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Attorneys for **DEFENDANTS**

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES – CENTRAL JUDICIAL DISTRICT**

ERICA HERNANDEZ,	)	Case No.: 23STCV00685
	)	
	)	
Plaintiff,	)	[Assigned for All Purposes to Honorable Judge
	)	Upinder S. Kalra in Dept. 51]
	)	
vs.	)	
	)	STIPULATION FOR APPROVAL OF PAGA
GANJI DENTAL CORPORATION, a	)	SETTLEMENT AND RELEASE;
California corporation;	)	[PROPOSED] ORDER
GANJI DDS DENTAL CORPORATION, a	)	
California corporation;	)	
GANJI DMD DENTAL CORPORATION, a	)	<i>[Declaration of Arthur Sezgin, Esq. filed</i>
California corporation;	)	<i>concurrently herewith]</i>
GANJI & GANJI DENTAL	)	
CORPORATION, a California corporation;	)	
GANJI DDS PS, a professional corporation;	)	
DS GANJI DDS PS, a professional	)	
corporation;	)	
DAVID GANJI, an individual; and	)	
DOES 1 THROUGH 100, inclusive,	)	
	)	
	)	
Defendants.	)	
	)	

1 **I. INTRODUCTION**

2 Plaintiff ERICA HERNANDEZ (hereinafter “Plaintiff”) and Defendants GANJI DENTAL
3 CORPORATION, GANJI DDS DENTAL CORPORATION, GANJI DMD DENTAL
4 CORPORATION, GANJI & GANJI DENTAL CORPORATION, GANJI DDS PS, DS GANJI
5 DDS PS, and DAVID GANJI (hereinafter collectively referred to as “Washington Dental” or
6 “Defendants”) have reached an agreement to settle the above-captioned action (hereinafter the
7 “Action”). The parties have memorialized the terms of this settlement in a Settlement Agreement
8 (hereinafter the “Settlement Agreement”). Attached as “**Exhibit A**” hereto is a copy of the Joint
9 Stipulation of Settlement and Release of PAGA Action.

10 By this Stipulation and pursuant to California *Labor Code* § 2699(l), Plaintiff seeks an order
11 permitting settlement on the terms outlined in the Settlement Agreement. Plaintiff and Defendants
12 are collectively referred to as the “Parties” and any one of them individually may be referred to as
13 a “Party.”

14 Defendants adamantly deny any liability or wrongdoing of any kind whatsoever associated
15 with the Action, and further deny that, for any purpose other than settling the Action, the Action is
16 appropriate for representative treatment. It is the desire of the Parties to fully, finally, and forever
17 compromise and discharge all claims known or unknown related to those alleged in the Action.

18 **II. ALLEGATIONS AND INVESTIGATION**

19 A. Defendants operate dental offices. Plaintiff started working as a Treatment
20 Coordinator for Defendants beginning in or around August 2021. Plaintiff’s employment ended in
21 or around September 2022. At all times during her employment, Plaintiff was considered an hourly,
22 non-exempt employee.

23 B. Plaintiff complied with the procedures of California *Labor Code* § 2699.3 for
24 bringing suit under the Labor Code Private Attorneys General Act of 2004, California *Labor Code*
25 §§ 2698 et seq. (“PAGA”). On September 14, 2022, Plaintiff, on behalf of herself and Defendants
26 other California non-exempt, hourly employees (hereafter collectively the “Aggrieved Employees”)
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1 gave written notice by electronic service to the California Labor and Workforce Development
2 Agency (“LWDA”) and via certified mail to Defendants of her claims against Defendants. In her
3 notice to the LWDA, Plaintiff asserted on behalf of herself and the Aggrieved Employees that
4 Defendants violated various laws, including California *Labor Code* §§ 203, 204, 226(a), 226.3,
5 226.7, 510, 512, 558, 1174(d), 1194, 1197, 1197.1, 2800, 2802, 2698, 2699, and related IWC Wage
6 Orders, including, but not limited to Wage Order No. 4, based on the various theories of liability,
7 including, but not limited to, Defendants’ alleged failure to: provide meal periods; provide rest
8 periods; pay for all hours worked; pay minimum wages; pay overtime wages; provide accurate
9 wage statements; timely pay all wages due in accordance with time periods prescribed by law;
10 reimburse business expenses; keep accurate payroll records; and timely pay all final wages at
11 separation of employment. Plaintiff filed her initial lawsuit on January 12, 2023 in the Superior
12 Court for the State of California, County of Los Angeles, Case No. 23STCV00685 with one cause
13 of action for penalties under PAGA under the following legal theories: (a) failure to pay all
14 minimum wages owed; (b) failure to pay all overtime wages owed; (c) failure to provide compliant
15 meal periods, or premium pay for non-compliant meal periods; (d) failure to authorize and permit
16 complaint rest periods, or provide premium pay for non-complaint rest periods; (e) failure to
17 provide accurate, itemized wage statements and/or otherwise maintain accurate records; (f) failure
18 to timely pay wages during employment and/or upon separation of employment; (g) failure to
19 indemnify and/or reimburse for all reasonable and necessary business expenses; and (h) violations
20 of Industrial Welfare Commission Wage Order No. 4. *See concurrently filed Declaration of Arthur*
21 *Sezgin, Esq. (hereinafter “Sezgin Decl.”), ¶ 3.*

22 C. According to Defendants’ records, they employed 131 Aggrieved Employees from
23 September 14, 2021 through September 14, 2022, and that there are paychecks issued for a total of
24 approximately 2100 pay periods worked for that same time period.

25 D. Defendants deny any liability or wrongdoing of any kind whatsoever associated with
26 the lawsuit and the Representative PAGA Claim. It is the desire of the Parties to fully, finally, and
27

1 forever compromise and discharge all claims known or unknown related to those alleged in
2 Plaintiff's lawsuit.

3 E. On December 27, 2022, the Parties attended a full day mediation session with
4 experienced wage-and-hour mediator, Hon. Jeff Winikow (Ret.). At the mediation, the Parties
5 agreed to settle the Representative PAGA claim for violation of California *Labor Code* §§ 2698 et
6 seq. Before agreeing to the terms of the Settlement, the Parties engaged in informal discovery
7 regarding Defendants' policies, practices, operations, time and payroll information and other topics.
8 In advance of mediation, Defendants produced Plaintiff's personnel file, including time and payroll
9 data for Plaintiff and also produced the time records and payroll records for 26 aggrieved
10 employees, which is a 20% sample. Through extensive arm's length negotiations at the mediation
11 and only after discovery and investigation were performed, the Parties agreed to settlement terms.
12 *See Sezgin Decl.*, ¶ 4.

13 F. The Parties conducted investigation of the facts and law both before and after the
14 lawsuit was filed. Counsel for the Parties have further investigated the applicable law as applied to
15 the facts discovered regarding Plaintiff's claims, the defenses thereto, and the Labor Code violations
16 claimed by Plaintiff. Based on their own independent investigations and evaluations, the Parties
17 and their respective counsel are of the opinion that the Settlement for the consideration and on the
18 terms set forth in this Stipulation are fair, reasonable, and adequate and are in the best interests of
19 Plaintiff, the Aggrieved Employees, and Defendants in light of all known facts and circumstances
20 and the risks inherent in litigation, especially in this pandemic era when most businesses are
21 struggling to remain afloat, much less prosper and make a large profit. *See Sezgin Decl.*, ¶ 5.

