

1 ERIN M. CONNELL (SBN 223355)
econnell@orrick.com
2 ALEXANDRA STATHOPOULOS (SBN 286681)
astathopoulos@orrick.com
3 KAYLA DELGADO GRUNDY (SBN 300513)
kgrundy@orrick.com
4 ORRICK, HERRINGTON & SUTCLIFFE LLP
The Orrick Building
5 405 Howard Street
San Francisco, CA 94105-2669
6 Telephone: +1 415 773 5700

7 SCOTT MORRISON (SBN 320167)
scott.morrison@orrick.com
8 ORRICK, HERRINGTON & SUTCLIFFE LLP
2050 Main Street, Suite 1100
9 Irvine, CA 92614-8255
Telephone: +1 949 567 6700

10 Attorneys for Defendant
11 Delta Dental of California

12 DOUGLAS HAN (SBN 232858)
SHUNT TATAVOS-GHARAJEH (SBN 272164)
13 CHRISTOPHER K. PETERSEN (SBN 260631)
LIZETTE RODRIGUEZ (SBN 335182)
14 JUSTICE LAW CORPORATION
751 N. Fair Oaks Avenue, Suite 101
15 Pasadena, California 91103
Telephone: +818 230 7502
16 Facsimile: +818 230 7259

17 Attorneys for Plaintiffs

18 SUPERIOR COURT OF THE STATE OF CALIFORNIA

19 CITY AND COUNTY OF SAN FRANCISCO
20

21 MARIANNE RAMIREZ and WENDY
22 CAMPBELL, individually, and on behalf of
other members of the general public similarly
23 situated,

24 Plaintiffs,

25 v.

26 DELTA DENTAL OF CALIFORNIA, a
California Corporation; and DOES 1 through
27 100, inclusive,

28 Defendants.

Case No. CGC-21-589648

**SECOND AMENDED JOINT
STIPULATION OF CLASS AND PAGA
ACTION SETTLEMENT AND
RELEASE**

1
2 **CLASS AND PAGA ACTION SETTLEMENT AGREEMENT**

3 This Joint Stipulation of Class and PAGA Action Settlement and Release (“Settlement
4 Agreement,” “Settlement,” or “Agreement”) is made and entered into between Marianne Ramirez
5 and Wendy Campbell (collectively, “Plaintiffs”), individually and as representatives of the Class
6 Members and Aggrieved Employees, and Defendant Delta Dental of California (“Defendant”)
7 and is subject to the terms and conditions herein and the approval of the Court. Plaintiffs and
8 Defendant are referenced collectively herein as “the Parties.”

9 **I. CONDITIONAL NATURE OF SETTLEMENT**

10 This Agreement is made for the sole purpose of settling the above-captioned action on a
11 class and representative basis. This Settlement is made in compromise of disputed claims as set
12 forth in the case entitled *Ramirez, et al. v. Delta Dental of California*, Case No. CGC-21-589648,
13 pending in the Superior Court of California, County of San Francisco. This action will be referred
14 to herein as “the Action.” The Settling Parties (as defined in Section 2 of this Agreement) enter
15 into this Agreement on a conditional basis.

16 Furthermore, in the event that the Court does not enter the Final Approval Order, or a
17 Judgment is not entered in the Action, or the conditions precedent are not met for any reason, this
18 Settlement shall be deemed void *ab initio*, it shall be of no force or effect whatsoever, it shall not
19 be referred to or utilized for any purpose whatsoever, and the negotiations, terms, and entry of the
20 Agreement shall remain subject to the provision of California Evidence Code §§ 1119 and 1152
21 and any other analogous rules of evidence that might apply.

22 Defendant denies all claims as to liability, damages, penalties, interest, fees, restitution,
23 injunctive relief, and all other forms of relief as well as the representative allegations asserted in
24 the Action. Defendant has agreed to resolve the Action through this Settlement, but to the extent
25 this Settlement is deemed void, Defendant does not waive, but rather expressly reserves, all rights
26 to challenge all such claims and allegations in the Action upon all procedural and factual grounds,
27 including without limitation the ability to challenge class or representative action treatment on
28 any grounds, as well as asserting any and all other potential defenses or privileges. The Plaintiffs

1 and Plaintiffs' Counsel agree that Defendant retains and reserves these rights. Specifically, the
2 Plaintiffs and Plaintiffs' Counsel agree not to argue or present any argument that, in the event this
3 Settlement is not approved in full, Defendant could not file a later motion or opposition that
4 contests the certifiability or manageability of the claims of this Action if it proceeds on a class or
5 representative basis or assert any and all other potential defenses and privileges if this Action
6 were to proceed. The Plaintiffs and Plaintiffs' Counsel hereby waive such arguments and agree
7 they will not take a position contrary to this provision. The Parties intend this Agreement to fully,
8 finally, and forever resolve, discharge, and settled the Released Claims upon and subject to the
9 terms and conditions hereof.

10 **II. DEFINITIONS**

- 11 1. "Action" means the case entitled *Ramirez, et al. v. Delta Dental of California*, Case
12 No. CGC-21-589648, pending in the Superior Court of California, County of San
13 Francisco.
- 14 2. "Agreement" means this agreement entered into by the Parties to effectuate the terms
15 of the Settlement.
- 16 3. "Aggrieved Employees" means all current and former hourly-paid or non-exempt
17 Professional and Clerical employees employed by Delta Dental of California within
18 the State of California at any time during the PAGA Period.
- 19 4. "Attorneys' Fees and Litigation Expenses" means the fees awarded to Class Counsel
20 in connection with this Action, as approved by the Court, and actual litigation
21 expenses for work performed by Class Counsel that are approved for reimbursement
22 by the Court as set forth in Section 7.3 of this Agreement.
- 23 5. "Class" means all current and former hourly-paid or non-exempt Professional and
24 Clerical employees who are or were employed by Delta Dental of California during
25 the Class Period.
- 26 6. "Class Counsel" means:

27 DOUGLAS HAN (SBN 232858)
28 SHUNT TATAVOS-GHARAJEH (SBN 272164)
CHRISTOPHER PETERSEN (SBN 260631)

LIZETTE RODRIGUEZ (SBN 335182)
JUSTICE LAW CORPORATION
751 N. Fair Oaks Avenue, Suite 101
Pasadena, California 91103
Telephone: +818 230 7502
Facsimile: +818 230 7259

7. "Class Notice" means the Court-approved Class Notice, included here as Exhibit A, which notifies Class Members of the lawsuit and of their estimated share of the Settlement and the number of Eligible Workweeks he/she worked during the Class Period.
8. "Class Period" means from August 10, 2016, through February 8, 2023.
9. "Class Released Claims" means all claims, demands, rights, liabilities, penalties, fees, and causes of action that were, or reasonably could have been, asserted based on the facts alleged in the Action including, for the avoidance of doubt, claims based on the following allegations: failure to pay all wages owed, including minimum, straight, and overtime wages due to working off the clock or rounding of time entries; failure to properly calculate the regular rate of pay; failure to provide compliant meal periods or rest breaks or to pay meal period or rest break premiums; failure to provide accurate and/or compliant wage statements; failure to reimburse all reasonable and necessary business expenses; failure to timely pay wages during employment or upon separation; or violation of Cal. Bus. & Prof. Code section 17200 et seq. by engaging in the foregoing conduct. Settlement Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.
10. "Court" means the Superior Court of the State of California, County of San Francisco.
11. "Cy Pres Recipient" means Legal Aid At Work, whom the Parties have selected to receive any funds remaining in the QSF after Settlement Class Members and Aggrieved Employees have had 180 days to cash or otherwise negotiate their Settlement Checks and failed to do so, and after those funds have been redistributed to

1 participating Class Members who cashed their checks.

2 12. "Defendant" means Delta Dental of California.

3 13. "Defendant's Counsel" means:

4 ERIN M. CONNELL (SBN 223355)
5 econnell@orrick.com
6 ALEXANDRA STATHOPOULOS (SBN 286681)
7 astathopoulos@orrick.com
8 KAYLA DELGADO GRUNDY (SBN 300513)
9 kgrundy@orrick.com
10 ORRICK, HERRINGTON & SUTCLIFFE LLP
11 The Orrick Building
12 405 Howard Street
13 San Francisco, CA 94105-2669
14 Telephone: +1 415 773 5700

15 SCOTT MORRISON (SBN 320167)
16 scott.morrison@orrick.com
17 ORRICK, HERRINGTON & SUTCLIFFE LLP
18 2050 Main Street, Suite 1100
19 Irvine, CA 92614-8255
20 Telephone: +1 949 567 6700

21 14. "Eligible Workweek" means any workweek in which work was performed by a
22 Settlement Class Member during the Class Period or PAGA Period.

23 15. "Employee Settlement Data" means records for each Class Member including: (1)
24 name, (2) social security number, (3) last known residential address, (4) last known
25 telephone number, and (5) number of Eligible Workweeks worked during the Class
26 Period; and records for each Aggrieved Employee including: (1) name, (2) social
27 security number, (3) last known residential address, (4) last known telephone number,
28 and (5) number of Eligible Workweeks worked during the PAGA Period.

16 16. "Enhancement Award" means a payment to named Plaintiffs out of the Gross
17 Settlement Amount of up to Ten Thousand Dollars (\$10,000) each, or a lesser amount
18 if ordered by the Court, which will be paid to Plaintiffs for serving as representatives
19 in this case and in exchange for a general release of claims and California Civil Code
20 section 1542 waiver. Plaintiffs will also be eligible for Individual Class Settlement
21 Payments and PAGA Settlement Payments. The Enhancement award is not
22 conditioned upon the Class Representatives supporting the settlement. The

Enhancement Award is for their service to the class in bringing the lawsuit.

17. “Effective Date” means the date that the Court’s Judgment in the Action becomes final. For purposes of this Settlement Agreement, the Judgment “becomes final” upon the last to occur of the following: (i) the day immediately after the last day by which a Notice of Appeal of Judgment may be timely filed with the California Court of Appeal (i.e., the sixty-first calendar day following entry of Judgment), and no such appeal being filed; (ii) if an appeal is filed and is finally disposed of by ruling, dismissal, denial, or otherwise, the day after the last date for filing a request for further review of the Court of Appeal’s decision passes and no further review is requested; (iii) if an appeal is filed and there is a final disposition by ruling, dismissal, denial, or otherwise by the Court of Appeal, and further review of the Court of Appeal’s decision is requested, the day after the request for review is denied with prejudice and/or no further review of the order can be requested; or (iv) if review is accepted, the day the Supreme Court of the State of California affirms the Settlement.

18. “Final Approval” means an Order granting final approval of the Settlement of this Action.

19. “Gross Settlement Amount” or “GSA” shall mean the total of Eight Million Five Hundred Thousand Dollars (\$8,500,000). The Gross Settlement Amount will be used to pay Settlement Administration Costs, Class Counsel’s attorneys’ fees and costs, Plaintiffs’ Enhancement Payments, the Individual Class Settlement Payments, the PAGA Settlement Payments, and the PAGA Penalties to be paid to the Labor Workforce Development Agency (“LWDA”). Defendant’s corporate payroll tax obligation shall be paid separately from the GSA.

20. “Individual Class Settlement Payments” means the *pro rata* amount payable from the Net Settlement Amount to each of the Settlement Class Members based on each Settlement Class Member’s number of Eligible Workweeks during the Class Period. Individual Class Settlement Payments will be paid to Settlement Class Members in the form of a check and the Settlement Administrator will make all required withholdings.

Individual Settlement Payments will be treated as follows: 50% as wages, reportable on IRS Form W-2 and subject to withholdings; 50% as interest and penalties reportable on IRS Form 1099.

21. "Individual PAGA Payments" means the *pro rata* amount payable from the 25% portion of PAGA Penalties that will be paid to Aggrieved Employees based on each Aggrieved Employee's number of Eligible Workweeks during the PAGA Period. Individual PAGA Payments will be paid to Aggrieved Employees in the form of a check, and Aggrieved Employees will be issued an IRS Form 1099 for their Individual PAGA Payments. Individual PAGA Payments will be treated 100% as penalties.
22. "Judgment" means a judgment entered by the Court following entry of the Final Approval order.
23. "LWDA" means the California Labor Workforce Development Agency.
24. "LWDA Payment" means the 75% portion of the PAGA Penalties that will be paid to the LWDA pursuant to California Labor Code § 2699(i).
25. "Net Settlement Amount" or "NSA" means the amount remaining after Class Counsel's attorneys' fees and costs, Plaintiffs' Enhancement Payments, the PAGA Penalties, and Settlement Administration Costs, have been deducted from the GSA, from which the Individual Class Settlement Payments will be paid.
26. "PAGA" means the California Labor Code Private Attorneys General Act, California Labor Code §§ 2698, *et seq.*
27. "PAGA Notice" means the notice that Plaintiffs provided to the Department of Industrial Relations, dated June 28, 2022, that informed the PAGA Administrator of the alleged violations of the Labor Code that are at issue in this Action (LWDA-CM-891853-22).
28. "PAGA Penalties" means the \$850,000 of the GSA that the Parties have allocated to settlement of Plaintiffs' PAGA claim, 75% of which will be paid to the LWDA (the "LWDA Payment") and 25% of which will be distributed to Aggrieved Employees as Individual PAGA Payments.

1 29. "PAGA Period" means the time period of November 9, 2019, through February 8,
2 2023.

3 30. "PAGA Released Claims" means all claims, demands, rights, liabilities, penalties,
4 fees, and causes of action under PAGA during the PAGA Period based on the factual
5 allegations and legal assertions made in the operative complaint or PAGA Notice,
6 including, for the avoidance of doubt, claims based on any alleged failure to pay all
7 wages owed, including minimum, straight, and overtime wages due to working off the
8 clock or rounding of time entries; failure to properly calculate the regular rate of pay;
9 failure to provide compliant meal periods or rest breaks or to pay meal period and rest
10 break premiums; failure to provide accurate and/or compliant wage statements; failure
11 to reimburse all reasonable and necessary business expenses; or failure to timely pay
12 wages during employment or upon separation.

13 31. "QSF" means the Qualified Settlement Fund established by the Settlement
14 Administrator for the benefit of the Settlement Class Members and Aggrieved
15 Employees and from which the Individual Class Settlement Payments and Individual
16 PAGA Payments and, if applicable, payroll taxes shall be paid.

17 32. "Reasonable Address Verification Measure" means utilization of the National Change
18 of Address Database maintained by the United States Postal Service prior to the initial
19 mailing of the Settlement Checks and skip-tracing of bad addresses upon the return of
20 undelivered Settlement Checks.

21 33. "Released Parties" means Defendant and its past or present officers, directors,
22 shareholders, employees, agents, principals, heirs, representatives, accountants,
23 auditors, attorneys, consultants, insurers, and their respective successors and
24 predecessors in interest, assigns, subsidiaries, affiliates, and parents in their individual
25 and corporate capacities.

26 34. "Response Deadline" means 45 days after the mailing of the Class Notice during
27 which time Class Members may opt out of the non-PAGA portion of the Settlement,
28 object to the non-PAGA portion of the Settlement, or dispute the number of Eligible

Workweeks that they worked during the Class Period.

35. “Settlement Administrator” means CPT Group, who the Parties have selected to administer this Settlement.

36. “Settlement Administration Costs” means the reasonable costs and fees incurred by the Settlement Administrator, as approved by the Court, to administer the Settlement in accordance with this Agreement, which will be paid from the GSA and is expected not to exceed Twenty-Nine Thousand Dollars (\$29,000).

37. “Settlement Check” means a check mailed by the Settlement Administrator to a Settlement Class Member or Aggrieved Employee with that individual’s Individual Class Settlement Payment and/or Individual PAGA Payment.

38. “Settlement Class Member” means a Class Member who did not timely opt out of the non-PAGA portion of the Settlement by submitting an opt-out request to the Settlement Administrator by the opt-out deadline.

39. “Updated Address” means a mailing address that was updated via a Reasonable Address Verification Measure, or an updated mailing address provided by the United States Postal Service, a Class Member, or any other valid source.

III. PROCEDURAL BACKGROUND

On February 4, 2021, Plaintiff Marianne Ramirez filed a class action lawsuit in San Francisco County Superior Court, Case No. CGC-21-589648, on behalf of herself and all other Class Members. In the Complaint, Plaintiff alleged various wage and hour violations under California law, including claims for: (1) unpaid overtime wages; (2) unpaid meal period premiums; (3) unpaid rest period premiums; (4) unpaid minimum wages; (5) waiting time penalties; (6) non-compliant wage statements; (7) unreimbursed business expenses; and (8) unfair business practices.

On May 10, 2022, the Parties attempted to resolve the matter in mediation with Jeff Krivis, *Esq.* but were unsuccessful.

