff's counsel within 5 days of the mailing of the Individual Payments or
18 within five days of Defendant's receipt of a returned mailing to the Individual Member which is
19 stamped by the United States Postal Service as being undeliverable due to an incorrect address,
20 whichever is later.

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

25 Defendant will prepare and issue IRS Form 1099s to PAGA Settlement Members who
26 received an Individual Payment.

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1 **VI. RELEASE OF CLAIMS**

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

3 Upon the Effective Date, the LWDA and PAGA Settlement Members, including Plaintiff,
4 fully waive, release and forever discharge the Released Parties, and each of them, from any and all
5 of the Released PAGA Claims. The Parties agree that the settlement of this Action shall be effective
6 as a full and final accord and satisfaction, settlement of, and as a bar to, the Released PAGA Claims.
7 The Parties further agree the settlement of this Action shall be binding on, and inure to the benefit
8 of, Plaintiff, the PAGA Settlement Members, the LWDA, the State of California, Defendant, and the
9 Released Parties. As a result of this release, the PAGA Settlement Members will be unable to bring
10 a claim under, or to recover in any other claim brought under, the PAGA for any violations arising
11 from the Released PAGA Claims that took place or arose during the PAGA Period.

12 **B. Claims Release by Plaintiff**

13 Upon the Effective Date, Plaintiff shall be deemed to have fully released, waived and forever
14 discharged the Released Parties from any and all of the Released PAGA Claims.

15 In further consideration of the above, and the benefit of this Agreement, Plaintiff
16 unconditionally, irrevocably, and absolutely releases and discharges Defendant, and the Released
17 Parties, and each of them, from any and all rights, claims, causes of action, demands, liabilities,
18 obligations, contracts, damages, complaints, wages, benefits, charges, grievances, penalties, interest,
19 expenses and duties, whether legal, equitable or contractual, asserted or not asserted, known or
20 unknown, suspected to exist or not suspected to exist, which Plaintiff now has, may have, claims to
21 have or may claim to have against the Released Parties, or any of them, which arose on or before the
22 Effective Date (the "Released Claims"), including but not limited to any and all rights and claims
23 arising out of or in any way related to: the facts, circumstances, and primary rights alleged in the
24 PAGA Action; Plaintiff's employment and/or the termination of his employment; any federal, State
25 or local employment related, wage and hour, or non-discrimination law, statute, regulation, rule,
26 ordinance, Constitutional provision or public policy, including without limitation the California
27 Labor Code, the Labor Code Private Attorneys General Act (Labor Code Section 2698, *et seq.*
28 ("PAGA")), the Wage Orders promulgated by the California Industrial Welfare Commission, the

1 California Fair Employment and Housing Act (Government Code Section 12900, *et seq.*), the Family
2 Rights Act (Government Code Section 12945.2), the California Business & Professions Code, the
3 Fair Labor Standards Act (29 U.S.C. Section 201, *et seq.*), Title VII of the Civil Rights Act of 1964
4 (42 U.S.C. Section 2000e, *et seq.*), the Age Discrimination in Employment Act (29 U.S.C. Section
5 621, *et seq.*), the Americans with Disabilities Act (42 U.S.C. Section 12101, *et seq.*), the
6 Rehabilitation Act (29 U.S.C. Section 701, *et seq.*) and/or the Family and Medical Leave Act (29
7 U.S.C. Section 2601, *et seq.*); any tortious, unlawful or wrongful conduct of any kind, including
8 without limitation any wrongful discharge, wrongful discharge in violation of public policy,
9 defamation, or negligent or intentional infliction of emotional distress; any contract; or arising out
10 of any other matter, or in any other manner, or at all ("Plaintiff's Released Claims").
11 Notwithstanding the foregoing, the Parties agree and acknowledge that nothing in this Agreement
12 releases or waives (i) any rights or claims Plaintiff has or may have under applicable law for workers'
13 compensation benefits and/or unemployment insurance benefits; (ii) any rights and claims which, by
14 law, cannot be waived by Plaintiff with Court approval; or (iii) any claim that Plaintiff may have to
15 enforce this Agreement (the "Excluded Rights"). Other than the Excluded Rights, Plaintiff's release
16 shall have the broadest possible application allowed by law and includes, but is not limited to, a
17 release of all claims arising from torts, contract, common law, legal, equitable, constitutional and
18 statutory claims, and all claims for attorney fees, costs, and expenses.