22 G. The Parties further recognize that the issues presented in the Representative PAGA
23 Claim are likely only to be resolved with extensive and costly pretrial and trial proceedings, and
24 that further litigation will cause inconvenience, distraction, disruption, delay, and expense
25 disproportionate to the maximum potential benefits, especially in light of the pandemic era and the
26 business climate. *See Sezgin Decl.*, ¶ 6.
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1 **III. FAIRNESS OF THE SETTLEMENT**

2 A. While this lawsuit is a Representative PAGA Claim, the Parties are not obligated to
3 follow the class action procedural rules for obtaining approval of this settlement. *See Arias v.*
4 *Superior Court (Angelo Dairy)*, (2009) 46 Cal.4th 969.

5 B. Plaintiff alleges that the strongest claims is that Plaintiff and other Aggrieved
6 Employees were not provided timely, uninterrupted meal and rest breaks and that there would be
7 derivative penalties under Labor Code Section 226 based on the failure to itemize meal and rest
8 break premiums on the paystubs. Note that Defendants vehemently deny that there were any meal
9 and rest break violations especially in light of the fact that Defendants had adequate meal and rest
10 policies. In terms of Plaintiff's other claims for minimum wage violations and failure to compensate
11 for all hours worked, no rounding issues unfavorable to Plaintiff and other Aggrieved Employees
12 were observed. Any bonus payments made to employees were purely discretionary and did not need
13 to be factored into employees' regular rate for purposes of overtime compensation.

14 C. Plaintiff contends that the civil penalty statutes applicable to the Representative
15 PAGA Claim are California *Labor Code* §§ 210, 226.3, 558, 1174.5, 1197.1, 2802, and 2699(f)(2).
16 Under these civil penalty statutes, an employee who suffers a Labor Code violation may be awarded
17 a sum of money for each pay period in which he or she was underpaid. However, under California
18 *Labor Code* § 2699(e)(2), the Court can reduce an award of civil penalties if the award is unjust,
19 arbitrary, oppressive, or confiscatory.

20 D. Under the civil penalty formulas applicable under PAGA, Plaintiff estimated a
21 maximum exposure of approximately \$151,200.00 for civil penalties for Plaintiff's strongest
22 disputed claims of failure to provide meal and rest periods and the derivative Labor Code Section
23 226 penalties for inaccurate paystubs. Plaintiff's analysis, which Defendants vehemently dispute,
24 revealed a 18% violation rate for either late, short, or interrupted meal periods. As such, with the
25 18% violation rate, the maximum exposure for meal break violations would be \$18,900.00, which
26 is calculated as a \$50 penalty multiplied by 378 pay periods (18% of the 2100 pay periods). Plaintiff
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extrapolated the same 18% rate for rest break violations, which would equate to an exposure of \$37,800.00 (\$100 penalty per pay period multiplied by 378 pay periods). Furthermore, Plaintiff also extrapolated the same 18% rate for inaccurate pay stubs under Labor Code Section 226, which would equate to an exposure of \$94,500.00 (\$250 penalty per pay period multiplied by 378 pay periods). Assuming Plaintiff's calculations and analysis are accurate, the maximum exposure presumes that the Court will not reduce the penalty award as unjust, arbitrary, oppressive, or confiscatory.

E. Moreover, Plaintiff is aware of no California state courts awarding Plaintiff multiple PAGA penalties for the same violation for the same pay period under different Labor Code provisions. As such, one of the risks Plaintiff faces is that the Court would refuse to "stack" civil penalties arising under the various Labor Codes. Furthermore, judges have awarded extremely small sums to PAGA claimants in the past. In addition, Defendants would make an argument under *Naranjo v. Spectrum Security Services, Inc.*, and other similar cases, that meal or rest period violations are not a predicate for civil penalties for improper wage statements and untimely final wages under Labor Code Sections 201-203, 226, 226.3, and 2699. *See Naranjo v. Spectrum Security Services, Inc.*, (2019) 40 Cal.App.5th 444. Defendants also adamantly dispute all of Plaintiff's allegations in the operative Complaint.

F. The source of penalties available is under PAGA, which allows employees to seek civil penalties for certain violations of the Labor Code so long as the penalties are not unjust, arbitrary, oppressive, or confiscatory. There are no State Court decisions under the PAGA to date with substantial awards of civil penalties. There is a substantial risk that the Court could reduce civil penalties to an insignificant amount if it is unpersuaded by Plaintiff's evidence of willful and intentional conduct. The PAGA expressly counsels against such awards. *See California Labor Code* § 2699(e)(2) (stating "[A] court may award a lesser amount than the maximum civil penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory."). Further,

1 although class certification is not required for a PAGA claim, Defendants could contend that
2 Plaintiff should show that the PAGA claims are manageable.

3 G. As such, Defendants could also convince the Court to dismiss the claims due to
4 unmanageability. *See Wesson v. Staples The Office Superstore, LLC*, (2021) 68 Cal.App.5th 746;
5 *see also Feltzs v. Cox Communs. Cal.*, (October 21, 2021) 2021 U.S. Dist. LEXIS 207087. On
6 September 9, 2021, the California Court of Appeal issued the significant decision in *Wesson v.*
7 *Staples The Office Superstore, LLC*, holding that courts have authority to ensure that PAGA claims
8 are manageable, and that courts may limit or strike unmanageable PAGA claims. Defendants
9 contend that Plaintiff's allegations require a host of individualized inquiries which would arguably
10 devolve into a series of mini-trials based on whether each employee voluntarily elected to
11 unilaterally waive a provided meal period or authorized rest break, based on position titles, job
12 duties and the type of work they perform. *See, e.g., Brinker v. Superior Court*, (2012) 53 Cal.4th
13 1004. In *Ortiz v. CVS Caremark Corp.*, the Court dismissed a PAGA claim because it was
14 unmanageable. *Ortiz v. CVS Caremark Corp.*, (N.D. Cal. 2014) 2014 WL 1117614, at 3-4. The
15 *Ortiz* Court cited the "multitude of individualized assessments" that case would have required in
16 ordering dismissal. *Id.* at 4. Several other courts have adopted *Ortiz* and dismissed PAGA claims
17 where, as here, there are a large number of allegedly aggrieved individuals whose claims require
18 individual assessments. *See, e.g., Litty v. Merrill Lynch & Co.*, C.D. Cal. 2014) 2014 WL 5904904
19 at 3; *see also Stafford v. Dollar Tree Stores, Inc.*, (E.D. Cal. 2014) 2014 WL 6633396 at 2-4
20 (bifurcating trial of plaintiff's claim from representative claims: "in light of the number of potential
21 aggrieved employees, judicial economy favors deferring the representative portion of the PAGA
22 claim"). The risk of an unmanageable trial is heightened in a representative PAGA claim because
23 the burden of proof rests with the plaintiff to establish violations of the Labor Code "with respect
24 to each and every individual on whose behalf [they] seek to recover civil penalties." *Molina v.*
25 *Dollar Tree Stores, Inc.*, (C.D. Cal. Aug. 9, 2013) 2013 U.S. Dist. LEXIS 138642 at 33-34.
26 Moreover, in a PAGA case the plaintiff must prove liability with respect to "each and every
27