On October 4, 2022, Plaintiffs Marianne Ramirez and Wendy Campbell filed a First Amended Complaint, adding Wendy Campbell as a named Plaintiff and adding a claim for civil

1 penalties under PAGA based on the underlying Labor Code violations alleged in the initial
2 Complaint and in the PAGA Notice.

3 The Parties agreed to attend mediation with Jeff Ross, *Esq.*, and participated in formal and
4 informal discovery in advance of mediation. The Parties exchanged relevant documents and data,
5 including documents regarding policies and/or practices that are at issue in this lawsuit, records
6 kept by Defendant regarding Plaintiffs' employment with Defendant, exemplar wage statement
7 samples, and detailed time and earnings data for approximately 20% of the putative class.

8 The Parties have engaged in arm's length negotiations, including a mediation session on
9 February 8, 2023, facilitated by Jeff Ross, *Esq.*, who has extensive experience in labor and
10 employment litigation, which generated a Memorandum of Understanding that summarizes the
11 key terms of the Settlement detailed in this Agreement. The Parties and their counsel are
12 sufficiently familiar with the facts of this Action and the applicable laws to make an informed
13 judgment as to the fairness of the Settlement, the respective strengths and weaknesses of the
14 claims brought by the group that Plaintiff sought to represent, and the risks of proceeding in
15 litigation. The Parties are represented by competent counsel and have had the opportunity to
16 consult with counsel prior to the signing of this Agreement.

17 On August 1, 2023, Class Counsel filed a Motion for Preliminary Approval of this
18 Settlement, and on August 30, 2023, the Court issued a tentative ruling denying it, identifying the
19 following issues: (1) whether Lawyers for Justice may serve as adequate counsel in the context of
20 this case; (2) the scope of the release language being overbroad as compared to the claims at
21 issue; (3) the Motion and/or operative Complaint lacking sufficient facts to support the breadth of
22 the class definition; (4) and certain paragraphs that "unduly limit the ability of Plaintiffs and their
23 counsel to independently and candidly represent and communicate with class members to best
24 represent them in this case and throughout the process of settlement administration."

25 The Parties have thus attempted to address each of those concerns by: (1) disassociating
26 Lawyers for Justice from this Action; (2) narrowly tailoring the scope of the release to the claims
27 alleged or that reasonably could have been alleged based on the facts alleged in the Action and
28 expressly carving out certain unrelated claims; (3) stipulating to the filing of a Second Amended

1 Complaint (attached here as **Exhibit B**), which alleges more specific facts and theories of liability
2 to support the scope of the class definition; and (4) striking former Paragraph 11.2 and 11.4 from
3 the Agreement.

4 **IV. DEFENDANT'S DENIAL OF LIABILITY**

5 Defendant specifically and generally denies any and all liability or wrongdoing of any sort
6 with respect to any of the claims alleged in the Action and makes no concessions or admissions of
7 liability of any sort. Defendant maintains that for any purpose other than settlement, the Action is
8 not appropriate for class or representative treatment and that, had this matter proceeded through
9 litigation, it would be uncertifiable and unmanageable. Nonetheless, Defendant has concluded
10 that further litigation would be protracted, distracting, and expensive, and that it is desirable that
11 the Action be fully and finally settled in the manner and upon the terms and conditions set forth in
12 this Agreement. Defendant has also taken into account the uncertainty and risks inherent in any
13 litigation. Defendant has therefore determined that it is desirable and beneficial to settle the
14 Action in the manner and upon the terms and conditions set forth in this Agreement.

15 The Parties agree there is a bona fide dispute as to the claims in the alleged Action, and
16 neither this Agreement, nor the Settlement-related documents, nor the Settlement itself shall be
17 construed as an admission of either fact or law on any issue by any Party.

18 **V. PLAINTIFFS' CLAIMS AND BENEFITS OF SETTLEMENT**

19 Plaintiffs and Class Counsel believe that the claims asserted in the Action have merit and
20 that evidence developed to date supports the claims. However, Plaintiffs and Class Counsel
21 recognize and acknowledge the significant expense, resources, and time required to prosecute the
22 Action against Defendant through trial and through appeals. Plaintiffs and Class Counsel have
23 also taken into account the uncertain outcome and the risks of litigation, the difficulties and
24 delays inherent in this and similar litigation, the challenges of proving certifiability and
25 manageability throughout the Action, and the problems of proving liability and rebutting possible
26 defenses to the claims alleged in the Complaint. Based upon their evaluation, Plaintiffs and Class
27 Counsel have determined that the settlement set forth in this Agreement is fair, reasonable,
28 adequate, and in the interests of Plaintiffs, Class Members, and Aggrieved Employees. Both Class

Counsel and the Plaintiffs believe that the settlement set forth in this Agreement confers substantial benefits upon all Class Members and Aggrieved Employees.

VI. CONDITIONS PRECEDENT TO EFFECTIVENESS OF AGREEMENT

6.1 The Parties enter into this Agreement and the Settlement on a conditional basis. This Agreement and Settlement will become final and effective only upon the occurrence of all of the following events:

6.1.1 The Court enters a Final Approval Order and Judgment; and

6.1.2. The Effective Date occurs, and any challenge to the Settlement, whether by objection or appeal, is resolved in favor of enforcement of the Settlement.

6.2 Unless the Court orders otherwise or agreed in writing by the Parties, this Agreement shall be deemed null and void *ab initio* upon the failure of any of these conditions to occur.

VII. SETTLEMENT CONSIDERATION—NO CLAIM FORM REQUIRED; DEDUCTIONS FROM THE GROSS SETTLEMENT AMOUNT; CALCULATION OF PAYMENTS FROM THE NET SETTLEMENT AMOUNT

This shall be an all-in Settlement without a reversion.

7.1 **Payment of the Gross Settlement Amount:** Defendant will pay the Gross Settlement Amount in full and final settlement of the Action. The Gross Settlement Amount will constitute adequate consideration for this Settlement. Since any uncashed settlement check funds will be distributed pursuant to the *cy pres* doctrine, this Agreement and the associated Judgment do not and will not create any unpaid residue or unpaid residual, and no distribution of such shall be required.

7.2 **Escalator Clause:** The Settlement is based on the understanding that there are approximately 268,709 workweeks in the Class Period. In the event the total number of workweeks in the Class Period exceeds 268,709 by more than 10%, *either* the GSA will increase by the same percentage above 10% by which the total workweeks exceeds 268,709 (e.g., if the actual total number of workweeks as of February 8, 2023, exceeds 268,709 by 12%, the GSA would increase by 2%), *or*, at Defendant's option, the Class Period will end as of the date the total workweeks

1 exceeded 268,709 by more than 10%.

2 7.3 **Attorneys' Fees and Litigation Expenses:** Class Counsel will submit an
3 application for: (a) an award of Attorneys' Fees of no more than 1/3 of the Gross Settlement
4 Amount, or \$2,833,333.33, unless otherwise increased by the Escalator Clause included in Section
5 7.2 of this Settlement in which case Class Counsel's attorney fee award will be increased by the
6 same percentage amount; and (b) an award of Class Counsel's actual Litigation Expenses (as
7 documented on an itemized cost sheet with appropriate support), estimated to be approximately
8 \$38,000, both of which shall be paid out of the Gross Settlement Amount as approved by the Court.
9 The Attorneys' Fees and Litigation Expenses set forth in this Section, as approved by the Court,
10 will constitute complete consideration for all work performed and expenses incurred to date and
11 for all worked to be performed and expenses to be incurred through the completion of the Action,
12 its settlement, and the effort to secure a Final Approval Order and Judgment by Class Counsel. The
13 Attorneys' Fees and Litigation Expenses, as approved by the Court, shall constitute full satisfaction
14 of any claim for fees or costs.

15 7.3.1 In the event that the Court (or any appellate court) awards less than the
16 amount requested for Attorneys' Fees or Litigation Expenses, only the awarded amounts shall be
17 paid and shall constitute satisfaction of those obligations and full payment thereunder, and any
18 remaining or unawarded portion of the requested Attorneys' Fees or Litigation Expenses shall be
19 made a part of the Net Settlement Amount. To the extent the Court does not approve any or all of
20 the Attorneys' Fees or Litigation Expenses requested, the Settlement shall remain binding except
21 as otherwise provided, and this will not be a justification for Plaintiff or Settlement Class Members
22 to withdraw from the Settlement.

23 7.3.2 Class Counsel agrees to be solely responsible for any claims, liens or other
24 demands from persons or entities who previously represented Plaintiffs and may seek to be
25 compensated out of the Gross Settlement Amount for attorneys' fees and/or legal costs arising from
26 prosecution of the Action against Defendant.

27 7.4 **Settlement Administration Costs:** From the Gross Settlement Amount,
28 Settlement Administration Costs shall be paid in an amount expected not to exceed Twenty-Nine

1 Thousand Dollars (\$29,000.00), subject to approval from the Court.

2 7.5 **Enhancement Payments to Plaintiffs:** From the Gross Settlement Amount,
3 Defendant agrees to pay to each Plaintiff, subject to Court approval, an Enhancement Payment of
4 up to Ten Thousand Dollars (\$10,000.00). Plaintiffs shall be issued an Internal Revenue Service
5 Form 1099 for any Enhancement Payment approved by the Court. Plaintiffs hereby acknowledge
6 that they have obtained no tax advice from Defendant and that neither Defendant nor its attorneys
7 have made any representation concerning tax consequences, if any, of the Enhancement
8 Payments. Plaintiffs agree that they are solely responsible for the tax consequences of the
9 Enhancement Payments.

10 7.5.1 In the event that the Court (or any appellate court) awards less than the
11 amount requested for the Enhancement Payments, only the awarded amount shall be paid and
12 shall constitute satisfaction of those obligations and full payment thereunder, and any remaining
13 or unawarded portion of the requested Enhancement Payments shall be made a part of the Net
14 Settlement Amount.

15 7.5.2 The Enhancement Payment, if approved by the Court, is in addition to the
16 Plaintiffs' Individual Class Settlement Payments and Individual PAGA Payments.

17 7.6 **PAGA Penalties; LWDA Payment; Net Settlement Amount:** The PAGA
18 Penalties are the \$850,000 that the Parties have allocated for settlement of Plaintiffs' PAGA
19 Claim.

20 7.6.1 Pursuant to California Labor Code § 2699(i), 75% of the PAGA Penalties
21 will be paid to the LWDA as the "LWDA Payment."

22 7.6.2 The remaining 25% of the PAGA Penalties will be the fund from which
23 Individual PAGA Payments are made.

24 7.6.3 Individual PAGA Payments will be calculated *pro rata* based on the
25 number of Eligible Workweeks each Aggrieved Employee has during the PAGA Period
26 according to Defendant's records. Individual PAGA Payments will be paid to Aggrieved
27 Employees in the form of a Settlement Check.

28 7.7 **Taxes on Individual PAGA Payments:** Individual PAGA Payments will be

1 treated as non-wage penalties and interest, reportable to the Internal Revenue Service on Form
2 1099. Defendant shall not be responsible for tax payments on any portion of the Gross Settlement
3 Amount. The Parties further understand that the Plaintiffs and any Aggrieved Employee who
4 receives any Individual PAGA Payment pursuant to this Agreement shall be solely responsible
5 for any and all tax obligations associated with such receipt.

6 7.8 **Calculation of Defendant's Corporate Payroll Obligations:** Defendant's
7 corporate payroll tax obligation shall be calculated by the Settlement Administrator and paid in
8 addition to the GSA. Defendant's corporate payroll taxes are estimated to be approximately
9 \$358,332.

10 7.9 **Payment of Individual Class Settlement Payments:** Individual Class Settlement
11 Payments will be made from the Net Settlement Amount. Individual Class Settlement Payments
12 will be calculated *pro rata* based on the number of Eligible Workweeks each Settlement Class
13 Member has during the Class Period according to Defendant's records. Individual Class
14 Settlement Payments will be paid to Settlement Class Members in the form of a Settlement
15 Check.

16 7.10 **Taxes on Individual Class Settlement Payments:** Individual Class Settlement
17 Payments will be treated 50% as wages, reportable to the Internal Revenue Service on Form W-2
18 and subject to withholdings, and 50% as interest and penalties, reportable to the Internal Revenue
19 Service on Form 1099. Defendant shall not be responsible for tax payments on any portion of the
20 Gross Settlement Amount. The Parties further understand that the Plaintiffs and any Settlement
21 Class Member who receives any Individual Class Settlement Payment pursuant to this Agreement
22 shall be solely responsible for any and all tax obligations associated with such receipt.

23 **VIII. ADMINISTRATION OF THE SETTLEMENT**

24 8.1 **Motion for Preliminary Approval of Settlement Agreement:** Class Counsel has
25 agreed to draft and file the Motion for Preliminary Approval and Motion for Final Approval. At
26 least five (5) Court days before the filing deadline for the Motion for Preliminary Approval,
27 Plaintiffs will provide drafts of the Memorandum of Points and Authorities and supporting
28 documents to Defendant so that Defendant has an opportunity to review and provide commentary.

1 Defendant will provide commentary or any feedback within five (5) calendar days of receiving
2 the draft of the Motion for Preliminary Approval and supporting documents. If Defendant does
3 not provide commentary by that time, Defendant will have waived the right to review and
4 comment.

5 8.2 **Motion for Final Approval of Settlement Agreement**: At least five (5) Court
6 days before the filing deadline for the Motion for Final Approval, Plaintiffs will provide drafts of
7 the Memorandum of Points and Authorities and supporting documents to Defendant so that
8 Defendant has an opportunity to review and provide commentary. Defendant will provide
9 commentary or any feedback within five (5) calendar days of receiving the draft of the Motion for
10 Final Approval and supporting documents. If Defendant does not provide commentary by that
11 time, Defendant will have waived the right to review and comment.

12 8.3 **Settlement Administrator**: The Parties agree to jointly utilize a third-party
13 Settlement Administrator to distribute the Gross Settlement Amount as outlined in this
14 Agreement. The Parties have selected CPT Group to administer the Settlement, but may jointly
15 select a different settlement administrator subject to the approval of the Court. Settlement
16 Administration Costs are expected not to exceed Twenty-Nine Thousand Dollars (\$29,000). If the
17 actual cost of settlement administration is less than the amount approved by the Court, the
18 remaining amount shall be added to the Net Settlement Amount and distributed accordingly.
19 Settlement Administration Costs as approved by the Court shall come out of the Gross Settlement
20 Amount. The Settlement Administrator's duties shall include the following: distribute payments
21 for Attorneys' Fees and Litigation Expenses to Class Counsel; distribute Plaintiffs' Enhancement
22 Payments to Plaintiffs; make payment to the LWDA for its 75% share of the PAGA Penalties;
23 update addresses for Class Members via the USPS National Change of Address database and
24 perform a skip tracing process to determine the best, most recent address prior to distribution of
25 any Settlement Checks; calculate Defendant's corporate payroll tax obligation; determine
26 Individual Class Settlement Payment amounts for each Settlement Class Member; determine
27 Individual PAGA Payment amounts for each Aggrieved Employee; mail Settlement Checks; re-
28 mail undeliverable Settlement Checks; redistribute funds from uncashed settlement checks to

1 participating Class Members who cashed their checks; pay to the Cy Pres Recipient any funds
2 remaining in the QSF; and perform related tax, accounting, and administration services.

3 8.4 **Establishment and Funding of the QSF**: The Parties agree that the QSF is
4 intended to be a “Qualified Settlement Fund” under Section 468B of the Internal Revenue Code
5 and Treasury Regulation § 1.468B-1 (26 C.F.R. § 1.468B-1 *et seq.*) and will be administered by
6 the Settlement Administrator as such. With respect to the QSF, the Settlement Administrator
7 shall: (1) open and administer a settlement account in such a manner as to qualify and maintain
8 the qualification of the QSF as a “Qualified Settlement Fund” under Section 468B of the Internal
9 Revenue Code and Treasury Regulation § 1.468B-1; (2) satisfy all federal, state and local income
10 and other tax reporting, return, and filing requirements with respect to the QSF; (3) calculate,
11 withhold, remit and report each Settlement Class Member’s share of applicable payroll taxes
12 (including, without limitation, federal, state, and local income tax withholding, FICA, Medicare,
13 and any state or local employment taxes); and (4) satisfy out of the QSF all fees, expenses and
14 costs, including the employer’s share of applicable federal, state, and local employment taxes on
15 applicable settlement payments incurred in connection with the opening and administration of the
16 QSF and the performance of its duties and functions as described in this Agreement. The
17 aforementioned taxes, fees, expenses, and costs shall be treated as and included in the costs of
18 administering the QSF and as Settlement Administration Costs. The Parties and the Settlement
19 Administrator shall treat the QSF as coming into existence as a Qualified Settlement Fund on the
20 earliest date permitted as set forth in 26 C.F.R. § 1.468B-1(j)(2)(i), and such election statement
21 shall be attached to the appropriate returns as required by 26 C.F.R. § 1.468B-1(j)(2)(ii). The
22 Parties agree to cooperate with the Settlement Administrator and one another to the extent
23 reasonably necessary to carry out the provisions of this section of the Agreement.