19 Plaintiff's releases set forth herein include a waiver of all rights under California Civil Code
20 § 1542, which provides:

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

25 Upon the Effective Date, Plaintiff shall be deemed to have waived his rights under Civil Code
26 § 1542. Plaintiff elects to and does assume all risks for any and all claims, whether known or
27 unknown, suspected or not suspected, arising from the subject matter of this Agreement, including
28 but not limited to Plaintiff's Released Claims, and Plaintiff knowingly and voluntarily releases

1 Defendant and the Released Parties, and each of them, from any and all claims arising out of such
2 matters. .

3 **C. Tax Treatment and Indemnification**

4 The PAGA Settlement Members, including Plaintiff, will assume any tax obligations or
5 consequences that may arise from this Settlement. PAGA Settlement Members release any and all
6 claims they have or may have against Defendant or the Released Parties, or any of them, for any
7 claims, demands, deficiencies, levies, assessments, executions, judgments, penalties, taxes,
8 indemnification, and any other recoveries related to any payments made under this Settlement or any
9 compensation provided at any time by Defendant or any of the Released Parties.

10 **VII. MISCELLANEOUS PROVISIONS**

11 **A. Mutual Full Cooperation**

12 Plaintiff Counsel shall be responsible for filing with the Court such pleadings and papers as
13 are reasonable and necessary to seek and obtain Court approval of this Settlement Agreement.
14 Plaintiff, Defendant, Plaintiff Counsel, and Defense Counsel agree to cooperate fully with each other
15 to accomplish the terms of this Settlement, including, but not limited to, execution of such
16 documents, and to take such other action as may reasonably be necessary to implement the terms
17 herein. The Parties agree to use their best efforts and any other efforts that may become necessary
18 by Order of the Court, or otherwise, to effectuate this Settlement.

19 **B. Parties' Authority**

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

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

22 This Settlement shall be binding upon, and inure to the benefit of, Plaintiff, the PAGA
23 Settlement Members, the LWDA, the State of California, and Defendant and the Released Parties,
24 and their successors and assigns. Plaintiff represents, covenants, and warrants he has not directly or
25 indirectly, assigned, transferred, or encumbered any claim, demand, action, cause of action, or rights
26 released in the Released Claims in this Settlement. This Settlement may be amended or modified
27 only by a written instrument signed by Plaintiff and Defendant's duly authorized representatives. No
28 rights under this Settlement may be waived except in writing.

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

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

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

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

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

10 Plaintiff and Plaintiff Counsel, as well as Defendant and Defense Counsel agree that they
11 shall not publicize, and shall not issue any media or press release, initiate any contact with the media
12 or the press, respond to any media or press inquiry, or have any communications with the media or
13 the press about the fact, amount, or terms of this Settlement. Plaintiff and Plaintiff Counsel shall not
14 publicize or refer to the fact or amount of the Settlement on their websites, social media, or marketing
15 materials, in legal publications, or otherwise. Plaintiff and Plaintiff Counsel shall not state on their
16 websites, social media, or marketing materials, in legal publications, or otherwise that Defendant
17 engaged in any act contrary to California law, or denied payment owed to its employees, or otherwise
18 committed any violations of the California Labor Code or any other local, state, or federal law, shall
19 not otherwise disparage Defendant, and shall not otherwise identify Defendant. Defendant may
20 report the Settlement or results of this lawsuit if required to do so by public disclosure regulatory
21 requirements, or with respect to any financial or other disclosures, which in their judgment are
22 necessary.

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

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

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H. Advice of Counsel

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

[SIGNATURES ON FOLLOWING PAGES]

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PLAINTIFF AND PLAINTIFF COUNSEL

DATED: September 2, 2021



Plaintiff Luis Morales

Approved as to form:

DATED: September 8, 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: September __, 2021

By: _____

Its: _____

Approved as to form:

DATED: September __, 2021

DAVENPORT GERSTNER & McCLURE,
a Professional Corporation

Stephen Thomas Davenport, Jr.
Attorneys for Defendant,
Richard J. Hagstrom, DDS, Inc.

PLAINTIFF AND PLAINTIFF COUNSEL

DATED: September __, 2021

Plaintiff Luis Morales

Approved as to form:

SULLIVAN & YAECKEL LAW GROUP, APC

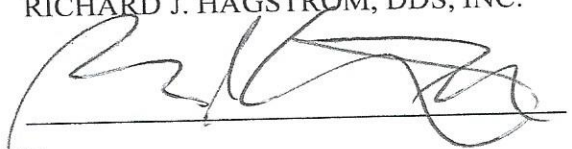
DATED: September __, 2021

By: _____
Eric K. Yaeckel
Jason A. Baluarte
Attorneys for Plaintiff

DEFENDANT AND DEFENSE COUNSEL

RICHARD J. HAGSTROM, DDS, INC.

DATED: September 8, 2021


By: Richard J. Hagstrom, DDS

Its: Chief Executive Officer

Approved as to form:

DATED: September 13, 2021

DAVENPORT GERSTNER & McCLURE,
a Professional Corporation



Stephen Thomas Davenport, Jr.
Attorneys for Defendant,
Richard J. Hagstrom, DDS, Inc.