individual” through representative evidence – but without sacrificing the defendant’s due process right to present proof of their affirmative defenses. *Elkins v. Superior Court*, (2007) 41 Cal.4th 1337, 1357; *Walmart Stores, Inc. v. Dukes*, (2011) 131 S.Ct. 2541, 2561; *Duran v. U.S. Bank Nat’l Ass’n*, (2014) 59 Cal.4th 1, 33-34. Plaintiff is required to establish a violation of the Labor Code in each pay period of each and every one of the approximately 131 employees. The Court could find that this is an impractical task and require the Aggrieved Employees to bring individual claims instead of a PAGA representative claim.

H. The Parties further recognize that the issues presented in the Representative PAGA Claim are likely only to be resolved with extensive and costly pretrial and trial proceedings, and that further litigation will cause inconvenience, distraction, disruption, delay, and expense disproportionate to the maximum potential benefits to the Aggrieved Employees and Plaintiff from continued litigation.

I. The settlement of the Representative PAGA Claim involves monetary relief to all Aggrieved Employees, Plaintiff, her attorneys, and the State of California.

J. Furthermore, Plaintiff recognizes that continued litigation presents significant risks that support a significant downward departure from Plaintiff’s estimated civil penalties amount. In view of the risks, the Settlement represents a fair, adequate, and reasonable compromise amount for these claims and is in the best interest of Plaintiff and Aggrieved Employees and thus warrants approval. *See Laguna v. Coverall N. Am., Inc.*, (9th Cir. June 3, 2014) 2014 WL 2465049 at 3. The PAGA settlement and its terms are fair, just, reasonable, adequate, and equitable to Defendants, Plaintiff, and the State, especially in light of the current economic climate, and are the product of good faith, and informed arm’s length negotiations between the Parties consistent with public policy and fully comply with applicable provisions of law.

IV. TERMS AND PROCEDURES OF THE SETTLEMENT

A. The Settlement covers any and all civil penalties claims arising from Plaintiff’s allegations in his Complaint, as laid out above.

1 B. Defendant agrees to pay \$50,000.00 toward the Settlement (the “Gross Settlement
2 Amount” or “GSA”) which will be distributed by Defendants as follows:

3 1) \$16,666.66 (33 1/3% of the GSA) in attorney’s fees to Sezgin Khousadian LLP;

4 2) \$1,579.22 in attorney litigation costs to Sezgin Khousadian LLP;

5 3) \$2,750.00 in PAGA Settlement Administrator costs to the Settlement Administrators
6 (ILYM Group, Inc.);

7 4) \$29,004.12 (the “Net Settlement Amount” or “NSA”) will be divided as follows:

8 i. \$21,753.09 (75% of “NSA”) to the LWDA, which represents civil penalties
9 payable to the LWDA under the Labor Code Private Attorneys General Act
10 (“PAGA”), Labor Code Sections 2698 et seq.; and

11 ii. \$7,251.03 (25% of NSA) (the “Aggrieved Employee Amount”) to the
12 Aggrieved Employees which represents civil penalties payable to the
13 Aggrieved Employees as compensation for civil penalties that are allegedly
14 owed on the Representative PAGA Claim for the period from September 14,
15 2021 through September 14, 2022. *See Sezgin Decl.*, ¶ 7.

16 C. Plaintiff and each Aggrieved Employee shall receive a portion of the Aggrieved
17 Employee Amount on a pro-rata basis by multiplying the Aggrieved Employee Amount by the ratio
18 of (i) the number of pay periods worked by the Aggrieved Employee during the release period and
19 (ii) the total number of pay periods worked by all Aggrieved Employees during the release period.

20 D. For purposes of computing taxes, one-hundred percent (100%) of the Aggrieved
21 Employee Settlement Award shall be considered to be a civil penalty and shall therefore not be
22 subject to withholding, unless otherwise required by law. The Claims Administrator shall file proof
23 of payment.

24 ///

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26 ///

V. **THE PROPOSED AMOUNT FOR ATTORNEY’S FEES AND LITIGATION COSTS IS FAIR, ADEQUATE, AND REASONABLE AND SHOULD BE APPROVED**

A. Plaintiff’s counsel represents Plaintiff on a straight contingency basis. Plaintiff counsel’s request for \$16,666.66 in attorney fees and \$1,579.22 in litigation costs is fair and reasonable. “Empirical studies show that, regardless of whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery. *Chavez v. Netflix, Inc.*, (2008) 162 Cal.App.4th 43, 47 fn. 11; *see also Lafitte v. Robert Half Int’l Inc.*, (2016) 1 Cal.5th 480, 503 (holding courts can use the percentage method for the calculation of attorneys’ fees). This is also consistent with Plaintiff’s Counsel’s experience in cases involving PAGA claims. This award is justified here because Plaintiff’s counsel achieved a strong result for the Aggrieved Employees and the State while bearing the substantial burdens of contingency representation.

B. It is an accepted practice in a wage-and-hour class action settlement to award attorney’s fees to plaintiff’s counsel based on a percentage of the total settlement value agreed upon by the parties. California courts have long recognized that an appropriate method for awarding attorney’s fees in class actions is to award a percentage of the common fund. *See Serrano v. Priest*, (1977) 20 Cal.3d. 25, 48-49 (holding “when a number of persons are entitled in common to a specific fund, and an action brought by a plaintiff or plaintiffs for the benefit of all results in the creation or preservation of that fund, such plaintiff or plaintiffs may be awarded attorney’s fees out of the fund”); *see also Wershba v. Apple Computer, Inc.*, (2001), 91 Cal.App.4th 230, 254; *see also Lealao v. Beneficial California, Inc.*, (2000) 82 Cal.App.4th 19, 26-30.

C. The litigation costs expended to aid in the representation of the Aggrieved Employees include the following: lawsuit filing fee of \$454.22, PAGA notice initial filing fee of \$75.00, and expert data analysis fee of \$1,050.00. All of these costs are documented and reasonably incurred. *See Sezgin Decl.*, ¶ 8.

1 **VI. NO ADMISSION OF LIABILITY OR WRONGDOING**

2 The payment of consideration or any other obligation are not and shall not be construed in
3 any way as an admission of wrongdoing or liability on the part of Defendants, or any other person
4 or business entity. Defendants adamantly deny all allegations of wrongdoing arising out of the
5 employment relationship between the Parties, including the Aggrieved Employees. The Parties
6 intend merely to avoid the expense, delay, uncertainty, and burden of continued litigation.