24 8.5 **Employee Settlement Data**: For each Class Member, Defendant will provide the
25 Settlement Administrator with the following data from its records, to the extent available: (1)
26 name, (2) social security number, (3) last known residential address, (4) last known telephone
27 number, and (5) number of Eligible Workweeks worked during the Class Period. For each
28 Aggrieved Employee, Defendant will provide the Settlement Administrator with the following

1 data from its records, to the extent available: (1) name, (2) social security number, (3) last known
2 residential address, (4) last known telephone number, and (5) number of Eligible Workweeks
3 worked during the PAGA Period. Defendant will provide, in Microsoft Excel or Microsoft Word
4 form, the Employee Settlement Data to the Settlement Administrator within 10 calendar days (or,
5 if that date falls on a weekend or holiday, the next business day thereafter) after the Court enters
6 an order granting preliminary approval of the Settlement. The Settlement Administrator shall
7 utilize Reasonable Address Verification Measures which may include running the mailing
8 addresses provided through the National Change of Address database and using Updated
9 Addresses for each Class Member when mailing Class Notices.

10 8.6 **Distribution of Class Notice:** Within ten (10) calendar days of receiving the
11 Employee Settlement Data, the Settlement Administrator will send Class Members, by first-class
12 mail, at their last known address, the Court-approved Class Notice, notifying them of the lawsuit
13 and of their estimated share of the Settlement and the number of Eligible Workweeks they
14 worked during the Class Period. The Settlement Administrator will take reasonable steps to
15 ensure that the Class Notice packet is received by as many Class Members as possible, including
16 by use of the National Change of Address Database and skip tracing to review the accuracy of
17 and (if possible and as needed) updating mailing addresses.

18 8.7 **Opting Out, Objecting, Disputing Workweeks:** Class Members will have forty-
19 five (45) calendar days from the mailing of the Class Notice to opt out of or object to the non-
20 PAGA portion of the Settlement, or to dispute their Eligible Workweeks, unless extended by the
21 Court (the “Response Deadline”). Class Members may dispute their workweeks by timely
22 submitting information to the Settlement Administrator, and may notify the Settlement
23 Administrator of any objections to the Settlement. The Settlement Administrator will certify
24 jointly to Class Counsel and Defense Counsel any opt-outs or objections received. In the event of
25 a dispute over a Class Member’s Eligible Workweeks, Defendant shall make the final decision as
26 to which dates should be applied based on its records and any evidence submitted by the Class
27 Member. Aggrieved Employees may not opt out of the PAGA portion of this Settlement. **Under**
28 **no circumstances should a Class Member file anything with the Court directly.**

1 8.8 **Distribution of Gross Settlement Amount:**

2 8.8.1 No later than five (5) business days after the Effective Date has passed, the
3 Settlement Administrator shall prepare a final list of all Settlement Class Members and Aggrieved
4 Employees. For each person on this list, the Settlement Administrator will calculate the amounts
5 due to each Settlement Class Member and Aggrieved Employee using the methodology set forth in
6 this Agreement.

7 8.8.2 No later than ten (10) calendar days after the Effective Date has passed (or,
8 if that date falls on a weekend or holiday, the next business day thereafter), Defendant shall transfer
9 to the Settlement Administrator the Gross Settlement Amount of \$8,500,000.00. Defendant will
10 wire the funds requested by the Settlement Administrator into the QSF set up and controlled by the
11 Settlement Administrator.

12 8.8.3 No later than ten (10) calendar days after receipt of the Gross Settlement
13 Amount from Defendant, the Settlement Administrator will (1) pay from the Gross Settlement
14 Amount the Settlement Administration Costs, as approved by the Court; (2) pay from the Gross
15 Settlement Amount to Class Counsel the Attorneys' Fees and Litigation Expenses, as approved by
16 the Court; (3) pay from the Gross Settlement Amount to Plaintiffs the Enhancement Payments, as
17 approved by the Court; (4) pay from the Gross Settlement Amount the LWDA Payment; (5) pay
18 from the Gross Settlement Amount the Individual PAGA Payments; and (6) pay from the Gross
19 Settlement Amount the Individual Class Settlement Payments, less applicable deductions and
20 withholdings.

21 8.8.4 Settlement Checks will remain negotiable for one hundred eighty (180)
22 calendar days from the original date of mailing. Any checks returned as non-deliverable on or
23 before the check cashing deadline will be sent promptly via regular First-Class U.S. Mail to the
24 forwarding address affixed thereto. If no forwarding address is provided, the Settlement
25 Administrator will promptly utilize Reasonable Address Verification Measures to attempt to
26 determine the correct address using a skip-trace, or other search using the name, address, or Social
27 Security number of the Settlement Class Member or Aggrieved Employee involved and will then
28 perform a single re-mailing using an Updated Address, if available. The Settlement Administrator

1 shall mail a check-cashing reminder postcard to those recipients who have not negotiated their
2 Settlement Checks within ninety (90) days of mailing. Funds represented by Settlement Checks
3 returned as undeliverable and those settlement checks remaining uncashed for more than 180 days
4 after the original date of mailing shall be redistributed to participating Class Members who cashed
5 their checks. Funds represented by these redistributed Settlement Checks that remain uncashed for
6 more than 180 days after the redistribution date shall be paid to Legal Aid At Work. Both Plaintiff
7 and Defendant, and their respective Counsel represent that they do not have any relationship or
8 involvement with Legal Aid At Work.

9 8.8.5 After the Settlement Checks have been mailed and any payment to the Cy
10 Pres Recipient has been made, the Settlement Administrator will provide an accounting in a signed
11 declaration to the Parties of all amounts paid out in connection with this Settlement.

12
13 **IX. RELEASED CLAIMS**

14 9.1 **Release by Settlement Class Members:** When the Court's final approval order
15 and judgment becomes final and upon funding of the Gross Settlement Amount, the Settlement
16 Class Members shall release the Released Parties from the Class Released Claims.

17 9.2 **Release by Aggrieved Employees:** When the Court's final approval order and
18 judgment becomes final and upon funding of the Gross Settlement Amount, the Aggrieved
19 Employees shall release and be barred from acting as a proxy of the State of California to allege
20 any of the PAGA Released Claims against the Released Parties.

21 9.3 **Agreement As Evidence of Res Judicata:** Any Party to this Settlement
22 Agreement may use the Settlement Agreement to assert that this Settlement Agreement and the
23 Judgment to be entered by the Court following Final Approval of this Settlement Agreement bar
24 any later-filed action asserting any Class Released Claims or PAGA Released Claims against any
25 of the Released Parties. The provisions of this paragraph apply regardless of whether Plaintiffs,
26 Settlement Class Members, and/or Aggrieved Employees cash their Settlement Checks.

27 9.4 **General Release by Plaintiffs:** As consideration for the Enhancement Payments,
28 upon the Effective Date, Plaintiffs, on behalf of themselves and each of their respective heirs,

1 representatives, successors, assigns, and attorneys, shall be deemed to have, and by operation of
2 the Judgment shall have, fully, finally, and forever released, relinquished, and discharged the
3 Released Parties from all claims or causes of action of any type whatsoever, whether known or
4 unknown, arising out of or related to the Action or Plaintiffs' employment with or separation of
5 employment from Defendant, including but not limited to any and all claims for wrongful
6 discharge; termination in violation of public policy; discrimination; harassment; retaliation; failure
7 to provide reasonable accommodation; failure to engage in a good faith interactive process; breach
8 of contract, both express and implied; breach of covenant of good faith and fair dealing, both
9 express and implied; promissory estoppel; negligent or intentional infliction of emotional distress;
10 fraud; negligent or intentional misrepresentation; negligent or intentional interference with contract
11 or prospective economic advantage; unfair business practices; defamation; libel; slander;
12 negligence; personal injury; assault; battery; invasion of privacy; false imprisonment; conversion;
13 and disability benefits; any and all claims for violation of any federal, state, or municipal statute,
14 including, but not limited to, Title VII of the Civil Rights Act of 1964; the Civil Rights Act of 1991;
15 Section 1981 of U.S.C. Title 42; the Rehabilitation Act of 1973; the Americans with Disabilities
16 Act of 1990; the Equal Pay Act; the Fair Labor Standards Act ("FLSA"), 29 U.S.C. §§ 216 et seq.,
17 except as prohibited by law; the Fair Credit Reporting Act; the Employee Retirement Income
18 Security Act of 1974 (regarding unvested benefits); the Worker Adjustment and Retraining
19 Notification Act; the Family and Medical Leave Act, except as prohibited by law; the Sarbanes-
20 Oxley Act of 2002; the National Labor Relations Act; the Uniform Services Employment and
21 Reemployment Rights Act; the Genetic Information Nondiscrimination Act; the Immigration
22 Reform and Control Act; the California Family Rights Act; the California Labor Code; the
23 California Industrial Welfare Commission Wage Orders; the California Business & Professions
24 Code; and the California Fair Employment and Housing Act; any and all claims for violation of the
25 federal, or any state, constitution; any and all claims arising out of any other laws and regulations
26 relating to employment or employment discrimination, harassment or retaliation; any and all claims
27 for monetary recovery and personal or individual relief, except as prohibited by law; and any
28 premiums, penalties, interest, punitive damages, costs, attorneys' fees, injunctive relief, declaratory

1 relief, or accounting based on the claims (the "Plaintiffs Released Claims"). Nothing in this
2 Agreement shall be construed to prohibit Plaintiffs from (i) filing a charge or complaint with the
3 Equal Employment Opportunity Commission or any other federal, state or local administrative or
4 regulatory agency, or (ii) participating in any investigation or proceedings conducted by the Equal
5 Employment Opportunity Commission or any other federal, state or local administrative or
6 regulatory agency. However, Plaintiffs expressly waive the right to any relief of any kind in the
7 event that the Equal Employment Opportunity Commission or any other federal, state or local
8 administrative or regulatory agency pursues any claim on Plaintiffs' behalf that Plaintiffs have
9 released in this Agreement. Furthermore, this general release of claims excludes, and Plaintiffs do
10 not waive, release or discharge any unwaivable rights Plaintiffs may have under the California
11 Labor Code, claims under state workers' compensation or unemployment laws or indemnification
12 rights Plaintiffs have against Released Parties and/or any claims by Plaintiffs that cannot be released
13 by a private settlement agreement.

14 9.3 With regard to the Plaintiffs' Released Claims, Plaintiffs expressly waive all rights
15 under California Civil Code section 1542, which states:

16 **A general release does not extend to claims that the creditor or releasing party**
17 **does not know or suspect to exist in his or her favor at the time of executing**
18 **the release and that, if known by him or her, would have materially affected**
19 **his or her settlement with the debtor or released party.**

20 Plaintiffs may hereafter discover facts in addition to or different from those which they
21 now know or believe to be true with respect to the subject matter of the Plaintiffs Released
22 Claims, but they shall be deemed to have, and by operation of the Judgment shall have, fully,
23 finally, and forever settled and released any and all Plaintiffs Released Claims, known or
24 unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or
25 hidden, which then exist, or heretofore have existed upon any theory of law or equity now
26 existing, including, but not limited to, conduct which is negligent, intentional, with or without
27 malice, or a breach of any duty, law or rule, without regard to the subsequent discovery or
28 existence of such different or additional facts.

1 **X. RIGHT TO REVOKE**

2 10.1 **Right to Revoke:** Defendant has the right in its sole and exclusive discretion to
3 terminate this Agreement and withdraw from the Settlement at any time prior to date the Court
4 enters the Final Approval Order on this Settlement if: (a) the Settlement is construed in such a
5 fashion that Defendant is required to pay more than the Gross Settlement Amount, except as
6 pursuant to the Escalator Clause in Section 8.2; (b) any court, following the signing of this
7 Agreement but before the Court enters the Final Approval Order, certifies, whether on a
8 conditional basis or not, a class, collective, or representative action involving a claim described in
9 the Action by potential Class Members or Aggrieved Employees covered by this Settlement; or
10 (c) 7.5% or more of the Class Members opt out of the Settlement. If for any reason the Settlement
11 does not become final, or if Defendant withdraws from the Settlement for any of the reasons set
12 forth in this section, this Agreement and any related settlement documents shall be null and void.
13 In such an event, neither the Agreement, nor the settlement documents, nor the negotiations
14 leading to the Settlement may be used as evidence for any purpose, and Defendant shall retain the
15 right to challenge all claims and allegations in the Action, to assert all applicable defenses, and to
16 dispute the propriety of class or representative treatment on all applicable grounds.

17 10.2 **Non-Approval of Settlement Agreement:** Because settlement of the Action requires
18 Court approval, the Settlement Agreement is conditional and contingent upon approval and entry
19 of the Final Approval Order and Judgment. If the conditions of the Settlement set forth in this
20 Agreement are not satisfied, or if Defendant terminates and withdraws from the Agreement, or if
21 the Court does not enter the Final Approval Order and Judgment, or if appellate review is sought
22 and on such review the Court's Final Approval Order is materially modified or reversed, then this
23 Settlement shall be canceled, terminated, and shall have no force or effect. If the Effective Date
24 does not occur (due to the failure of the Court to grant approval or otherwise), or if this
25 Settlement is terminated, revoked, or canceled pursuant to its terms, the Parties to this Settlement
26 shall be deemed to have reverted to their respective status as of the date and time immediately
27 prior to the execution of this Settlement. A reduction by the Court or on appeal as to the amount
28 of Attorneys' Fees and Litigation Expenses, and/or to the amount of Plaintiff's Enhancement

1 Payments does not provide a basis for terminating this Settlement.

2 **XI. COOPERATION**

3 11.1 The Parties shall cooperate fully with one another in seeking the Court's approval
4 of this Agreement and to use their respective best efforts to consummate the Settlement and cause
5 the Final Approval Order and Judgment to be entered and to become final. The Parties therefore
6 agree to cooperate in good faith to promptly prepare, execute and finalize all Settlement-related
7 documents, seek all necessary Court approvals, and do all other things necessary to consummate
8 the Settlement.

9 11.2 Plaintiffs, Class Counsel, Settlement Class Members, the LWDA, and Aggrieved
10 Employees hereby waive appeals of an order granting approval of this Settlement or entering
11 Judgment in the Action as to Defendant so long as such order is consistent with the material terms
12 of this Agreement.

13 **XII. MISCELLANEOUS PROVISIONS**

14 12.1 All of the Parties have been represented by counsel throughout all negotiations that
15 preceded the execution of this Agreement, and this Agreement is made with the consent and
16 advice of counsel.

17 12.2 This Agreement may not be modified or amended, except in a writing that is
18 signed by the respective counsel of record for the Parties and approved by the Court.

19 12.3 This Agreement and Exhibit A (Class Notice) attached hereto constitute the entire
20 agreement between the Parties concerning the subject matter hereof, and supersede and replace all
21 prior negotiations, understandings, memoranda of understanding and proposed agreements,
22 written and oral, relating thereto. No extrinsic oral or written representations or terms shall
23 modify, vary, or contradict the terms of the Agreement unless made in writing, signed by duly
24 authorized representatives of all Parties, and approved in writing by a final order of the Court. No
25 waiver of any term, provision or condition of this Agreement, whether by conduct or otherwise,
26 in any one or more instance shall be deemed to be or construed as a further or continuing waiver
27 of any such term, provision or condition.

28 12.4 This Agreement shall be subject to, governed by, construed, enforced, and

1 administered in accordance with the laws of the State of California, without giving effect to the
2 principles of conflict of laws, both in its procedural and substantive aspects, and shall be subject
3 to the continuing jurisdiction of the Court. This Agreement shall be construed as a whole
4 according to its fair meaning and intent, and not strictly for or against any party, regardless of
5 who drafted (or was principally responsible for drafting) this Agreement or any specific term or
6 condition thereof. In any construction to be made of the Agreement, the Agreement shall not be
7 construed against any party and the canon of contract interpretation set forth in California Civil
8 Code section 1654 shall not be applied.

9 12.5 The Settlement shall be binding upon and inure to the benefit of the settling
10 Parties' respective successors, assigns, heirs, spouses, marital communities, executors,
11 administrators and legal representatives.