7 **VII. PAGA SETTLEMENT ADMINISTRATION**

8 A. **Administration:** The Parties agree to use ILYM Group, Inc. to handle the
9 administration of this Settlement.

10 B. **Administration Costs And Expenses:** All costs and expenses due to the Settlement
11 Administrator in connection with its administration of the Settlement described in the Agreement,
12 including, but not limited to, formatting and mailing the Settlement Letter and Individual Settlement
13 Payments, performing a National Change of Address database search to update Settlement Group
14 Members addresses prior to the mailing, performing skip-traces to locate and update Settlement
15 Group Members' addresses, calculating, and distributing Individual Settlement Payments, and any
16 other tasks requested by the Parties or by the Court, among other tasks as reflected within this
17 Agreement, will be paid through the Gross Settlement Amount.

18 C. **Funding And Distribution:**
19 *Funding of the Gross Settlement Amount:* The Settlement Administrator will provide Defendant
20 with its bank wire instructions to establish the Qualified Settlement Fund (QSF). Within fifteen (15)
21 days of the Effective Date, Defendant shall transmit the Gross Settlement Amount to the Settlement
22 Administrator.

23 *Distribution of the Gross Settlement Amount:* Within 30 calendar days of the Effective Date, the
24 Administrator will pay to Settlement Group Members, their Individual Settlement Payments via
25 first-class regular U.S. Mail; to PAGA Counsel, the Court-awarded Attorney's Fees and Litigation
26 Expenses Payment; to the LWDA, the Court-approved LWDA Payment; and to the Administrator,
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the Court-awarded Administration Fees and Expenses.

Non-Cashed Settlement Checks: Settlement Group Members shall have one hundred eighty days (180) to cash their checks. Any funds associated with uncashed checks after one hundred eighty (180) days will be sent to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California *Civil Code* §§ 1500 et seq., for the benefit of those Settlement Group Members whose checks were voided.

VIII. TAXES

Plaintiff and each Aggrieved Employee bear full responsibility for the payment of any taxes or withholdings arising from the Aggrieved Employee Settlement Awards paid to them.

IX. RELEASED CLAIMS

Upon the approval by the Court of this Settlement, Plaintiff, the State of California, and each Aggrieved Employee shall fully release and forever discharge Defendants and the Released Parties from any and all claims, rights, demands, liabilities for violation of PAGA (California *Labor Code* §§ 2699 et seq.) that were set forth, or that could have been set forth based on the facts alleged in the Action during the PAGA Period, including but not limited to under California *Labor Code* §§ 203, 204, 226(a), 226.3, 226.7, 510, 512, 558, 1174(d), 1194, 1197, 1197.1, 2800, 2802, 2698, 2699, and related and applicable IWC Wage Orders, based on the various theories of liability, including, but not limited to, Defendants' alleged failure to: provide meal periods; provide rest periods; pay for all hours worked, pay minimum wages; pay overtime wages; provide accurate wage statements; timely pay all wages due in accordance with time periods prescribed by law; reimburse business expenses; keep accurate payroll records; and timely pay all final wages at separation of employment.

X. CONCLUSION

The Parties respectfully request the Court grant this Stipulation.

1 Dated: February 15, 2023

SEZGIN KHOUSADIAN LLP

2 By: Arthur Sezgin
3 ARTHUR SEZGIN, ESQ.
4 Attorneys for PLAINTIFF
ERICA HERNANDEZ

5 Dated: February 14, 2023

LANDEGGER VERANO & DAVIS

6 By: Marie D. Davis
7 MARIE D. DAVIS, ESQ.
8 Attorneys for DEFENDANTS
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1 **[PROPOSED] ORDER**

2 Under California Labor Code Section 2699(1)(2) of the Private Attorneys General Act of
3 2004 (“PAGA”), the Parties submitted a Stipulation for Approval of Settlement under PAGA.

4 Plaintiff’s Complaint, filed on or about January 12, 2023, seeks civil penalties on behalf of
5 the State of California and similarly situated aggrieved employees (the “Aggrieved Employees”),
6 as authorized by PAGA under California *Labor Code* § 2699, in relation to alleged violations of
7 the predicate statutes set forth in Plaintiff’s Complaint and the letter to the Labor Workforce and
8 Development Agency (“LWDA”) dated September 14, 2022 (the “LWDA Letter”), on behalf of all
9 current and former non-exempt employees of Defendants Ganji Dental Corporation, Ganji DDS
10 Dental Corporation, Ganji DMD Dental Corporation, Ganji & Ganji Dental Corporation, Ganji
11 DDS PS, Ds Ganji DDS PS, and David Ganji (hereinafter collectively referred to as “Washington
12 Dental” or “Defendants”) from September 14, 2021 through September 14, 2022, inclusive.

13 Under PAGA, in any action brought by an aggrieved employee, the Court “shall review and
14 approve any settlement of any civil action filed pursuant to this part.” California *Labor Code* §
15 2699(1)(2). Accordingly, the Court, having considered the proposed settlement set forth in the
16 Settlement Agreement, including the proposed PAGA penalties, under Labor Code § 2699(1)(2),
17 having considered the papers filed in support of the proposed settlement and the arguments of
18 counsel, and good cause appearing, HEREBY ORDERS AS FOLLOWS:

- 19 1. The Court finds the instant Action presents a good faith dispute of the claims alleged;
20 2. The Court finds in favor of settlement approval, and therefore approves the Settlement of
21 the above-captioned action, as set forth in the Joint Stipulation of Settlement and Release of
22 PAGA Action, and each of the releases and other terms, as fair, just, reasonable, and
23 adequate;
24 3. The Court finds further that Plaintiff, acting on behalf of herself, the Aggrieved Employees,
25 and the State of California, by operation of this Order and Judgment hereby releases and
26 forever discharges Defendants and the Released Parties (as defined in the Joint Stipulation
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1 of Settlement and Release of PAGA Action) from any and all PAGA Released Claims (as
2 defined in the Joint Stipulation of Settlement and Release of PAGA Action) including
3 penalties asserted in Plaintiff's Complaint, including any and all known and unknown
4 claims for civil penalties under the Private Attorneys General Act (California Labor Code
5 §§ 2698 et seq.) that arise;

6 4. The Court finds further that the foregoing release shall be binding on Plaintiff and the State
7 of California, and shall bar any claim under PAGA brought by any person, including the
8 Aggrieved Employees, on behalf of the State of California, as to the PAGA Released Claims
9 and Released Parties;

10 5. The Parties are directed to comply with all terms of the Joint Stipulation of Settlement and
11 Release of PAGA Action, and Defendants are directed to make all payments required by
12 the Joint Stipulation of Settlement and Release of PAGA Action;

13 6. Under the Settlement Agreement, Defendants agree to pay an all-in gross amount of Fifty
14 Thousand Dollars (\$50,000.00) (the "Gross Settlement Amount"). The Gross Settlement
15 Amount is inclusive of payments to the LWDA and Aggrieved Employees, Settlement
16 Administrator Costs, and Attorney's Fees and Costs. No portion of the Gross Settlement
17 Amount will revert to Defendants. Plaintiff's Counsel requests an award of attorney's fees
18 of Sixteenth Thousand Six Hundred Sixty-Six Dollars and Sixty-Six Cents (\$16,666.66);
19 litigation costs of One Thousand Five Hundred Seventy-Nine Dollars and Twenty-Two
20 cents (\$1,579.22). The settlement administrator, ILYM Group, Inc., requests administration
21 costs of Two Thousand Seven Hundred Fifty Dollars and Zero Cents (\$2,750.00).
22 Defendants do not oppose these requests. The Court finds the Gross Settlement Amount is
23 fair, reasonable, and adequate, and approves each of these payments, and directs the
24 Settlement Administrator to make the above payments to payments from the Gross
25 Settlement Amount as follows:

26 a. \$16,666.66 in attorney's fees to Sezgin Khousadian LLP;

- b. \$1,579.22 in litigation costs to Sezgin Khousadian LLP;
 - c. \$2,750.00 in administration costs to ILYM Group, Inc.;
 - d. After deducting the foregoing payments, the estimated remainder of approximately \$29,004.12 shall form the Net Settlement Amount (“NSA”). Pursuant to Labor Code Section 2699(i), the NSA will then be distributed 75 percent (\$21,753.09) to the LWDA, and the remaining 25 percent (\$7,251.03) to the Aggrieved Employees on a pro rata basis, as set forth in the Joint Stipulation of Settlement and Release of PAGA Action. The Court approves these payments and directs the Settlement Administrator to issue checks to the LWDA and Aggrieved Employees, along with the Notice of PAGA Settlement, as set forth in the Joint Stipulation of Settlement and Release of PAGA Action, and to otherwise carry out its duties as set forth in the Joint Stipulation of Settlement and Release of PAGA Action; and
7. The PAGA Action is hereby DISMISSED WITH PREJUDICE as to all parties and all causes of action. The Court reserves exclusive and continuing jurisdiction over the Action and the Parties under California *Code of Civil Procedure* § 664.6 for the purpose of supervising implementation, enforcement, construction, administration, and interpretation of the Settlement Agreement.

IT IS SO [PROPOSED] ORDERED.

Dated: _____

Hon. Judge Upinder S. Kalra

EXHIBIT A

SEZGIN KHOUSADIAN LLP

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Attorneys for **DEFENDANTS****SUPERIOR COURT OF THE STATE OF CALIFORNIA****FOR THE COUNTY OF LOS ANGELES – CENTRAL JUDICIAL DISTRICT**

ERICA HERNANDEZ,) Case No.: 23STCV00685
)
)
 Plaintiff,) [Assigned for All Purposes to Honorable Judge
) Upinder S. Kalra in Dept. 51]

vs.

) **JOINT STIPULATION OF SETTLEMENT**
) **AND RELEASE OF PAGA ACTION**
 GANJI DENTAL CORPORATION, a)
 California corporation;)
 GANJI DDS DENTAL CORPORATION, a)
 California corporation;)
 GANJI DMD DENTAL CORPORATION, a)
 California corporation;)
 GANJI & GANJI DENTAL)
 CORPORATION, a California corporation;)
 GANJI DDS PS, a professional corporation;)
 DS GANJI DDS PS, a professional)
 corporation;)
 DAVID GANJI, an individual; and)
 DOES 1 THROUGH 100, inclusive,)
)
)
 Defendants.)

This Joint Stipulation of Settlement and Release of PAGA Action (hereinafter “Agreement”) is made and entered into between Plaintiff ERICA HERNANDEZ (hereinafter “Plaintiff” or “Hernandez”), individually and on behalf of the proposed PAGA Group (defined below), and Defendants GANJI DENTAL CORPORATION, GANJI DDS DENTAL CORPORATION, GANJI DMD DENTAL CORPORATION, GANJI & GANJI DENTAL CORPORATION, GANJI DDS PS, DS GANJI DDS PS, and DAVID GANJI (hereinafter collectively referred to as “Defendant” “Defendants,” or “Washington Dental”).

1. DEFINITIONS

As used in this Agreement, the following terms shall have the meanings specified below. To the extent terms or phrases used in this Agreement are not specifically defined below, but are defined elsewhere in this Agreement, they are incorporated by reference into this section.

1.1 **Action.** “Action” shall mean the PAGA Notice sent to the Labor and Workforce Development Agency (“LWDA”) by Plaintiff on September 14, 2022 and the instant PAGA-only lawsuit based on the PAGA Notice that Plaintiff filed in Los Angeles County Superior Court against Defendants to seek approval of the settlement.

1.2 **Approval and Fairness Hearing.** “Approval and Fairness Hearing” shall mean the hearing held to ascertain the fairness, reasonableness, and adequacy of the PAGA Settlement. At this hearing, the Court will consider PAGA Counsel’s application for Attorney’s Fees and Expenses, the Administration Expenses, and approval of the PAGA Payment.

1.3 **Approval Date.** “Approval Date” shall mean the date upon which the Court enters an order granting approval of the PAGA Settlement and enters Judgment.

1.4 **Claims.** “Claims” shall mean the claims and theories asserted and causes of action alleged in the Action, or that could have been alleged in the Action, including the PAGA penalties alleged in the Action.

1.5 **Court.** “Court” shall mean the Superior Court of California, County of Los Angeles.

1 1.6 **Defendant.** “Defendant” or “Defendants” shall mean Defendant Washington
2 Dental (defined in this section). “Washington Dental” shall mean Ganji Dental Corporation, Ganji
3 DDS Dental Corporation, Ganji DMD Dental Corporation, Ganji & Ganji Dental Corporation,
4 Ganji DDS PS, DS Ganji DDS PS, and its officers, directors, executives, partners, managers,
5 owners, shareholders, members, employees, agents, attorneys, any of their former and present
6 parents, subsidiaries, successors, assigns and affiliates, and their officers, directors, managers,
7 owners, executives, partners, employees, shareholders, agents, attorneys, and any other successors,
8 assigns, or legal representatives, including but not limited to Defendant David Ganji.

9 1.7 **Defense Counsel.** “Defense Counsel” shall mean Marie D. Davis of Landegger,
10 Verano, and Davis ALC, 15760 Ventura Blvd., Suite 1200, Encino, California 91436.

11 1.8 **Effective Date.** “Effective Date” shall be the later of the time when: (i) the date
12 of final affirmance of the Judgment on an appeal of the Judgment, the expiration of the time for, or
13 the denial of, a petition to review the Judgment, or if review is granted, the date of final affirmance
14 of the Judgment following review pursuant to that grant; (ii) the date of final dismissal of any appeal
15 from the Judgment or the final dismissal of any proceeding to review the Judgment, provided that
16 the Judgment is affirmed and/or not reversed in any part; (iii) the final resolution (or withdrawal)
17 of any filed appeal in a way that affirms the Final Approval Order and Judgment in a form
18 substantially identical to the form of the Final Approval Order entered by the Court, and the time
19 to petition for review with respect to any appellate decision affirming the Final Approval Order has
20 expired; or (iv) if no appeal is filed, the sixty-first (61st) day after the Court enters final approval of
21 the settlement and the judgment approving this Agreement.