12 12.6 Consistent with Section 664.6 of the California Code of Civil Procedure and Rule
13 3.769(h) of the California Rules of Court, the Parties agree the Court shall retain jurisdiction with
14 respect to the interpretation, implementation and enforcement of the terms of the Agreement, and
15 all Parties hereto submit to the jurisdiction of the Court for purposes of implementing and
16 enforcing the terms of the Agreement. Before raising an issue before the Court with respect to
17 interpretation of the Agreement, the Parties agree to attempt to resolve the issue first by
18 consulting with mediator Jeff Ross.

19 12.7 This Agreement may be executed in one or more counterparts, each of which shall
20 be deemed an original and together shall constitute one and the same instrument. When each of
21 the Parties has signed at least one such counterpart, this Agreement shall become binding as to all
22 of the Parties as of the day and year last executed. Fax and/or electronically scanned signatures
23 shall be deemed as effective as originals.

24 12.8 The Parties hereto represent, covenant, and warrant that they have not directly or
25 indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any
26 person or entity any portion of any liability, claim, demand, action, cause of action or rights
27 herein released and discharged except as set forth herein.

28 12.9 Each individual signing this Agreement warrants that he or she has the authority

1 and is expressly authorized to enter into this Agreement on behalf of the party(ies) for which that
2 individual signs.

3 12.10 Any notices or other documents that must or may be transmitted to Class Counsel
4 and/or Defendant's Counsel, pursuant to any section of this Agreement, shall be transmitted to the
5 addresses set forth in the definitions of Class Counsel and Defendant's Counsel, respectively, set
6 forth above.

7 12.11 The Parties and all counsel acknowledge and agree that for the purposes of any
8 claims, actions, and/or proceedings arising out of this Agreement, notice provided to Class
9 Counsel shall be deemed to be notice to the Plaintiffs.

10 12.12 The Parties believe this Settlement Agreement is a fair, adequate, and reasonable
11 settlement of the Actions, acknowledging that the Court "may award a lesser amount than the
12 maximum civil penalty amount specified by "PAGA" if, based on the facts and circumstances of
13 the particular case, to do otherwise would result in an award that is unjust, arbitrary and
14 oppressive, or confiscatory." Lab. Code § 2699(e)(2). The Parties have arrived at this Settlement
15 Agreement after arm's-length negotiations by experienced counsel. The Parties further
16 acknowledge that they are each represented by competent counsel and that they have had an
17 opportunity to consult with their counsel regarding the fairness and reasonableness of this
18 Settlement Agreement.

19 IN WITNESS THEREOF, the Parties each acknowledge that they have read the
20 foregoing Settlement Agreement, accept and agrees to the provisions contained in this Settlement
21 Agreement, and hereby execute it voluntarily and with full understanding of its consequences.

22 10/03/2023
23 Dated: October __, 2023



Marianne Ramirez, Plaintiff

24
25 10/04/2023
26 Dated: October __, 2023



Wendy Campbell, Plaintiff

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: October____, 2023

Delta Dental of California

By: _____

Mike Castro
Chief Executive Officer
Delta Dental of California

APPROVED AS TO FORM AND CONTENT:

Dated: October 4, 2023

By:  _____

Douglas Han, Esq.
Shunt Tatavos-Gharajeh, Esq.
Christopher K. Petersen, Esq.
Lizette Rodriguez, Esq.
Justice Law Corporation
Attorneys for Plaintiffs

Dated: October____, 2023

By: _____

Erin Connell, Esq.
Alexandra Stathopoulos, Esq.
Kayla Grundy, Esq.
Scott Morrison, Esq.
Orrick, Herrington & Sutcliffe, LLP
Attorneys for Defendant

1
2
3 Dated: October ^{10/4/2023}____, 2023

Delta Dental of California

4 DocuSigned by:
5 By: Mike Castro
6 4C7B208B81344DA...

7 DocuSign Envelope ID: 8EC5A176-0995-48FC-BE19-5EED67D13735
8 Mike Castro
9 Chief Executive Officer
10 Delta Dental of California

11 **APPROVED AS TO FORM AND CONTENT:**

12 Dated: October____, 2023

By: _____

13 Douglas Han, Esq.
14 Shunt Tatavos-Gharajeh, Esq.
15 Christopher K. Petersen, Esq.
16 Lizette Rodriguez, Esq.
17 Justice Law Corporation
18 *Attorneys for Plaintiffs*

19
20
21 Dated: October ^{10/4/2023}____, 2023

22 By: _____
23 

24 DocuSign Envelope ID: 8EC5A176-0995-48FC-BE19-5EED67D13735
25 Erin Connell, Esq.
26 Alexandra Stathopoulos, Esq.
27 Kayla Grundy, Esq.
28 Scott Morrison, Esq.
Orrick, Herrington & Sutcliffe, LLP
Attorneys for Defendant

EXHIBIT A

Marianne Ramirez, et al. v. Delta Dental of California, Case No. CGC-21-589648
Superior Court of the State of California, for the County of San Francisco
Notice of Class and PAGA Action Settlement And Release

You are not being sued. This notice affects your rights. Please read it carefully.

To: All current and former hourly-paid or non-exempt Professional and Clerical employees of Defendant Delta Dental of California (“Defendant”) in the State of California who worked at any time from August 10, 2016, through February 8, 2023 (“Class Members”).

All current and former hourly-paid or non-exempt Professional and Clerical employees of Defendant in the State of California who worked at any time from November 9, 2019, through February 8, 2023 (“PAGA Members”).

On [REDACTED], the Honorable Andrew Y.S. Cheng of the San Francisco County Superior Court granted preliminary approval of this class action settlement and ordered the litigants to notify all Class Members of the settlement. **You have received this notice because Defendant’s records indicate that you are a Class Member, and therefore entitled to a payment from the settlement.**

Unless you choose to opt out of the settlement by following the procedures described below, you will be deemed a Class Member and, if the Court grants final approval of the settlement, you will be mailed a check for your share of the settlement fund. The Final Approval Hearing on the adequacy, reasonableness, and fairness of the Settlement will be held at [REDACTED] : [REDACTED].m. on [REDACTED], 2023 in Department 613 of the San Francisco County Superior Court, located at the 400 McAllister St., San Francisco, CA 94102.

If you move, you must send the Settlement Administrator your new address; otherwise, you may never receive your settlement payment. It is your responsibility to keep a current address on file with the Settlement Administrator.

Summary of the Litigation

Plaintiffs Marianne Ramirez and Wendy Campbell, on their behalf and of other current and former hourly paid or non-exempt Professional and Clerical employees, allege the following claims against Defendant: (1) unpaid overtime; (2) unpaid meal period premiums; (3) unpaid rest period premiums; (4) unpaid minimum wages; (5) final wages not timely paid; (6) non-compliant wage statements; (7) unreimbursed business expenses; (8) unfair business practices; and (9) civil penalties for violations of the Labor Code under California’s Private Attorneys General Act (“PAGA”). Defendant denies these allegations.

After the exchange of relevant information and evidence, the parties agreed to enter into settlement negotiations in an attempt to informally resolve the claims in the case. On February 8, 2023, the parties participated in a mediation with Jeff Ross, Esq., an experienced and well-respected class action mediator. With Mr. Ross’s guidance, the parties were able to negotiate a complete settlement of Plaintiffs’ claims.

Counsel for Plaintiff, who has been appointed by the Court to represent the class for the purposes of this Settlement—Justice Law Corporation (“Class Counsel”)—has investigated and researched the facts and circumstances underlying the issues raised in the case and the applicable law. While Class Counsel believes that the claims alleged in this lawsuit have merit, Class Counsel also recognizes that the risk and expense of continued litigation justify settlement. Based on the foregoing, Class Counsel believe the proposed settlement is fair, adequate, reasonable, and in the best interests of Class Members.

Questions? Contact the Settlement Administrator toll free at 1-[REDACTED]

Defendant has denied, and continues to deny, the factual and legal allegations in the case and believes that it has valid defenses to Plaintiffs' claims. By agreeing to settle, Defendant is not admitting liability on any of the factual allegations or claims in the case or that the case can or should proceed as a class action. Defendant has agreed to settle the case as part of a compromise with Plaintiffs.

Summary of the Proposed Settlement Terms

Plaintiffs and Defendant have agreed to settle the underlying class claims in exchange for a Gross Settlement Amount of \$8,500,000. This amount is inclusive of: (1) individual settlement payments to all Settlement Class Members; (2) an Enhancement Award of \$10,000 each to Marianne Ramirez and Wendy Campbell for their services on behalf of the class, and for a release of all claims arising out of their employment with Defendant; (3) up to \$2,833,333.33 in attorneys' fees and up to \$38,000.00 in litigation costs and expenses; (4) a \$850,000 settlement of claims under the Labor Code Private Attorneys General Act of 2004 ("PAGA"), inclusive of a \$637,500 payment to the California Labor and Workforce Development Agency ("LWDA") in connection with the PAGA, and a \$212,500 payment (the "PAGA Settlement Amount") to PAGA Members; and (5) reasonable Settlement Administrator's fees and expenses currently estimated at \$29,000. After deducting the above payments, a total of approximately \$ [REDACTED] will be allocated to Class Members who do not opt out of the Settlement Class ("Net Settlement Amount"). Additionally, all PAGA Members will receive a proportional share of the \$212,500 PAGA Settlement Amount, regardless of whether they opt out of the Settlement Class.

Payments from Net Settlement Amount. Defendant will calculate the total aggregate number of Eligible Workweeks from August 10, 2016, through February 8, 2023 ("Class Period") and each Class Member's total number of Eligible Workweeks during the Class Period. To determine each Class Member's estimated share of the Net Settlement Amount, the Settlement Administrator will use the following formula: The Net Settlement Amount will be divided by the aggregate total number of Eligible Workweeks, resulting in the "Class Workweek Value." Each Class Member's share of the Net Settlement Amount will be calculated by multiplying each individual Class Member's total number of Eligible Workweeks by the Class Workweek Value. The Individual Class Settlement Payment will be reduced by any required deductions for each Class Member as specifically set forth herein, including employee-side tax withholdings or deductions. If there are any valid and timely Requests for Exclusion, or if there are any successful Workweek Disputes, the Settlement Administrator shall proportionately increase or decrease each Settlement Class Member's share of the Net Settlement Amount according to the number of Eligible Workweeks, so that the amount distributed to the Settlement Class Members equals 100% of the Net Settlement Amount.

According to Defendant's records, you have a total of [REDACTED] Eligible Workweeks during the Class Period. Accordingly, your estimated payment from the Net Settlement Amount is approximately \$ [REDACTED].

Payments from PAGA Settlement Amount. Defendant will calculate the total aggregate number of Eligible Workweeks from November 9, 2019, through February 8, 2023 ("PAGA Period") and the each PAGA Member's total number of Eligible Workweeks during the PAGA Period. To determine each PAGA Member's estimated share of the PAGA Settlement Amount, the Settlement Administrator will use the following formula: The PAGA Member's share of the PAGA Settlement Amount (\$212,500) will be divided by the aggregate total number of Eligible Workweeks, resulting in the "PAGA Workweek Value." Each PAGA Member's share of the PAGA Settlement Amount will be calculated by multiplying each individual Participating PAGA Member's total number of Eligible Workweeks by the "PAGA Workweek Value." A Request for Exclusion does not exclude a PAGA Member from the release of claims under California Labor Code §§ 2698, et seq. and the PAGA Member will receive their portion of the PAGA Settlement Amount even if he or she submits a valid Request for Exclusion. If there are any successful Workweek Disputes, the Settlement

Questions? Contact the Settlement Administrator toll free at 1-[REDACTED]

Administrator shall proportionately increase or decrease each PAGA Member's share of the PAGA Settlement Amount according to the number of Eligible Workweeks, so that the amount distributed to the PAGA Members equals 100% of the PAGA Settlement Amount.

According to Defendant's records, you have a total of [REDACTED] Eligible Workweeks during the PAGA Period. Accordingly, your estimated payment from the PAGA Settlement Amount is approximately \$ [REDACTED].

Your Estimated Payment: Based on the above, your estimated payment from the Settlement is approximately \$ [REDACTED]. If you believe the information regarding Eligible Workweeks during the Class Period or PAGA Period provided above is incorrect, please contact the Settlement Administrator to dispute the information. You must attach all documentation in support of your dispute (such as check stubs, W2s, or letters from HR). All disputes must be postmarked or faxed on or before [insert date of Response Deadline] and must be sent to:

[Name]

CPT GROUP

c/o [REDACTED]

[Mailing Address]

Fax No. [REDACTED]

If you dispute the information stated above, Defendant's records will control unless you are able to provide documentation that establishes otherwise.

Taxes on Settlement Payments. IRS Forms W-2 and 1099 will be distributed to Settlement Class Members and the appropriate taxing authorities reflecting the payments they receive under the settlement. Settlement Class Members should consult their tax advisors concerning the tax consequences of the payments they receive under the Settlement. For purposes of this settlement, 50% of Individual Class Settlement Payments will be allocated as wages for which IRS Forms W-2 will be issued, and 50% will be allocated as non-wages for which IRS Forms 1099-MISC will be issued. For purposes of this settlement, 100% of Individual PAGA Settlement Payments shall be allocated as non-wage penalties for which IRS Forms 1099-MISC will be issued.

Your Options Under the Settlement

Option 1 – Automatically Receive a Payment from the Settlement

If want to participate in the Settlement, then no further action is required on your part. You will automatically receive your Settlement Check from the Settlement Administrator if and when the settlement receives final approval by the Court.

If you choose **Option 1**, and if the Court grants final approval of the settlement, you will be mailed a Settlement Check for your share of the Settlement Amount. In addition, you will be deemed to have released or waived the Released Class Claims and Released PAGA Claims:

Released Class Claims: All claims, demands, rights, liabilities, penalties, fees, and causes of action that were or reasonably could have been asserted based on the facts alleged in the Action including, for the avoidance of doubt, claims based on the following allegations: failure to pay all wages owed, including minimum, straight, and overtime wages due to working off the clock or rounding of time entries; failure to properly calculate the regular rate of pay; failure to provide compliant meal periods or rest breaks or to pay meal period or rest break premiums; failure to provide accurate and/or compliant wage statements; failure to reimburse all reasonable and necessary

Questions? Contact the Settlement Administrator toll free at 1-[REDACTED]

business expenses; failure to timely pay wages during employment or upon separation; or violation of Cal. Bus. & Prof. Code section 17200 et seq. by engaging in the foregoing conduct. Settlement Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

Released PAGA Claims: All claims, demands, rights, liabilities, penalties, fees, and causes of action under PAGA during the PAGA Period based on the factual allegations and legal assertions made in the operative complaint or PAGA Notice, including, for the avoidance of doubt, claims based on any alleged failure to pay all wages owed, including minimum, straight, and overtime wages due to working off the clock or rounding of time entries; failure to properly calculate the regular rate of pay; failure to provide compliant meal periods or rest breaks or to pay meal period and rest break premiums; failure to provide accurate and/or compliant wage statements; failure to reimburse all reasonable and necessary business expenses; or failure to timely pay wages during employment or upon separation.

Option 2 – Request Exclusion From the Settlement

If you do not wish to participate in the settlement, you may exclude yourself from participating by submitting a written request to the Settlement Administrator expressly and clearly indicating that you have received this Notice of Class and PAGA Action Settlement, decided not to participate in the settlement, and desire to be excluded from the settlement. The written Request for Exclusion must include your name, signature, address, and telephone number. Sign, date, and mail the request for exclusion by First Class U.S. Mail or equivalent, to the address below.

[Name]

CPT Group

c/o

[Mailing Address]

Fax No.

The Request for Exclusion must be postmarked or faxed not later than [REDACTED], 2023. If you submit a Request for Exclusion which is not postmarked or faxed by [REDACTED], 2023, your Request for Exclusion will be rejected, and you will be included in the Settlement Class.

If you choose **Option 2**, you will no longer be a Class Member, and you will:

- Not receive a payment from the Net Settlement Amount.
- Not release the Released Class Claims.
- You will still release the Released PAGA Claims and will receive payment from the PAGA Settlement Amount if you are a PAGA Member.

Option 3 – Object to the Settlement

If you decide to object to the settlement because you find it unfair or unreasonable, you may submit a written objection stating why you object to the settlement, or you may instead appear at the Final Approval Hearing to object to the Settlement. Written objections must provide: (1) this case's name and case number; (2) your full

Questions? Contact the Settlement Administrator toll free at 1-[REDACTED]

name, address, and telephone number; (3) a written statement of all grounds for the objection; (4) copies of any papers, briefs, or other documents upon which the objection is based, if any; (5) a statement whether you intend to appear at the Final Approval hearing; and (6) your signature. The objection must be mailed to the administrator at:

[Name]

CPT Group

c/o

[Mailing Address]

Fax No.

All written objections must be received by the administrator not later than [redacted], 2023. By submitting an objection, you are not excluding yourself from the settlement. To exclude yourself from the settlement, you must follow the directions described above. Please note that you cannot both object to the settlement and exclude yourself. You must choose one option only.

You may also, if you wish, appear at the Final Fairness Hearing set for [redacted] at [redacted] a.m./p.m. in Department 613 of the San Francisco County Superior Court located at 400 McAllister St., San Francisco, CA 94102, and discuss your objection with the Court and the Parties at your own expense. You may also retain an attorney to represent you at the hearing.

If you choose **Option 3**, you will still be entitled to the money from the settlement. If the Court overrules your objection, you will be deemed to have released the Released Class Claims (in addition to the Released PAGA Claims).

Additional Information

This Notice of Class and PAGA Action Settlement is only a summary of the case and the settlement. For the complete terms and conditions of the Settlement, you are referred to the detailed Second Amended Joint Stipulation of Class and PAGA Action Settlement and Release (the “Settlement Agreement”), which is on file with the Clerk of the Court. The pleadings and other records in this litigation, including the Settlement Agreement, may be examined (a) online on the Superior Court of California, County of San Francisco’s Electronic Filing and Service Website at <https://www.sfsuperiorcourt.org/online-services>, or (b) in person at Superior Court of California, County of San Francisco, 400 McAllister St., San Francisco, CA 94102, between the hours of 7:30 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays and closures.

All other inquiries by Class Members regarding this Class Notice and/or the settlement can be directed to the Settlement Administrator. In addition, contact information for Settlement Class Counsel, as well as Defendant’s attorneys, are as follows:

<u>Class Counsel</u> Douglas Han Justice Law Corporation 751 N. Fair Oaks Avenue, Suite 101 Pasadena, California 91103 Telephone: 818-230-7502	<u>Counsel for Defendant Delta Dental of California</u> Erin Connell Orrick, Herrington & Sutcliffe LLP 405 Howard Street San Francisco, CA 94105-2669 Telephone: 415-773-5700
--	--

Questions? Contact the Settlement Administrator toll free at 1-*-***-******

**PLEASE DO NOT CONTACT THE CLERK OF THE COURT OR THE JUDGE, WITH
INQUIRIES.**

Questions? Contact the Settlement Administrator toll free at 1-*-***-*****

EXHIBIT B

DOUGLAS HAN (SBN 232858)
SHUNT TATAVOS-GHARAJEH (SBN 272164)
LIZETTE RODRIGUEZ (SBN 335182)
CHRISTOPHER K. PETERSEN (SBN 260631)
JUSTICE LAW CORPORATION
751 North Fair Oaks Ave., Suite 101
Pasadena, CA 91103
Telephone: (818) 230-7502
Facsimile: (818) 230-7259

Attorneys for Plaintiffs

ERIN M. CONNELL (SBN 223355)
ALEXANDRA STATHOPOULOS (SBN 286681)
KAYLA DELGADO GRUNDY (SBN 300513)
SCOTT MORRISON (SBN 320167)
ORRICK, HERRINGTON & SUTCLIFFE LLP
The Orrick Building
405 Howard Street
San Francisco, CA 94105-2669
Telephone: (415) 773-5700
Facsimile: (415) 773-5759

Attorneys for Defendant

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

MARIANNE RAMIREZ, individually, and on
behalf of other members of the general public
similarly situated;

Plaintiff,

v.

DELTA DENTAL OF CALIFORNIA, a
California corporation; and DOES 1 through
100, inclusive;

Defendants.

Case No.: CGC-21-589648

Assigned for All Purposes to:
Honorable Andrew Y.S. Cheng
Department 613

**JOINT STIPULATION AND
[PROPOSED] ORDER GRANTING
PLAINTIFFS LEAVE TO FILE A
SECOND AMENDED COMPLAINT**

Complaint Filed: February 4, 2021
FAC Filed: October 4, 2022
Trial Date: None Set

1 Plaintiffs Marianne Ramirez and Wendy Campbell (“Plaintiffs”), individually, on behalf
2 of other members of the general public similarly situated, and Defendant Delta Dental of
3 California (“Defendant”), by and through their respective counsel of record, hereby stipulate as
4 follows:

5 WHEREAS, on August 1, 2023, on behalf of themselves and all other members of the
6 general public similarly situated, Plaintiffs filed their Motion for Preliminary Approval of Class
7 Action Settlement;

8 WHEREAS, on August 30, 2023, the Court issued a tentative ruling denying preliminary
9 approval of the class action settlement ruling, inter alia, that (1) the class definition was
10 overbroad and (2) that the complaint did not plead facts with a level of specificity that would
11 help narrow the release;

12 WHEREAS, Plaintiffs seek to amend the operative complaint to address the Court’s
13 concerns by pleading additional factual allegations and modifying the class definition¹;

14 WHEREAS, the Parties have met and conferred regarding Plaintiffs’ proposed
15 amendments to the operative complaint;

16 WHEREAS, Defendant has agreed to stipulate to allow Plaintiffs to file a Second
17 Amended Complaint, adding additional allegations and modifying the scope of the class
18 definition;

19 WHEREAS, Defendant makes no admissions regarding Plaintiffs’ Second Amended
20 Complaint. Instead, Defendant ardently denies the allegations set forth in the Second Amended
21 Complaint, and denies that Plaintiffs were damaged in the nature alleged or in any other manner.
22 Defendant does not waive, and expressly reserves the rights and remedies available under
23 federal, state, and common law with respect to challenging any allegation in the Second
24 Amended Complaint, or any rulings issued with respect to the Second Amended Complaint.

25 WHEREAS, attached hereto as “EXHIBIT A” is Plaintiffs’ redlined [Proposed] Second
26 Amended Complaint, highlighting the proposed changes.

27
28 ¹ The Parties will also narrow the scope of the proposed release to address the concerns raised in the Court’s
Tentative Ruling. The revised settlement agreement will be submitted along with Plaintiffs’ supplemental brief in
support of their motion for preliminary approval of class and PAGA action settlement.

1 IT IS HEREBY STIPULATED AND AGREED BY THE PARTIES HERETO,
2 THROUGH THEIR RESPECTIVE COUNSEL, AS FOLLOWS: Plaintiffs may file the attached
3 Second Amended Complaint.

4
5 Dated: October 3, 2023

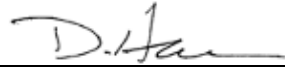
ORRICK, HERRINGTON & SUTCLIFE LLP

6
7 By: /s/ Alexandra Stathopoulos

8 ERIN M. CONNELL
9 ALEXANDRA STATHOPOULOS
10 KAYLA DELGADO GRUNDY
11 SCOTT MORRISON
12 *Attorneys for Defendant*

13
14 Dated: October 3, 2023

JUSTICE LAW CORPORATION

15 By: 

16 DOUGLAS HAN
17 SHUNT TATAVOS-GHARAJEH
18 CHRISTOPHER K. PETERSEN
19 LIZETTE RODRIGUEZ
20 *Attorneys for Plaintiffs*

21 ///

22 ///

23 ///

1 **[PROPOSED] ORDER**

2 Pursuant to the above Stipulation and good cause appearing, the Court hereby GRANTS
3 Plaintiffs' leave to file a Second Amended Complaint. Plaintiffs shall file the Second Amended
4 Complaint within 10 days of this order.

5 **IT IS SO ORDERED.**

6
7 Dated: _____

8 _____
9 Honorable Andrew Y.S. Cheng
10 Judge of the Superior Court
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT A

DOUGLAS HAN (SBN 232858)
SHUNT TATAVOS-GHARAJEH (SBN 272164)
CHRISTOPHER K. PETERSEN (SBN 260631)
LIZETTE RODRIGUEZ (SBN 335182)
JUSTICE LAW CORPORATION
751 N. Fair Oaks Avenue, Suite 101
Pasadena, California 91103
Telephone: (818) 230-7502
Facsimile: (818) 230-7259

Attorneys for Plaintiff

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

MARIANNE RAMIREZ, individually, and
on behalf of other members of the general
public similarly situated;

Plaintiff,

v.

DELTA DENTAL OF CALIFORNIA, a
California corporation; and DOES 1 through
100, inclusive;

Defendants.

Case No.: CGC-21-589648

**SECOND AMENDED CLASS ACTION
COMPLAINT FOR DAMAGES**

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums);
- (3) Violation of California Labor Code § 226.7 (Unpaid Rest Period Premiums);
- (4) Violation of California Labor Code §§ 1194 and 1197 (Unpaid Minimum Wages);
- (5) Violation of California Labor Code §§ 201 and 202 (Final Wages Not Timely Paid);
- (6) Violation of California Labor Code § 226(a) (Non-Compliant Wage Statements);
- (7) Violation of California Labor Code §§ 2800 and 2802 (Unreimbursed Business Expenses);
- (8) Violation of California Business & Professions Code §§ 17200, *et seq.*
- (9) Violation of California Labor Code §§ 2698, *et seq.* (Private Attorneys General Act of 2004)

DEMAND FOR JURY TRIAL

SECOND AMENDED CLASS ACTION COMPLAINT FOR DAMAGES

COMES NOW, Plaintiff MARIANNE RAMIREZ (“Plaintiff”), individually, and on behalf of other members of the general public similarly situated, and Plaintiff WENDY CAMPBELL (“Plaintiff Campbell”) (collectively, “Plaintiffs”), individually, and on behalf of other aggrieved employees pursuant to PAGA, allege as follows:

JURISDICTION AND VENUE

1. This class action is brought pursuant to the California Code of Civil Procedure section 382. The monetary damages and restitution sought by Plaintiff exceeds the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial.

2. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, Section 10, which grants the superior court “original jurisdiction in all other causes” except those given by statute to other courts. The statutes under which this action is brought do not specify any other basis for jurisdiction.

3. This Court has jurisdiction over Defendants because, upon information and belief, Defendants are citizens of California, have sufficient minimum contacts in California, or otherwise intentionally avail themselves of the California market so as to render the exercise of jurisdiction over them by the California courts consistent with traditional notions of fair play and substantial justice.

4. Venue is proper in this Court because, upon information and belief, Defendants maintain offices, have agents, and/or transact business in the State of California, including the County of San Francisco. The majority of the acts and omissions alleged herein relating to Plaintiff took place in the State of California. Defendants employed Plaintiff within the State of California, County of San Francisco.

PARTIES

5. Plaintiff MARIANNE RAMIREZ is an individual residing in the State of California.

6. Plaintiff WENDY CAMPBELL is an individual residing in the State of California.

///

1 7. Defendant DELTA DENTAL OF CALIFORNIA, at all times herein mentioned,
2 was and is, upon information and belief, a California corporation, and at all times herein
3 mentioned, was and is, an employer whose employees are engaged throughout the State of
4 California, including the County of San Francisco.

5 8. At all relevant times, Defendants DELTA DENTAL OF CALIFORNIA was the
6 “employer” of Plaintiff within the meaning of all applicable California laws and statutes.

7 9. At all times herein relevant, Defendants DELTA DENTAL OF CALIFORNIA
8 and DOES 1 through 100, and each of them, were the agents, partners, joint venturers, joint
9 employers, representatives, servants, employees, successors-in-interest, co-conspirators and
10 assigns, each of the other, and at all times relevant hereto were acting within the course and
11 scope of their authority as such agents, partners, joint venturers, joint employers,
12 representatives, servants, employees, successors, co-conspirators and assigns, and all acts or
13 omissions alleged herein were duly committed with the ratification, knowledge, permission,
14 encouragement, authorization, and consent of each defendant designated herein.

15 10. The true names and capacities, whether corporate, associate, individual or
16 otherwise, of Defendants DOES 1 through 100, inclusive, are unknown to Plaintiffs, who sues
17 said defendants by such fictitious names. Plaintiffs are informed and believe, and based on
18 that information and belief alleges, that each of the Defendants designated as a DOE is legally
19 responsible for the events and happenings referred to in this Complaint, and unlawfully caused
20 the injuries and damages to Plaintiffs and the other class members as alleged in this Complaint.
21 Plaintiffs will seek leave of court to amend this Complaint to show the true names and
22 capacities when the same have been ascertained.

23 11. Defendants DELTA DENTAL OF CALIFORNIA and DOES 1 through 100 will
24 hereinafter collectively be referred to as “Defendants.”

25 12. Plaintiffs further allege that Defendants directly or indirectly controlled or
26 affected the working conditions, wages, working hours, and conditions of employment of
27 Plaintiffs and the other class members so as to make each of said Defendants employers and
28 employers liable under the statutory provisions set forth herein.

CLASS ACTION ALLEGATIONS

13. Plaintiff Ramirez brings this action on her own behalf and on behalf of all other members of the general public similarly situated, and, thus, seeks class certification under Code of Civil Procedure section 382.

14. The proposed class is defined as follows:

All current and former hourly-paid or non-exempt Professional and Clerical employees of Delta Dental of California within the State of California at any time during the period from August 10, 2016¹ to February 8, 2023.

Deleted: Defendants

Deleted: final judgment

15. Plaintiff reserves the right to establish subclasses as appropriate.

16. The class is ascertainable and there is a well-defined community of interest in the litigation:

a. Numerosity: The class members are so numerous that joinder of all class members is impracticable. The membership of the entire class is unknown to Plaintiff Ramirez at this time; however, the class is estimated to be greater than fifty (50) individuals and the identity of such membership is readily ascertainable by inspection of Defendants' employment records.

b. Typicality: Plaintiff Ramirez's claims are typical of all other class members' claims as demonstrated herein. Plaintiff Ramirez will fairly and adequately protect the interests of the other class members with whom she has a well-defined community of interest.

c. Adequacy: Plaintiff Ramirez will fairly and adequately protect the interests of each class member, with whom she has a well-defined community of interest and typicality of claims, as demonstrated herein. Plaintiff Ramirez has no interest that is antagonistic to the other class

¹ Per Emergency Rule 9 (Tolling statute of limitations for civil causes of action) of the Judicial Council's Emergency Rules Related to COVID-19, all statute of limitations for civil causes of action that exceed 180 days are tolled from April 6, 2020 until October 1, 2020. Accordingly, Plaintiff's claims were tolled during that time period.

members. Plaintiff Ramirez's attorneys, the proposed class counsel, are versed in the rules governing class action discovery, certification, and settlement. Plaintiff Ramirez has incurred, and during the pendency of this action will continue to incur, costs and attorneys' fees, that have been, are, and will be necessarily expended for the prosecution of this action for the substantial benefit of each class member.

d. Superiority: A class action is superior to other available methods for the fair and efficient adjudication of this litigation because individual joinder of all class members is impractical.

e. Public Policy Considerations: Certification of this lawsuit as a class action will advance public policy objectives. Employers of this great state violate employment and labor laws every day. Current employees are often afraid to assert their rights out of fear of direct or indirect retaliation. However, class actions provide the class members who are not named in the complaint anonymity that allows for the vindication of their rights.

17. There are common questions of law and fact as to the class members that predominate over questions affecting only individual members. The following common questions of law or fact, among others, exist as to the members of the class:

- a. Whether Defendants' failure to pay wages, without abatement or reduction, in accordance with the California Labor Code, was willful;
- b. Whether Defendants failed to pay their hourly-paid or non-exempt employees within the State of California for all hours worked, missed meal periods and rest breaks in violation of California law;
- c. Whether Defendants required Plaintiff and the other class members to work over eight (8) hours per day and/or over forty (40) hours per week and failed to pay the legally required overtime compensation to Plaintiff and the other class members due to Defendants' illegal rounding policy

1 and requiring class members to work off the clock;

2 d. Whether Defendants properly calculated the regular rate for Plaintiff and
3 the other class members who worked overtime or received a meal

4 premium or sick pay and earned incentive pay or other remunerations;

5 e. Whether Defendants deprived Plaintiff and the other class members of
6 meal and/or rest periods or required Plaintiff and the other class
7 members to work during meal and/or rest periods without compensation;

8 f. Whether Defendants failed to pay minimum wages to Plaintiff and the
9 other class members for all hours worked;

10 g. Whether Defendants failed to pay all wages due to Plaintiff and the other
11 class members within the required time upon their discharge or
12 resignation;

13 h. Whether Defendants failed to timely pay all wages due to Plaintiff and
14 the other class members during their employment;

15 i. Whether Defendants complied with wage reporting as required by the
16 California Labor Code, including, *inter alia*, section 226;

17 j. Whether Defendants failed to reimburse Plaintiff and the other class
18 members for necessary business-related expenses and costs;

19 k. Whether Defendants' conduct was willful or reckless;

20 l. Whether Defendants engaged in unfair business practices in violation of
21 California Business & Professions Code section 17200, *et seq.*;

22 m. The appropriate amount of damages, restitution, and/or monetary
23 penalties resulting from Defendants' violation of California law; and

24 n. Whether Plaintiff and the other class members are entitled to
25 compensatory damages pursuant to the California Labor Code.