22 1.9 **Gross Settlement Amount.** “Gross Settlement Amount” means the agreed
23 upon settlement amount totaling \$50,000.00 to be paid by Defendant in full settlement of the
24 Released Claims asserted in this case, which includes the Administration Expenses and PAGA
25 Counsel’s Attorney’s Fees and Expenses. In no event shall Defendant be required to pay more than
26 the Gross Settlement Amount, except as expressly provided herein.
27

1 1.10 **Individual Settlement Payment.** “Individual Settlement Payment(s)” shall
2 mean the proportionate share of the Net Settlement Amount to be distributed to each PAGA
3 Member based on the number of his or her Pay Periods worked in the PAGA Period in relation to
4 the aggregate number of Pay Periods worked by the Settlement Group during the PAGA Period.

5 1.11 **Net Settlement Amount.** “Net Settlement Amount” or “NSA” shall mean the
6 Gross Settlement Amount, minus the Court-approved amounts awarded for the Attorney’s Fees and
7 Costs, Settlement Administration Fees, and the LWDA Payment. The Parties intend that the NSA
8 shall be sufficient to pay all valid claims of Settlement Group Members. Accordingly, if for any
9 reason the total value of Individual Settlement Payments to Settlement Group Members exceeds
10 this amount, then payment to each Settlement Group Member will be adjusted on a pro-rated basis
11 so that the total payout to Settlement Group Members does not exceed the NSA.

12 1.12 **PAGA:** “PAGA” refers to the Labor Code Private Attorneys General Act of
13 2004, California *Labor Code* §§ 2699 et seq.

14 1.13 **PAGA List:** “PAGA List” shall mean the information for each PAGA Member
15 which Defendant shall compile from its business records and provide to the Administrator for
16 purposes of providing notice of the Settlement to the PAGA Group. The PAGA List shall be in a
17 readable, ready to use, MS Excel spreadsheet, which will provide for each Settlement Class
18 Member, the following information: (a) full name; (b) last known mailing address; (c) telephone
19 numbers; (d) social security number; (e) dates of employment; and (f) number of pay periods
20 employed as a PAGA Member during the PAGA Period. The PAGA List will be provided to the
21 Settlement Administrator within twenty-one (21) days of Defendant receiving written notification
22 that the Court granted approval of the Settlement.

23 1.14 **PAGA Counsel:** “PAGA Counsel” refers to Arthur Sezgin and Alisa
24 Khousadian of Sezgin Khousadian LLP, 500 N. Central Avenue, Suite 830, Glendale, California
25 91203.

1 1.15 **PAGA Counsel's Attorney's Fees and Expenses:** "PAGA Counsel's
2 Attorney's Fees and Expenses" shall mean the amounts allocated to PAGA Counsel for
3 reimbursement of reasonable attorney's fees and expenses incurred to prosecute the Action.

4 1.16 **PAGA Member(s):** "PAGA Member(s)" and "Settlement Group Members"
5 shall mean all non-exempt, hourly employees of Defendants or any of their parent, affiliate, or
6 related entities, subsidiaries, successors, and assigns in California at any time during the PAGA
7 Period.

8 1.17 **PAGA Period.** "PAGA Period" means the period from September 14, 2021
9 through September 14, 2022.

10 1.18 **PAGA Release.** *See Released Claims.*

11 1.19 **Parties.** "Parties" shall mean Plaintiff and Defendant.

12 1.20 **Pay Periods.** "Pay Periods" means the number of pay periods a PAGA Member
13 was employed during the PAGA Period.

14 1.21 **Plaintiff.** "Plaintiff" and "PAGA Representative" shall mean Plaintiff Erica
15 Hernandez.

16 1.22 **Released Claims.** "Released Claims" shall mean all claims and theories that
17 were set forth or that could have been set forth based on the facts alleged in the Action during the
18 PAGA Period, including but not limited to under California Labor Code Sections 203, 204, 226(a),
19 226.3, 226.7, 510, 512, 558, 1174(d), 1194, 1197, 1197.1, 2800, 2802, 2698, 2699, and related IWC
20 Wage Orders (including but not limited to Wage Order No. 4), based on the various theories of
21 liability, including, but not limited to Defendants' alleged failure to: provide meal periods; provide
22 rest periods; pay for all hours worked; pay minimum wages; pay overtime wages; provide accurate
23 wage statements; timely pay all wages due in accordance with time periods prescribed by law;
24 reimburse business expenses; keep accurate payroll records; and timely pay all final wages during
25 employment and/or at separation of employment.

1.23 **Released Party.** “Released Party” shall mean Defendant Washington Dental.

1.24 **Settlement.** “Settlement” shall mean the settlement between Parties, which is memorialized in this Agreement, including any attached exhibits, and subject to Court approval.

1.25 **Settlement Administrator.** “Settlement Administrator” or “Administrator” shall mean ILYM Group, Inc., the third-party settlement administrator selected by the Parties and to be approved by the Court, which the Parties have agreed will be responsible for administration of the Settlement and related matters. The Administrator’s fee and expenses are estimated to not exceed \$2,750.00.

1.26 **Settlement Group.** “Settlement Group” or “Settlement Group Members” shall mean all PAGA Members.

1.27 **Settlement Letter.** “Settlement Letter” shall mean the letter accompanying the Individual Settlement Payments.

2. **FACTUAL AND PROCEDURAL BACKGROUND OF ACTION**

2.1 On September 14, 2022, Plaintiff submitted a letter to the California Labor Workforce Development Agency (“LWDA”) (“PAGA Notice”).

2.2 The Parties agreed to mediate with Hon. Jeff Winikow (Ret.), and Plaintiff requested and received informal discovery to evaluate the claims and theories alleged. With the continued assistance of the mediator, the Parties were able to resolve the matter.

2.3 The Parties and their respective counsel believe this Agreement reflects a fair, adequate, and reasonable settlement of the Action and have arrived at this Agreement as a result of arm’s length negotiations, facilitated by an experienced and neutral mediator, taking into account all relevant factors, present and potential.

3. **ALLEGATIONS OF THE PAGA REPRESENTATIVE AND BENEFITS OF THE SETTLEMENT**

3.1 The investigation and extensive exchange of information and informal discovery conducted in this matter, as well as discussions between counsel have been adequate to give and

1 PAGA Counsel an understanding of the merits of the Parties' respective positions and to evaluate
2 the worth of the claims of the Settlement Group. The information and data exchanged by the Parties
3 prior to and during mediation and settlement negotiations are sufficient to reliably assess the merits
4 of the Parties' respective positions and to compromise the issues on a fair and equitable basis.

5 3.2 The Parties recognize and acknowledge the expense and delay of continued
6 lengthy proceedings necessary to prosecute the Action against Defendant through trial and through
7 appeals. PAGA Counsel has considered the uncertain outcome of the litigation, the risk of continued
8 litigation in complex actions such as this, as well as difficulties and delays inherent in such
9 litigation, as well as trying the claims of the Settlement Group. PAGA Counsel believes that the
10 Settlement set forth in this Agreement confers substantial benefits upon Plaintiff and the Settlement
11 Group Members and that an independent review of this Agreement by the Court in the approval
12 process will confirm this conclusion. Based on their own independent investigation and evaluation,
13 PAGA Counsel has determined that the Settlement set forth in the Agreement is in the best interests
14 of Plaintiff and the Settlement Class Members.