26 **GENERAL ALLEGATIONS**

27 18. During the relevant time period set forth herein, Defendants employed Plaintiffs
28 and other persons as hourly-paid or non-exempt employees within the State of California.

Deleted: to

1 19. Defendants, jointly and severally, employed Plaintiff Ramirez as an hourly-paid
2 non-exempt employee from 2000 to 2019 in the State of California.

3 20. Defendants, jointly and severally, employed Plaintiff Campbell as an hourly-
4 paid non-exempt employee from June 2021 to September 2021 in the State of California.

5 21. Defendants had the authority to hire and terminate Plaintiffs and the other class
6 members; to set work rules and conditions governing Plaintiffs' and other class members'
7 employment; and to supervise their daily employment activities.

8 22. Defendants exercised sufficient authority over the terms and conditions of
9 Plaintiffs and other class members' employment for them to be joint employers of Plaintiffs
10 and the other class members.

11 23. Defendants directly hired and paid wages and benefits to Plaintiffs and the other
12 class members.

13 24. Defendants continue to employ hourly-paid or non-exempt employees within the
14 State of California.

15 25. Plaintiffs and the other class members worked over eight (8) hours in a day,
16 and/or forty (40) hours in a week during their employment with Defendants.

17 26. Plaintiffs are informed and believe, and based thereon allege, that Defendants
18 engaged in a uniform policy and systematic scheme of wage abuse against their hourly-paid or
19 non-exempt employees within the State of California. This scheme involved, inter alia,
20 maintaining an illegal rounding policy, failing to pay them for all hours worked, failing to
21 properly calculate class members' regular rate of pay for purposes of overtime compensation,
22 and sick pay, missed meal periods, and missed rest breaks in violation of California law.

23 27. Plaintiffs are informed and believe, and based thereon allege, that Defendants
24 knew or should have known that Plaintiffs and the other class members were entitled to receive
25 certain wages for overtime compensation and that Plaintiffs and the other class members were
26 not receiving wages for overtime compensation. Specifically, Defendant failed to properly
27 include incentive pay in calculating class members' regular rate of pay for purposes of
28 overtime compensation.

1 28. Plaintiffs are informed and believe, and based thereon allege, that Defendants
2 failed to provide Plaintiffs and the other class members the required rest and meal periods
3 during the relevant time period as required under the Industrial Welfare Commission Wage
4 Orders and thus they are entitled to any and all applicable penalties.

5 29. Plaintiffs are informed and believe, and based thereon allege, that Defendants
6 knew or should have known that Plaintiffs and the other class members were entitled to receive
7 all timely and complete meal periods or payment of one additional hour of pay at Plaintiffs'
8 and the other class members' regular rate of pay when a meal period was missed, late or
9 interrupted, and that Plaintiffs and the other class members did not receive all timely and
10 proper meal periods or payment of one additional hour of pay at their regular rate of pay when
11 a meal period was missed.

12 30. Plaintiffs are informed and believe, and based thereon allege, that Defendants
13 knew or should have known that Plaintiffs and other class members were entitled to receive all
14 timely rest periods without interruption or payment of one additional hour of pay at Plaintiffs
15 and the other class members' regular rate of pay when a rest period was missed, late or
16 interrupted, and that Plaintiffs and the other class members did not receive all rest periods or
17 payment of one additional hour of pay at their regular rate of pay when a rest period was
18 missed.

19 31. Plaintiffs are informed and believe, and based thereon allege, that Defendants
20 knew or should have known that Plaintiffs and the other class members were entitled to receive
21 at least minimum wages for compensation and that Plaintiffs and the other class members were
22 not receiving at least minimum wages for all hours worked due to Defendants' illegal rounding
23 policy and practice of requiring class members to work off the clock,

Deleted:

24 32. Plaintiffs are informed and believe, and based thereon allege, that Defendants
25 knew or should have known that Plaintiffs and the other class members were entitled to receive
26 the wages owed to them upon discharge or resignation, including overtime and minimum
27 wages and meal and rest period premiums, and that Plaintiffs and the other class members did
28 not, in fact, receive such wages owed to them at the time of their discharge or resignation.

1 ///

2 33. Plaintiffs are informed and believe, and based thereon allege, that Defendants
3 knew or should have known that Plaintiffs and the other class members were entitled to receive
4 complete and accurate wage statements in accordance with California law, but, in fact,
5 Plaintiffs and the other class members did not receive complete and accurate wage statements
6 from Defendants. The deficiencies included, inter alia, the failure to include the total number
7 of hours worked by Plaintiffs and the other class members.

8 34. Plaintiffs are informed and believe, and based thereon allege, that Defendants
9 knew or should have known that Plaintiffs and the other class members were entitled to
10 reimbursement for necessary business-related expenses, including inter alia, equipment for
11 class members that were required to work from home,

Deleted:

12 35. Plaintiffs are informed and believe, and based thereon allege, that Defendants
13 knew or should have known that Defendants had to keep complete and accurate payroll records
14 for Plaintiffs and the other class members in accordance with California law, but, in fact, did
15 not keep complete and accurate payroll records for Plaintiffs and the other class members.

16 36. Plaintiffs are informed and believe, and based thereon allege, that Defendants
17 knew or should have known that they had a duty to compensate Plaintiffs and the other class
18 members pursuant to California law, and that Defendants had the financial ability to pay such
19 compensation, but willfully, knowingly, and intentionally failed to do so, and falsely
20 represented to Plaintiffs and the other class members that they were properly denied wages, all
21 in order to increase Defendants' profits.

22 37. During the relevant time period set forth herein, Defendants failed to pay
23 overtime wages to Plaintiffs and the other class members for all hours worked. Plaintiffs and
24 other class members were required to work more than eight (8) hours per day and/or forty (40)
25 hours per week without overtime compensation.

26 38. During the relevant time period set forth herein, Defendants failed to provide the
27 requisite uninterrupted and timely meal and rest periods to Plaintiffs and the other class
28 members.

1 39. During the relevant time period set forth herein, Defendants failed to pay
2 Plaintiffs and the other class members at least minimum wages for all hours worked.

3 40. During the relevant time period set forth herein, Defendants failed to pay
4 Plaintiffs and the other class members the wages owed to them upon discharge or resignation.

5 41. During the relevant time period set forth herein, Defendants failed to provide
6 complete or accurate wage statements to Plaintiffs and the other class members.

7 42. During the relevant time period set forth herein, Defendants failed to keep
8 complete or accurate payroll records for Plaintiffs and the other class members.

9 43. During the relevant time period set forth herein, Defendants failed to properly
10 compensate Plaintiffs and the other class members pursuant to California law in order to
11 increase Defendants' profits.

12 44. California Labor Code section 218 states that nothing in Article 1 of the Labor
13 Code shall limit the right of any wage claimant to "sue directly . . . for any wages or penalty
14 due to him [or her] under this article."

15 **FIRST CAUSE OF ACTION**

16 **(Violation of California Labor Code §§ 510 and 1198)**

17 **(Against DELTA DENTAL OF CALIFORNIA and DOES 1 through 100)**

18 45. Plaintiff Ramirez incorporates by reference the allegations contained in
19 Paragraphs 1 through 44, and each and every part thereof with the same force and effect as
20 though fully set forth herein.

21 46. California Labor Code section 1198 and the applicable Industrial Welfare
22 Commission ("IWC") Wage Order provide that it is unlawful to employ persons without
23 compensating them at a rate of pay either time-and-one-half or two-times that person's regular
24 rate of pay, depending on the number of hours worked by the person on a daily or weekly
25 basis.

26 47. Specifically, the applicable IWC Wage Order provides that Defendants are and
27 were required to pay Plaintiff and the other class members employed by Defendants, who
28 work(ed) more than eight (8) hours in a day or more than forty (40) hours in a workweek, at

1 the rate of time-and-one-half for all hours worked in excess of eight (8) hours in a day or more
2 than forty (40) hours in a workweek.

3 48. The applicable IWC Wage Order further provides that Defendants are and were
4 required to pay Plaintiff and the other class members overtime compensation at a rate of two
5 times their regular rate of pay for all hours worked in excess of twelve (12) hours in a day.

6 49. California Labor Code section 510 codifies the right to overtime compensation
7 at one-and-one-half times the regular hourly rate for hours worked in excess of eight (8) hours
8 in a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh day
9 of work, and overtime compensation at twice the regular hourly rate for hours worked in
10 excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh day
11 of work.

12 50. During the relevant time period set forth herein, Plaintiff Ramirez and the other
13 class members worked in excess of eight (8) hours in a day, and/or in excess of forty (40)
14 hours in a week.

15 51. During the relevant time period set forth herein, Defendants intentionally and
16 willfully failed to pay overtime wages owed to Plaintiff Ramirez and the other class members.
17 Specifically, Defendant maintained an illegal rounding policy that resulted in an underpayment
18 of wages including overtime. Similarly, Defendant's practice of requiring class members to
19 work off the clock resulted in class members not being properly paid all the overtime wages
20 they were entitled to. Lastly, Defendant failed to properly account for incentive pay and other
21 remunerations when calculating class members' regular rate of pay for purposes of overtime
22 compensation.

23 52. Defendants' failure to pay Plaintiff Ramirez and the other class members the
24 unpaid balance of overtime compensation, as required by California laws, violates the
25 provisions of California Labor Code sections 510 and 1198, and is therefore unlawful.

26 53. Pursuant to California Labor Code section 1194, Plaintiff Ramirez and the other
27 class members are entitled to recover unpaid overtime compensation, as well as interest, costs,
28 and attorneys' fees.

1 **SECOND CAUSE OF ACTION**

2 **(Violation of California Labor Code §§ 226.7 and 512(a))**

3 **(Against DELTA DENTAL OF CALIFORNIA and DOES 1 through 100)**

4 54. Plaintiff Ramirez incorporates by reference the allegations contained in
5 paragraphs 1 through 53, and each and every part thereof with the same force and effect as
6 though fully set forth herein.

7 55. During the relevant time period set forth herein, the IWC Order and California
8 Labor Code sections 226.7 and 512(a) were applicable to Plaintiff Ramirez's and the other
9 class members' employment by Defendants.

10 56. During the relevant time period set forth herein, California Labor Code section
11 226.7 provides that no employer shall require an employee to work during any meal or rest
12 period mandated by an applicable order of the California IWC.

13 57. During the relevant time period set forth herein, the applicable IWC Wage
14 Order and California Labor Code section 512(a) provide that an employer may not require,
15 cause or permit an employee to work for a work period of more than five (5) hours per day
16 without providing the employee with a meal period of not less than thirty (30) minutes, except
17 that if the total work period per day of the employee is no more than six (6) hours, the meal
18 period may be waived by mutual consent of both the employer and employee.

19 58. During the relevant time period set forth herein, the applicable IWC Wage
20 Order and California Labor Code section 512(a) further provide that an employer may not
21 require, cause, or permit an employee to work for a work period of more than ten (10) hours
22 per day without providing the employee with a second uninterrupted meal period of not less
23 than thirty (30) minutes, except that if the total hours worked is no more than twelve (12)
24 hours, the second meal period may be waived by mutual consent of the employer and the
25 employee only if the first meal period was not waived.

26 59. During the relevant time period set forth herein, Plaintiff Ramirez and the other
27 class members who were scheduled to work for a period of time no longer than six (6) hours,
28 and who did not waive their legally-mandated meal periods by mutual consent, were required

1 to work for periods longer than five (5) hours without an uninterrupted meal period of not less
2 than thirty (30) minutes and/or without a rest period.

3 60. During the relevant time period set forth herein, Plaintiff Ramirez and the other
4 class members who were scheduled to work for a period of time no longer than twelve (12)
5 hours, and who did not waive their legally-mandated meal periods by mutual consent, were
6 required to work for periods longer than ten (10) hours without an uninterrupted meal period of
7 not less than thirty (30) minutes and/or without a rest period.

8 61. During the relevant time period set forth herein, Plaintiff Ramirez and the other
9 class members who were scheduled to work for a period of time in excess of six (6) hours were
10 required to work for periods longer than five (5) hours without an uninterrupted meal period of
11 not less than thirty (30) minutes and/or without a rest period.

12 62. During the relevant time period set forth herein, Plaintiff Ramirez and the other
13 class members who were scheduled to work for a period of time in excess of twelve (12) hours
14 were required to work for periods longer than ten (10) hours without an uninterrupted meal
15 period of not less than thirty (30) minutes and/or without a rest period. Importantly,
16 Defendants' meal break policies fail to provide for a second meal break for class members that
17 work more than 10 hours.

18 63. During the relevant time period set forth herein, Defendants intentionally and
19 willfully required Plaintiff Ramirez and the other class members to work during meal periods.
20 Specifically, Defendant required class members to delay, shorten or skip their meal period to
21 complete their tasks first. A majority of class members were also subject to Defendant's
22 productivity metrics and had an hourly quota that did not adequately account for complete and
23 compliant meal periods. Defendant also failed to compensate Plaintiff Ramirez and the other
24 class members the full meal period premium for work performed during meal periods.

25 64. During the relevant time period set forth herein, Defendants failed to pay
26 Plaintiff Ramirez and the other class members the full meal period premium due pursuant to
27 California Labor Code section 226.7.

28 65. Defendants' conduct violates applicable IWC Wage Order and California Labor

Deleted: and

Code sections 226.7 and 512(a).

66. Pursuant to the applicable IWC Wage Order and California Labor Code section 226.7(b), Plaintiff and the other class members are entitled to recover from Defendants one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest period is not provided.

THIRD CAUSE OF ACTION

(Violation of California Labor Code § 226.7)

(Against DELTA DENTAL OF CALIFORNIA and DOES 1 through 100)

67. Plaintiff Ramirez incorporates by reference the allegations contained in paragraphs 1 through 66, and each and every part thereof with the same force and effect as though fully set forth herein.

68. During the relevant time period set forth herein, the applicable IWC Wage Order and California Labor Code section 226.7 were applicable to Plaintiff's and the other class members' employment by Defendants.

69. During the relevant time period set forth herein, California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC.

70. During the relevant time period set forth herein, the applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3 ½) hours.

71. During the relevant time period set forth herein, Defendants required Plaintiff Ramirez and the other class members to work four (4) or more hours without authorizing or permitting a ten (10) minute rest period per each four (4) hour period worked.

72. During the relevant time period set forth herein, Defendants willfully required Plaintiff Ramirez and the other class members to work during rest periods and failed to pay

1 Plaintiff Ramirez and the other class members the full rest period premium for work performed
2 during rest periods. Similar to meal periods, Defendant required class members to delay,
3 shorten or skip their rest period to complete their tasks first. A majority of class members were
4 also subject to Defendant's productivity metrics and had an hourly quota that did not
5 adequately account for complete and compliant rest periods.

6 73. During the relevant time period set forth herein, Defendants failed to pay
7 Plaintiff and the other class members the full rest period premium due pursuant to California
8 Labor Code section 226.7.

9 74. Defendants' conduct violates applicable IWC Wage Orders and California
10 Labor Code section 226.7.

11 75. Pursuant to the applicable IWC Wage Orders and California Labor Code section
12 226.7(b), Plaintiff Ramirez and the other class members are entitled to recover from
13 Defendants one additional hour of pay at the employees' regular hourly rate of compensation
14 for each workday that the rest period was not provided.

15 **FOURTH CAUSE OF ACTION**

16 **(Violation of California Labor Code §§ 1194 and 1197)**

17 **(Against DELTA DENTAL OF CALIFORNIA and DOES 1 through 100)**

18 76. Plaintiff Ramirez incorporates by reference the allegations contained in
19 paragraphs 1 through 75 and each and every part thereof with the same force and effect as
20 though fully set forth herein.

21 77. During the relevant time period set forth herein, California Labor Code sections
22 1194 and 1197 provide that the minimum wage to be paid to employees, and the payment of a
23 lesser wage than the minimum so fixed, is unlawful.

24 78. During the relevant time period set forth herein, Defendants failed to pay
25 minimum wages to Plaintiff Ramirez and the other class members as required, pursuant to
26 California Labor Code sections 1194 and 1197, because Defendant maintained an illegal
27 rounding policy and a practice of requiring Plaintiff and other class members to work off the
28 clock.

Deleted:

1 79. Defendants' failure to pay Plaintiff Ramirez and the other class members the
2 minimum wage as required violates California Labor Code sections 1194 and 1197. Pursuant
3 to those sections, Plaintiff Ramirez and other class members are entitled to recover the unpaid
4 balance of their minimum wage compensation as well as interest, costs, and attorney's fees,
5 and liquidated damages in an amount equal to the wages unlawfully unpaid and interest
6 thereon.

7 80. Pursuant to California Labor Code section 1194.2, Plaintiff Ramirez and the
8 other class members are entitled to recover liquidated damages in an amount equal to the
9 wages unlawfully unpaid and interest thereon.

10 ///

11 **FIFTH CAUSE OF ACTION**

12 **(Violation of California Labor Code §§ 201 and 202)**

13 **(Against DELTA DENTAL OF CALIFORNIA and DOES 1 through 100)**

14 81. Plaintiff Ramirez incorporates by reference the allegations contained in
15 paragraphs 1 through 80, and each and every part thereof with the same force and effect as
16 though fully set forth herein.

17 82. During the relevant time period set forth herein, California Labor Code sections
18 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid
19 at the time of discharge are due and payable immediately, and if an employee quits his or her
20 employment, his or her wages shall become due and payable not later than seventy-two (72)
21 hours thereafter, unless the employee has given seventy-two (72) hours notice of his or her
22 intention to quit, in which case the employee is entitled to his or her wages at the time of
23 quitting.

24 83. During the relevant time period set forth herein, Defendants intentionally and
25 willfully failed to pay Plaintiff Ramirez and the other class members who are no longer
26 employed by Defendants their wages, earned and unpaid, within seventy-two (72) hours of
27 their leaving Defendants' employ.

28 84. Defendants' failure to pay Plaintiff Ramirez and the other class members who

1 are no longer employed by Defendants their wages, earned and unpaid, within seventy-two
2 (72) hours of their leaving Defendants' employ, is in violation of California Labor Code
3 sections 201 and 202.

4 85. California Labor Code section 203 provides that if an employer willfully fails to
5 pay wages owed, in accordance with sections 201 and 202, then the wages of the employee
6 shall continue as a penalty from the due date thereof at the same rate until paid or until an
7 action is commenced; but the wages shall not continue for more than thirty (30) days.

8 86. Plaintiff Ramirez and the other class members are entitled to recover from
9 Defendants the statutory penalty wages for each day they were not paid, up to the thirty (30)
10 day maximum as provided by Labor Code section 203.

11 **SIXTH CAUSE OF ACTION**

12 **(Violation of California Labor Code § 226(a))**

13 **(Against DELTA DENTAL OF CALIFORNIA and DOES 1 through 100)**

14 87. Plaintiff Ramirez incorporates by reference the allegations contained in
15 paragraphs 1 through 86, and each and every part thereof with the same force and effect as
16 though fully set forth herein.

17 88. During the relevant time period set forth herein, California Labor Code section
18 226(a) provides that every employer shall furnish each of his or her employees an accurate
19 itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the
20 employee, (3) the number of piece-rate units earned and any applicable piece rate if the
21 employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on
22 written orders of the employee may be aggregated and shown as one item, (5) net wages
23 earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the
24 employee and his or her social security number, (8) the name and address of the legal entity
25 that is the employer, and (9) all applicable hourly rates in effect during the pay period and the
26 corresponding number of hours worked at each hourly rate by the employee. The deductions
27 made from payments of wages shall be recorded in ink or other indelible form, properly dated,
28 showing the month, day, and year, and a copy of the statement or a record of the deductions

1 shall be kept on file by the employer for at least three years at the place of employment or at a
2 central location within the State of California.

3 89. Defendants have intentionally and willfully failed to provide Plaintiff Ramirez
4 and the other class members with complete and accurate wage statements. The deficiencies
5 include but are not limited to: failure to include all hours worked, failure to list the proper rate
6 for overtime compensation, and the failure to include the total number of hours worked by
7 Plaintiff and other class members.

8 90. As a result of Defendants' violation of California Labor Code section 226(a),
9 Plaintiff Ramirez and the other class members have suffered injury and damage to their
10 statutorily protected rights.

11 ///

12 91. More specifically, Plaintiff Ramirez and the other class members have been
13 injured by Defendants' intentional and willful violation of California Labor Code section
14 226(a) because they were denied both their legal right to receive, and their protected interest in
15 receiving, accurate and itemized wage statements pursuant to California Labor Code section
16 226(a).

17 92. Plaintiff Ramirez and the other class members are entitled to recover from
18 Defendants the greater of their actual damages caused by Defendants' failure to comply with
19 California Labor Code section 226(a), or an aggregate penalty not exceeding four thousand
20 dollars per employee.

21 93. Plaintiff Ramirez and the other class members are also entitled to injunctive
22 relief to ensure compliance with this section, pursuant to California Labor Code section 226(g).

23 **SEVENTH CAUSE OF ACTION**

24 **(Violation of California Labor Code §§ 2800 and 2802)**

25 **(Against DELTA DENTAL OF CALIFORNIA and DOES 1 through 100)**

26 94. Plaintiff Ramirez incorporates by reference the allegations contained in
27 paragraphs 1 through 93, and each and every part thereof with the same force and effect as
28 though fully set forth herein.

1 95. Pursuant to California Labor Code sections 2800 and 2802, an employer must
2 reimburse its employee for all necessary expenditures incurred by the employee in direct
3 consequence of the discharge of his or her job duties or in direct consequence of his or her
4 obedience to the directions of the employer.

5 96. Defendants have intentionally and willfully failed to reimburse Plaintiff Ramirez
6 and the other class members for all necessary business-related expenses and costs. Plaintiff
7 Ramirez and other class members were required to work from home but were not reimbursed for
8 the equipment they purchased to be able to work from home, nor provided a stipend for their
9 internet use or cell phone use. Plaintiff Ramirez and the other class members are entitled to
10 recover from Defendants their business-related expenses and costs incurred during the course
11 and scope of their employment, plus interest accrued from the date on which the employee
12 incurred the necessary expenditures at the same rate as judgments in civil actions in the State of
13 California.

14 ///

15 **EIGHTH CAUSE OF ACTION**

16 **(Violation of California Business & Professions Code §§ 17200, *et seq.*)**

17 **(Against DELTA DENTAL OF CALIFORNIA and DOES 1 through 100)**

18 97. Plaintiff Ramirez incorporates by reference the allegations contained in
19 paragraphs 1 through 96, and each and every part thereof with the same force and effect as
20 though fully set forth herein.

21 98. Defendants' conduct, as alleged herein, has been, and continues to be unfair,
22 unlawful and harmful to Plaintiff Ramirez , other class members, to the general public, and
23 Defendants' competitors. Accordingly, Plaintiff Ramirez seeks to enforce important rights
24 affecting the public interest within the meaning of Code of Civil Procedure section 1021.5.

25 99. Defendants' activities as alleged herein are violations of California law, and
26 constitute unlawful business acts and practices in violation of California Business &
27 Professions Code section 17200, *et seq.*

28 100. A violation of California Business & Professions Code section 17200, *et seq.*

1 may be predicated on the violation of any state or federal law. In this instant case, Defendants'
2 policy and practice of requiring Plaintiff Ramirez and the other class members work overtime
3 hours without paying them proper compensation violate California Labor Code sections 510
4 and 1198. Additionally, Defendants' policy and practice of requiring Plaintiff Ramirez and the
5 other class members, to work through their meal and rest periods without paying them proper
6 compensation violate California Labor Code sections 226.7 and 512(a). Moreover, Defendants'
7 policy and practice of failing to timely pay wages to Plaintiff Ramirez and the other class
8 members violate California Labor Code sections 201 and 202. Defendants also violated
9 California Labor Code sections 226(a), 1194, 1197, 2800 and 2802.

10 101. As a result of the herein described violations of California law, Defendants
11 unlawfully gained an unfair advantage over other businesses.

12 102. Plaintiff Ramirez and the other class members have been personally injured by
13 Defendants' unlawful business acts and practices as alleged herein, including but not
14 necessarily limited to the loss of money and/or property.

15 103. Pursuant to California Business & Professions Code section 17200, *et seq.*,
16 Plaintiff Ramirez and the other class members are entitled to restitution of the wages withheld
17 and retained by Defendants during a period that commences four years prior to the filing of
18 this Complaint; an award of attorneys' fees pursuant to California Code of Civil procedure
19 section 1021.5 and other applicable laws; and an award of costs.

20 **NINTH CAUSE OF ACTION**

21 **(Violation of California Labor Code §§ 2698, *et seq.*)**

22 **(Against DELTA DENTAL OF CALIFORNIA and DOES 1 through 100**

23 104. Plaintiff Campbell incorporates by reference the allegations contained in
24 paragraphs 1 through 103, and each and every part thereof with the same force and effect as
25 though fully set forth herein.

26 105. PAGA expressly establishes that any provision of the California Labor Code
27 which provides for a civil penalty to be assessed and collected by the LWDA, or any of its
28 departments, divisions, commissions, boards, agencies or employees for a violation of the

1 California Labor Code, may be recovered through a civil action brought by an aggrieved
2 employee on behalf of himself or herself, and other current or former employees.

3 106. On June 28, 2022, Plaintiff Campbell provided written notice to the LWDA and
4 Defendants of the specific provisions of the Labor Code she contends were violated, and the
5 theories supporting her contentions. Attached hereto as **Exhibit 1** and incorporated by
6 reference is a copy of the June 28, 2022 written notice to the LWDA. Plaintiff Campbell
7 believes that on or about September 1, 2022 the sixty-five (65) day notice period expired as to
8 all Defendants and the LWDA did not take any action to investigate or prosecute this matter.
9 Therefore, Plaintiff Campbell exhausted the statutory time period to bring this action.

10 107. Plaintiff Campbell and the other hourly-paid or non-exempt employees are
11 “aggrieved employees” as defined by California Labor Code § 2699(c) in that they are all
12 current and former hourly-paid or non-exempt employees of Defendants within the State of
13 California who worked for Defendants at any time during the period from November 9, 2019
14 through February 8, 2023, and one or more of the alleged violations was committed against
15 them.

Deleted: June 28, 2021

Deleted: to the present

16 **Failure to Pay Minimum and Overtime Wages**

17 108. At all times relevant herein, Defendants were required to compensate their non-
18 exempt employees minimum wages for all hours worked and overtime wages for all hours
19 worked in excess of eight (8) hours in a day or forty (40) hours in a workweek, pursuant to the
20 mandate of Labor Code §§ 510, 1194, 1197, and 1198.

21 109. As a policy and practice, Defendants failed to compensate Plaintiff Campbell and
22 the other aggrieved current and former employees for all hours worked because of its illegal
23 rounding policy and practice of requiring class members to work off the clock, resulting in a
24 failure to pay all minimum wages and overtime wages, where applicable.

Deleted: ,

25 **Failure to Provide Meal Periods and Rest Breaks**

26 110. In accordance with the mandates of Labor Code §§ 226.7 and 512, Defendants
27 were required to authorize and permit their non-exempt employees to take a 10-minute rest break
28

1 for every four (4) hours worked or major fraction thereof and were further required to provide
2 their non-exempt employees with a 30-minute meal period for every five (5) hours worked.

3 111. As a policy and practice, Defendants failed to provide Plaintiff Campbell and the
4 other aggrieved current and former employees with legally-mandated meal periods and rest
5 breaks and failed to pay proper compensation for this failure. Plaintiff Campbell and the other
6 aggrieved employees were instructed to complete their daily tasks before taking their meal
7 periods and rest breaks; however, the plethora of tasks assigned did not adequately account for
8 timely and complete meal periods and rest breaks.

Deleted:

9 **Failure to Timely Pay Wages During Employment**

10 112. At all times relevant herein, Defendants were required to pay their employees
11 within a specified time period pursuant to the mandate of Labor Code § 204.

12 113. As a policy and practice, Defendants failed to pay Plaintiff Campbell and the
13 other aggrieved current and former employees all wages due and owing them within the required
14 time period.

15 **Failure to Timely Pay Wages Upon Termination**

16 114. At all times relevant herein, Defendants were required to pay their employees all
17 wages owed in a timely fashion at the end of employment pursuant to California Labor Code §§
18 201 to 204.

19 ///

20 ///

21 115. As a result of Defendants' Labor Code violations alleged above, Defendants
22 failed to pay Plaintiff Campbell and the other aggrieved former employees their final wages
23 pursuant to Labor Code §§ 201 to 204 and accordingly owe waiting time penalties pursuant to
24 Labor Code § 203.

25 **Failure to Provide Complete and Accurate Wage Statements**

26 116. At all times relevant herein, Defendants were required to keep *accurate* records
27 regarding their California employees pursuant to the mandate of Labor Code §§ 226, 1174 and
28 1776.

1 117. As a result of Defendants' various Labor Code violations, Defendants failed to
2 keep accurate records regarding Plaintiff Campbell and the other aggrieved current and former
3 employees. For example, Defendants failed in their affirmative obligation to keep accurate
4 records regarding Plaintiff Campbell and the other aggrieved current and former employees'
5 gross wages earned, total hours worked, all deductions, net wages earned, and all applicable
6 hourly rates and the number of hours worked at each hourly rate.

7 **Failure to Reimburse Business Expenses**

8 118. At all times relevant herein, Defendants were required to reimburse its employees
9 for any and all necessary expenditures or losses incurred by the employees in direct
10 consequences of the discharge or his or her duties pursuant to the mandate of Labor Code §§
11 2800 and 2802.

12 119. As a policy and practice, Defendants failed to reimburse Plaintiff Campbell and
13 the other aggrieved current and former employees for all business expenses incurred and owing
14 them within the required time period.

15 **Penalties**

16 120. Pursuant to California Labor Code § 2699, Plaintiff Campbell, individually, and
17 on behalf of the other current and former aggrieved employees, requests and is entitled to recover
18 from Defendants, and each of them, civil penalties, interest, attorneys' fees and costs, including
19 but not limited to:

20 ///

- 21 a. Penalties under California Labor Code § 2699 in the amount of a hundred
22 dollars (\$100) for each aggrieved employee per pay period for the initial
23 violation, and two hundred dollars (\$200) for each aggrieved employee per
24 pay period for each subsequent violation;
- 25 b. Penalties under California Code of Regulations Title 8 § 11040 in the
26 amount of fifty dollars (\$50) for each aggrieved employee per pay period for
27 the initial violation, and one hundred dollars (\$100) for each aggrieved
28 employee per pay period for each subsequent violation;

- 1 c. Penalties under California Labor Code § 210 in addition to, and entirely
2 independent and apart from, any other penalty provided in the California
3 Labor Code in the amount of a hundred dollars (\$100) for each aggrieved
4 employee per pay period for the initial violation, and two hundred dollars
5 (\$200) for each aggrieved employee per pay period for each subsequent
6 violation;
- 7 d. Penalties under Labor Code § 1197.1 in the amount of a hundred dollars
8 (\$100) for each aggrieved employee per pay period for the initial violation,
9 and two hundred fifty dollars (\$250) for each aggrieved employee per pay
10 period for each subsequent violation;
- 11 e. Any and all additional penalties as provided by the Labor Code and/or other
12 statutes; and
- 13 f. Attorneys' fees and costs pursuant to Labor Code §§ 210, 1194, and 2699,
14 and any other applicable statute.

15
16 **DEMAND FOR JURY TRIAL**

17 Plaintiff, individually, and on behalf of other members of the general public similarly
18 situated, requests a trial by jury.

19 **PRAYER FOR RELIEF**

20 WHEREFORE, Plaintiff, individually and on behalf of all other members of the general
21 public similarly situated, prays for relief and judgment against Defendants, jointly and
22 severally, as follows:

23 **Class Certification**

- 24 1. That this action be certified as a class action;
- 25 2. That Plaintiff be appointed as representative of the Class;
- 26 3. That counsel for Plaintiff be appointed as Class Counsel; and
- 27 4. That Defendants provide to Class Counsel immediately the names and most
28 current contact information (address, e-mail and telephone numbers) of all class members.

1 **As to the First Cause of Action**

2 5. That the Court declare, adjudge and decree that Defendants violated California
3 Labor Code sections 510 and 1198 and applicable IWC Wage Orders by willfully failing to pay
4 all overtime wages due to Plaintiff and the other class members;

5 6. For general unpaid wages at overtime wage rates and such general and special
6 damages as may be appropriate;

7 7. For pre-judgment interest on any unpaid overtime compensation commencing
8 from the date such amounts were due;

9 8. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
10 California Labor Code section 1194; and

11 9. For such other and further relief as the court may deem just and proper.

12 **As to the Second Cause of Action**

13 10. That the Court declare, adjudge and decree that Defendants violated California
14 Labor Code sections 226.7 and 512 and applicable IWC Wage Orders by willfully failing to
15 provide all meal periods (including second meal periods) to Plaintiff and the other class
16 members;

17 11. That the Court make an award to Plaintiff and the other class members of one
18 (1) hour of pay at each employee's regular rate of compensation for each workday that a meal
19 period was not provided;

20 12. For all actual, consequential, and incidental losses and damages, according to
21 proof;

22 13. For premium wages pursuant to California Labor Code section 226.7(b);

23 14. For pre-judgment interest on any unpaid wages from the date such amounts
24 were due;

25 15. For reasonable attorneys' fees and costs of suit incurred herein; and

26 16. For such other and further relief as the court may deem just and proper.