15 **4. NO ADMISSION OF LIABILITY**

16 4.1 This Agreement represents a compromise and settlement of highly disputed
17 claims. This Agreement does not constitute, is not intended to constitute, and will not be deemed
18 to constitute, an admission of liability by Defendant as to the merits, validity, or accuracy of any of
19 the allegations or claims made against Defendant in the Action. Defendant denies each and all of
20 Plaintiff's allegations in their entirety.

21 4.2 Nothing in this Agreement nor any action taken or made in implementation
22 thereof, nor any statements, discussions, or communications, nor any materials prepared,
23 exchanged, issued, or used during the course of the negotiations leading to the Agreement, is
24 intended by the Parties to, nor will any of the foregoing constitute, be introduced, be used, or be
25 admissible in any way in this case or any other judicial, arbitral, administrative, investigative or
26 other forum or proceeding as evidence of any violation of any federal, state, or local law, statute,
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ordinance, regulation, rule, or executive order, or any obligation or duty at law or in equity. Notwithstanding the foregoing, the Agreement may be used in any proceeding in the Court that has as its purpose the interpretation, implementation, or enforcement of the Agreement or any orders or judgments of the Court entered into in connection therewith.

4.3 The Parties agree that this Agreement is for purposes of Settlement only. If, for any reason, the Agreement is not approved, this Agreement will not be admissible in this or any other proceeding as evidence that: (i) the Action should proceed forward; or (ii) Defendant is liable to Plaintiff or the Settlement Group Members as Plaintiff alleged. In the event that this Agreement is not approved by the Court or any appellate court, is terminated, or otherwise fails to be enforceable, Defendants will not be deemed to have waived, limited, or affected in any way any of their objections or defenses in the Action, including, but not limited to, its ability to move to compel arbitration, raise defenses in opposition to the Action, contest the merits of the claims and theories alleged, etc.

5. SETTLEMENT CONSIDERATION

5.1 **Gross Settlement and Net Settlement Amounts and Distribution.** The Gross Settlement Amount and other actions and forbearances taken by Defendant shall constitute adequate consideration for the Settlement and will be made in full and final settlement of: (a) the Released Claims; (b) PAGA Counsel's Attorney's Fees and Expenses; (c) Administration Expenses; (d) LWDA Payment; and (e) the Individual Settlement Payments to Settlement Group Members, and any other obligation of Defendant under this Agreement.

5.2 **Payments to Settlement Group Members.** Each Settlement Group Member shall be eligible to receive an Individual Settlement Payment. The Parties understand that Settlement Group Members who receive an Individual Settlement Payment pursuant to this Agreement shall be solely responsible for any and all other individual tax obligations associated with the payment.

1 5.3 **No Effect on Employee Benefits.** Neither the Settlement nor any amounts paid
2 under the Settlement will modify any previously credited hours, days, or weeks of service under
3 any employee benefit plan, policy or bonus program sponsored by Defendant (or its affiliates or
4 successors). Such amounts will not form the basis for additional contributions to, benefit under, or
5 any other monetary entitlement under Defendant's sponsored benefit plans, policies, or bonus
6 programs, if any. The payments made under the terms of this Settlement shall not be applied
7 retroactively, currently, or on a going forward basis, as salary, earnings, wages, or any other form
8 of compensation for the purposes of any of Defendant's benefit plans, policies, or bonus programs,
9 if any. Defendant retains the right to modify the language of its benefits plans, policies and bonus
10 programs to effect this intent and to make clear that any amounts paid pursuant to this Agreement
11 are not for "weeks worked," "weeks paid," "weeks of service," or any similar measuring term as
12 defined by applicable plans, policies and bonus programs for purpose of eligibility, vesting, benefit
13 accrual, or any other purpose, and that additional contributions or benefits are not required by this
14 Agreement. Defendant does not consider the Individual Settlement Payments "compensation" for
15 purposes of determining eligibility for, or benefit accrual within, any benefits plan, policy, or bonus
16 program, or any other plan or program sponsored by Defendant (or its affiliates or successors), if
17 any.

18 5.4 **PAGA Counsel Attorney's Fees and Expenses.** As part of Parties' Joint
19 Stipulation for Approval, PAGA Counsel will request an award of Attorney's Fees and Expenses.
20 Defendant agrees not to object to any such fee, cost, or expense application in line with this
21 Agreement and in an amount not to exceed 33 1/3% of the Gross Settlement Amount. As a condition
22 of this Settlement, PAGA Counsel has agreed to pursue fees only in the manner reflected by this
23 Agreement. Any PAGA Counsel Attorney's Fee and Expenses awarded by the Court shall be paid
24 from the Gross Settlement Amount. If the PAGA Counsel voluntarily reduces the request for
25 Attorney's Fees and Expenses or the Court's award is less than set forth above, the difference shall
26 remain with the Net Settlement Amount.
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1 The Attorney's Fees and Expenses approved by the Court shall encompass: (a) all work
2 performed and costs and expenses incurred by, or at the direction of, any attorney purporting to
3 represent the Settlement Group through the date of this Agreement; (b) all work to be performed
4 and costs to be incurred in connection with approval by the Court of the Settlement set forth in this
5 Agreement; (c) all work to be performed and costs and expenses, if any, incurred in connection
6 with administering the Class Settlement through the Effective Date; and (d) may be based on the
7 Catalyst Theory and/or Common Fund Doctrine.

8 5.5 **Payment of PAGA Counsel Attorney's Fees and Expenses.** PAGA Counsel
9 Attorney's Fees and Expenses as awarded and/or approved by the Court shall be paid by the
10 Settlement Administrator within thirty (30) days of the Effective Date.

11 5.6 **Size of the Settlement Group.** The settlement negotiations were premised on
12 approximately 2100 pay periods during the PAGA period. If this amount increases by more than
13 10% by the time of approval of the Settlement, the Gross Settlement Amount will increase
14 proportionally above that 10%.

15 **6. ADMINISTRATION COSTS AND EXPENSES**

16 6.1 **The Settlement Administrator's Costs and Expenses.** All costs and expenses
17 due to the Settlement Administrator in connection with its administration of the Settlement
18 described in the Agreement, including but not limited to, formatting and mailing the Settlement
19 Letter and Individual Settlement Payments, performing a National Change of Address database
20 search to update Settlement Group Members addresses prior to the mailing, performing skip-traces
21 to locate and update Settlement Group Members' addresses, calculating, and distributing Individual
22 Settlement Payments, and any other tasks requested by the Parties or by the Court, among other
23 tasks as reflected within this Agreement.

24 **7. FUNDING AND DISTRIBUTION**

25 7.1 **Funding of the Gross Settlement Amount.** The Settlement Administrator will
26 provide Defendant with its bank wire instructions to establish the Qualified Settlement Fund (QSF).
27

1 Within fifteen (15) days of the Effective Date, Defendant shall transmit the Gross Settlement
2 Amount to the Settlement Administrator.