27 **As to the Third Cause of Action**

28 17. That the Court declare, adjudge and decree that Defendants violated California

1 Labor Code section 226.7 and applicable IWC Wage Orders by willfully failing to provide all
2 rest periods to Plaintiff and the other class members;

3 18. That the Court make an award to Plaintiff and the other class members of one
4 (1) hour of pay at each employee's regular rate of compensation for each workday that a rest
5 period was not provided;

6 19. For all actual, consequential, and incidental losses and damages, according to
7 proof;

8 20. For premium wages pursuant to California Labor Code section 226.7(b);

9 21. For pre-judgment interest on any unpaid wages from the date such amounts
10 were due; and

11 22. For such other and further relief as the court may deem just and proper.

12 **As to the Fourth Cause of Action**

13 23. That the Court declare, adjudge and decree that Defendants violated California
14 Labor Code sections 1194 and 1197 by willfully failing to pay minimum wages to Plaintiff and
15 the other class members;

16 24. For general unpaid wages and such general and special damages as may be
17 appropriate;

18 25. For pre-judgment interest on any unpaid compensation from the date such
19 amounts were due;

20 26. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
21 California Labor Code section 1194(a);

22 27. For liquidated damages pursuant to California Labor Code section 1194.2; and

23 28. For such other and further relief as the court may deem just and proper.

24 **As to the Fifth Cause of Action**

25 29. That the Court declare, adjudge and decree that Defendants violated California
26 Labor Code sections 201, 202, and 203 by willfully failing to pay all compensation owed at the
27 time of termination of the employment of Plaintiff and other class members no longer
28 employed by Defendants;

1 30. For all actual, consequential, and incidental losses and damages, according to
2 proof;

3 31. For statutory wage penalties pursuant to California Labor Code section 203 for
4 the other class members who have left Defendants' employ;

5 32. For pre-judgment interest on any unpaid compensation from the date such
6 amounts were due; and

7 33. For such other and further relief as the court may deem just and proper.

8 **As to the Sixth Cause of Action**

9 34. That the Court declare, adjudge and decree that Defendants violated the record
10 keeping provisions of California Labor Code section 226(a) and applicable IWC Wage Orders
11 as to Plaintiff and the other class members, and willfully failed to provide accurate itemized
12 wage statements thereto;

13 35. For actual, consequential and incidental losses and damages, according to proof;

14 36. For statutory penalties pursuant to California Labor Code section 226(e);

15 37. For injunctive relief to ensure compliance with this section, pursuant to
16 California Labor Code section 226(g); and

17 38. For such other and further relief as the court may deem just and proper.

18 **As to the Seventh Cause of Action**

19 39. That the Court declare, adjudge and decree that Defendants violated California
20 Labor Code sections 2800 and 2802 by willfully failing to reimburse Plaintiff and the other
21 class members for all necessary business-related expenses as required by California Labor
22 Code sections 2800 and 2802;

23 40. For actual, consequential and incidental losses and damages, according to proof;

24 41. For the imposition of civil penalties and/or statutory penalties;

25 42. For punitive damages and/or exemplary damages according to proof at trial;

26 43. For reasonable attorneys' fees and costs of suit incurred herein; and

27 44. For such other and further relief as the court may deem just and proper.

28 **As to the Eighth Cause of Action**

1 45. That the Court declare, adjudge and decree that Defendants violated California
2 Business and Professions Code sections 17200, *et seq.* by failing to provide Plaintiff and the
3 other class members all overtime compensation due to them, failing to provide all meal and
4 rest periods to Plaintiff and the other class members, failing to pay at least minimum wages to
5 Plaintiff and the other class members, failing to pay Plaintiff and the other class members'
6 wages timely as required by California Labor Code section 201, 202.

7 46. For restitution of unpaid wages to Plaintiff and the other class members and all
8 pre-judgment interest from the day such amounts were due and payable;

9 47. For the appointment of a receiver to receive, manage and distribute any and all
10 funds disgorged from Defendants and determined to have been wrongfully acquired by
11 Defendants as a result of violation of California Business and Professions Code sections
12 17200, *et seq.*;

13 48. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
14 California Code of Civil Procedure section 1021.5;

15 49. For injunctive relief to ensure compliance with this section, pursuant to
16 California Business and Professions Code sections 17200, *et seq.*; and

17 50. For such other and further relief as the court may deem just and proper.

18 **As to the Ninth Cause of Action**

19 51. That the Court declare, adjudge and decree that Defendants violated
20 California Labor Code sections 2698, *et seq.*, the PAGA, for civil penalties pursuant to
21 Defendants' violations of Labor Code §§ 201, 202, 203, 204, 218.5, 221, 226(a), 226.3,
22 226.7, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802;

23 52. Upon the Cause of Action, for costs and attorneys' fees pursuant to Labor
24 Code Sections 210, 1194, and 2699, and any other applicable statute; and

25 53. For such other and further relief as the Court may deem just and proper.

26
27
28 Dated: October __, 2023

JUSTICE LAW CORPORATION

28
28

SECOND AMENDED CLASS ACTION COMPLAINT FOR DAMAGES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

By: _____
Douglas Han
Shunt Tatavos-Gharajeh
Christopher K. Petersen
Lizette Rodriguez
Attorneys for Plaintiff

EXHIBIT 1

June 28, 2022

BY U.S. EMAIL/ELECTRONIC SUBMISSION

PAGAfilings@dir.ca.gov

State of California

Labor & Workforce Development Agency

800 Capitol Mall, MIC-55

Sacramento, California 95814

Re: DELTA DENTAL OF CALIFORNIA

Dear Representative:

We have been retained to represent Wendy Campbell against Delta Dental of California (including any and all affiliates, managers, members, subsidiaries, and parents, and their shareholders, officers, directors, and employees), any individual, owner, officer and managing agent, DOES 1-10 as an "Employer" or person acting on behalf of an "Employer" pursuant to California Labor Code section 558.1, and DOES 11-20¹ for violations of California wage-and-hour laws (hereinafter collectively referred to as "DELTA DENTAL").

Ms. Campbell is pursuing her California Labor Code section 2698, *et seq.*, the Private Attorneys General Act of 2004 ("PAGA") claim on a representative basis. Therefore, Ms. Campbell may seek penalties and wages for violations of the Labor Code on behalf of the State of California and aggrieved employees, which are recoverable under PAGA. This letter is sent in compliance with the reporting requirements of California Labor Code section 2699.3.

Delta Dental is a California corporation located at 560 Mission St. Suite 1300 San Francisco, CA 94105.

///

///

///

¹ Ms. Campbell does not know the true names or capacities, whether individual, partner or corporate, of DOES 1 through 20, inclusive, and for that reason, said DOES are designated under such fictitious names. Ms. Campbell will amend this notice when the true names and capacities are known. Ms. Campbell is informed and believes that each DOE was responsible in some way for the matters alleged herein and proximately caused Ms. Campbell and other current and former aggrieved employees to be subject to the illegal employment practices, wrongs and injuries complained of herein.

DELTA DENTAL employed Ms. Campbell as an hourly-paid non-exempt Appeals Specialist within one year of the date of this letter (until in or around September of 2021²) in the State of California. DELTA DENTAL directly controlled the wages, hours and/or working conditions of Ms. Campbell and other aggrieved employees' employment, including direction, retention, scheduling, supervision, and termination.

The "aggrieved employees" that Ms. Campbell may seek penalties on behalf of are all current and former hourly-paid or non-exempt employees (whether hired directly or through a staffing agency) of DELTA DENTAL within the State of California.

DELTA DENTAL failed to properly pay its hourly-paid or non-exempt employees for all hours worked, failed to properly provide or compensate minimum and overtime wages and for meal and rest breaks, failed to issue compliant wage statements and failed to reimburse for all necessary business-related costs and expenses, thus resulting in other Labor Code violations as stated below.

Pursuant to *Huff v. Securitas Security Services*, 23 Cal. App. 5th 745, 751 (2018), an employee who brings a representative action and was affected by at least one of the violations alleged in the complaint has standing to pursue penalties on behalf of the state not only for that violation, but for violations affecting other employees as well. Accordingly, Ms. Campbell has standing to pursue penalties on behalf of the state for violations affecting all the aggrieved employees at DELTA DENTAL, regardless of their classification, job title, location, or whether they were hired directly or through a labor union.

DELTA DENTAL has violated and/or continues to violate, among other provisions of the California Labor Code and applicable wage law, California Labor Code sections 201, 202, 203, 204, 210, 218.5, 221, 226(a), 226.3, 226.7, 246, 432.5, 510, 512(a), 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and the IWC Wage Orders.

///

///

///

² Per Emergency Rule 9 (Tolling statute of limitations for civil causes of action) of the Judicial Council's Emergency Rules Related to COVID-19, all statute of limitations for civil causes of action that exceed 180 days are tolled from April 6, 2020 until October 1, 2020. Therefore, the one (1) year statute of limitations for Ms. Campbell PAGA cause of action is tolled.

California Labor Code sections 510, 1194, and 1198 require employers to pay at least minimum wage for all hours worked, pay time-and-a-half, or double-time overtime wages, and make it unlawful to work employees for hours longer than eight hours in one day and/or over forty hours in one week without paying the premium overtime rates. During the relevant time period, Ms. Campbell and other aggrieved employees routinely worked in excess of 8 hours in a day and 40 hours in a week. DELTA DENTAL failed to compensate Ms. Campbell and other aggrieved employees for all hours worked and performing off-the-clock work, including pre- and post-shift, undergoing security procedures, starting up necessary programs before clocking in, and during meal breaks. DELTA DENTAL also failed to include non-discretionary bonuses and incentives in Ms. Campbell and other aggrieved employees' regular rate of pay for purposes of overtime compensation. Moreover, DELTA DENTAL maintained an illegal rounding policy that shaved time from aggrieved employees' pay. Therefore, Ms. Campbell and other aggrieved employees were entitled to receive certain wages for overtime compensation, but they were not paid for all overtime hours worked.

California Labor Code section 246 requires that employers provide employees with paid sick leave of not less than one hour per every 30 hours worked. California Labor Code section 246(l) also requires that paid sick leave be paid at a non-exempt employee's regular rate of pay for the workweek in which the employee uses paid sick time or at a rate calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment. During the relevant time period, DELTA DENTAL failed to pay Ms. Campbell and other aggrieved employees with paid sick leave that complied with California Labor Code section 246, by, for example, failing to pay paid sick leave at non-exempt employee's regular rate of pay or at a rate calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment.

///

///

///

California Labor Code sections 226.7 and 512 require employers to pay an employee one additional hour of pay at the employee's regular rate for each workday that a meal or rest break is not provided. During the relevant time period, DELTA DENTAL routinely required Ms. Campbell and other aggrieved employees to work through, interrupt, cut short, and/or delay their meal and rest breaks to comply with DELTA DENTAL's demanding workload, policies and expectations, and customer service standards. DELTA DENTAL failed to provide coverage to Ms. Campbell and other aggrieved employees so they may be relieved of all work duties and take legally mandated meal and rest breaks. Lastly, DELTA DENTAL also failed to authorize and permit Ms. Campbell and other aggrieved employees to take the requisite number of meal and rest breaks, including second meal breaks and third rest breaks, when working shifts exceeding 10 hours in length. Despite these facts, DELTA DENTAL failed to compensate Ms. Campbell and other aggrieved employees all the premium wages they were owed, including failing to pay premium wages at Ms. Campbell and other aggrieved employees' regular rate of pay.

California Labor Code section 201 requires that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. California Labor Code section 202 requires that if an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. California Labor Code section 203 provides that if an employer willfully fails to pay, without abatement or reduction, in accordance with Labor Code sections 201, 201.3, 201.5, 201.6, 201.8, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days. During the relevant time period, DELTA DENTAL failed to pay Ms. Campbell and other aggrieved employees all wages, including for uncompensated off-the-clock work, unpaid overtime premiums and premium wages for failing to provide legally mandated meal and rest breaks, due to them within any time period specified by California Labor Code sections 201 and 203 and therefore is liable under California Labor Code section 203.

///

///

///

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. During the relevant time period, DELTA DENTAL failed to pay Ms. Campbell and other aggrieved employees all wages due to them, including for uncompensated off-the-clock work, unpaid overtime premiums and premium wages for failing to provide legally mandated meal and rest breaks within any time period specified by California Labor Code section 204.

California Labor Code section 226 requires employers to make, keep and provide complete and accurate itemized wage statements to their employees. During the relevant time period, DELTA DENTAL did not provide Ms. Campbell and other aggrieved employees with complete and accurate itemized wage statements. The wage statements they received from DELTA DENTAL were in violation of California Labor Code section 226(a). The violations include, but are not limited to, the failure to include (1) gross wages earned by Ms. Campbell and other aggrieved employees, (2) total hours worked by Ms. Campbell and other aggrieved employees, (3) the number of piece-rate units earned and any applicable piece rate by Ms. Campbell and other aggrieved employees (4) all deductions for Ms. Campbell and other aggrieved employees, (5) net wages earned by Ms. Campbell and other aggrieved employees, (6) the inclusive dates of the period for which Ms. Campbell and other aggrieved employees are paid, (7) the name of the aggrieved employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by Ms. Campbell and other aggrieved employees.

California Labor Code section 558 allows recovery of penalties. (a) Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall be paid to the affected employee. Ms. Campbell and other aggrieved employees have been denied their wages and premium wages and, therefore, are entitled to penalties.

California Labor Code sections 1174(d) requires an employer to keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than two years. During the relevant time period, DELTA DENTAL failed to keep accurate and complete payroll records showing the hours worked daily and the wages paid, to Ms. Campbell and other aggrieved employees.

California Labor Code sections 1194, 1197 and 1197.1 provide the minimum wage to be paid to employees, and the payment of a lesser wage than the minimum so fixed is unlawful. During the relevant time period, DELTA DENTAL did not provide Ms. Campbell and other aggrieved employees with the minimum wages to which they were entitled despite constructive and actual knowledge of off-the-clock work, including pre- and post-shift, undergoing security procedures, starting up necessary programs before clocking in, and during meal breaks, and maintaining an illegal rounding policy.

California Labor Code sections 2800 and 2802 require an employer to reimburse its employee for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer. During their employment, Ms. Campbell and other aggrieved employees incurred necessary business-related expenses and costs that were not fully reimbursed by DELTA DENTAL, including for purchasing their own supplies such as notepads, pens, disinfecting wipes, and using their personal cellular phones to communicate with management..

We believe that Ms. Campbell and other current and former California-based hourly-paid or non-exempt employees are entitled to penalties as allowed under California Labor Code section 2698, *et seq.* for violations of Labor Code sections 201, 202, 203, 204, 210, 218.5, 221, 226(a), 226.3, 226.7, 246, 432.5, 510, 512(a), 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and the IWC Wage Orders.

California Labor Code section 2699.3 requires that a claimant send a certified letter to the employer in questions and the California Labor & Workforce Development Agency setting forth the claims, and the basis for the claims, thereby giving the California Labor & Workforce Development Agency an opportunity to investigate the claims and/or take any action it deems appropriate.

///

///

LWDA
June 28, 2022
Page 7 of 7

The purpose of this letter is to satisfy the requirement created by California Labor code section 2699 prior to seeking penalties allowed by law for the aforementioned statutory violations. We look forward to determining whether California Labor & Workforce Development Agency intends to take any action in reference to these claims. We kindly request that you respond to this notice according to the time frame contemplated by the California Labor Code.

Ms. Campbell will seek these penalties on his own behalf and on behalf of other similarly situated California-based hourly-paid or non-exempt employees of DELTA DENTAL within one year of the date of this letter, as allowed by law.

If you have any questions or require additional information, please do not hesitate to contact us. Thank you for your attention to this matter and the noble cause you advance each and every day.

Very truly yours,

JUSTICE LAW CORPORATION

A handwritten signature in black ink, appearing to read 'D. Han', with a stylized flourish at the end.

Douglas Han, Esq.

CC: (By Certified U.S. Mail Only):

Michael G. Hankinson
c/o Delta Dental of California
560 Mission Street, Suite 1300
San Francisco, CA 94105
Agent for Service of Process for Delta Dental of California

CC: (By Electronic Mail Only)

Sara A. Moore
smoore@grsm.com
Ryan J. Greenspan
rgreenspan@grsm.com
GORDON REES SCULLY MANSUKHANI, LLP
Counsel of Record for Delta Dental of California

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

PROOF OF SERVICE