3 7.2 **Distribution of the Gross Settlement Amount.** Within 30 calendar days of the
4 Effective Date, the Administrator will pay to Settlement Group Members, their Individual
5 Settlement Payments via first-class regular U.S. Mail; to PAGA Counsel, the Court-awarded
6 Attorney's Fees and Expenses Payment; to the LWDA, the Court-approved LWDA Payment; and
7 to the Administrator, the Court-awarded Administration Fees and Expenses.

8 7.3 **Non-Cashed Settlement Checks.** Settlement Group Members shall have one
9 hundred eighty days (180) to cash their checks. Any funds associated with uncashed checks after
10 one hundred eighty (180) days will be sent to the Controller of the State of California to be held
11 pursuant to the Unclaimed Property Law, California *Civil Code* §§ 1500 et seq., for the benefit of
12 those Settlement Group Members whose checks were voided.

13 **8. NULLIFICATION OF THIS AGREEMENT**

14 8.1 **Non-Approval of the Agreement.** If (a) the Court should for any reason fail to
15 approve this Agreement in the form agreed to by the Parties, or (b) the Court should for any reason
16 fail to enter a judgment on this Action, or (c) the approval of the Settlement and judgment is
17 reversed, modified, or declared or rendered void. Notwithstanding the foregoing, the Parties may
18 attempt in good faith to cure any perceived defects in the Agreement to facilitate approval. In the
19 event the Court awards less than the requested amounts for Administration Fees, PAGA Counsel's
20 Attorney's Fees and Expenses, or the PAGA Payment, the difference shall become part of the Net
21 Settlement Amount.

22 8.2 **Invalidation.** Invalidation of any material portion of the Settlement shall
23 invalidate the Settlement in its entirety, unless the Parties shall subsequently agree in writing that
24 the remaining provisions of the Settlement are to remain in full force and effect.

25 8.3 **Stay Upon Appeal.** In the event of a timely appeal from the approval of the
26 Settlement and Judgment, the Judgment shall be stayed, and Defendant shall not be obligated to
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1 fund the Gross Settlement Amount or take any other actions required by this Agreement until all
2 appeal rights have been exhausted by operation of law.

3 **9. MOTION FOR COURT APPROVAL**

4 9.1 **Approval.** The Parties will submit this Agreement to the Court as Exhibit "A"
5 to the Parties' Stipulation for Approval of PAGA Settlement and Release.

6 **10. RELEASES AND WAIVERS**

7 10.1 **Plaintiff's General Release.** Plaintiff agrees to release all claims known or
8 unknown, accrued or unaccrued, she has or may have against Defendant, including execution of a
9 California *Civil Code* § 1542 release and waiver.

10 In consideration of the monetary sum provided to Plaintiff by Defendant, Plaintiff hereby
11 fully releases and forever discharges the Released Party from any and all actions, causes of action,
12 claims, charges, complaints, liabilities, obligations, promises, agreements, controversies, damages,
13 actions, suits, rights, demands, liens, costs, losses, debts, penalties, fines, wages, liquidated
14 damages, restitutionary amounts, attorney's fees and costs, interest, punitive damages and expenses
15 (including, without limitation, back wages, penalties, liquidated damages, and attorney's fees and
16 costs actually incurred) or liabilities of any kind which have been or could have been asserted
17 against the Released Party arising out of or relating to Plaintiff's employment with and/or
18 assignment at Defendant, and/or any other occurrence taking place on or before the effective date
19 of this Agreement, known or unknown, suspected or unsuspected, including but not limited to
20 claims arising out of, based upon, or relating to Plaintiff's employment with and/or assignment at
21 Defendant, or the remuneration for such employment and/or assignment, and the matters referred
22 to herein, whether or not known or suspected to exist, and whether or not specifically or particularly
23 described herein. Without limiting the generality of the foregoing, Plaintiff expressly releases all
24 claims or rights that exist at the time of the execution of this Agreement arising out of alleged
25 violations of any contracts, express or implied (including but not limited to any contract of
26 employment); any and all federal, state and local statutes, ordinances, regulations, rules and other
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laws, and any and all claims based on constitutional, statutory, common law or regulatory grounds; any contract or covenant of good faith or fair dealing (express or implied); any tort, including, without limitation, negligence, fraud, misrepresentation under California *Labor Code* § 970, negligent infliction of emotional distress, intentional infliction of emotional distress, and defamation, or damages under any other federal, state or local statutes, ordinances, regulations, rules or laws; any “retaliation” claims; any claims relating to any breach of public policy; any and all relief, no matter how denominated, including, but not limited to, overtime, wages, back pay, front pay, vacation pay, bonuses, compensatory damages, tortious damages, liquidated damages, punitive damages, damages for pain and suffering, and attorney’s fees and costs; any legal restrictions on Defendant’s right to discharge employees or refuse to hire applicants; and any federal, state, or other governmental statute, regulation, order or ordinance, including, without limitation: (1) Title VII of the Civil Rights Act of 1964 (race, color, religion, sex, and national origin discrimination or harassment, including retaliation for reporting discrimination or harassment); (2) 42 U.S.C. § 1981 (discrimination); (3) sections 503 and 504 of the Rehabilitation Act of 1973 (handicap discrimination); (4) Equal Pay Act, 29 U.S.C. § 209(4)(1) (equal pay); (5) Americans with Disabilities Act, 42 U.S.C. §§ 12100 et seq. (disability discrimination); (6) Family and Medical Leave Act, 29 U.S.C. §§ 2601 et seq. (family/medical leave); (7) California Fair Employment and Housing Act, California *Gov’t Code* § 12900 et seq. (discrimination or harassment in employment and/or housing, including discrimination or harassment based on race, religious creed, color, national origin, ancestry, disability, marital status, sex (including pregnancy), sexual orientation, or age, including, without limitation, retaliation for reporting discrimination or harassment); (8) California Family Rights Act, California *Gov’t Code* § 12945.2 (family/medical leave); (9) California Labor Code, including but not limited to California *Labor Code* §§ 2698 et seq. (PAGA), or any Industrial Welfare Commission Wage Order; (10) the Fair Labor Standards Act, 29 U.S.C. §§ 201 et seq.; (11) Executive Order 11246 (race, color, religion, sex, and national origin discrimination or harassment); (12) Executive Order 11141 (age discrimination); and

1 (13) Employee Retirement Income Security Act, 29 U.S.C. §§ 1000 et seq. (employee benefits)

2 10.2 **Plaintiff's Release of Unknown Claims.** Plaintiff expressly waives any right or
3 claim of right to assert hereafter that any claim, demand, obligation, and/or cause of action, existing
4 at the time of the execution of this Agreement, has, through ignorance, oversight, or error, been
5 omitted from the terms of this Agreement. Plaintiff agrees there is a risk that each and every injury
6 she may have suffered by reason of the Released Party's relationship with Plaintiff might not now
7 be known, and there is further risk that said injuries, whether known or unknown at the date of this
8 Agreement, might possibly become progressively worse, and that as a result thereof further
9 damages may be sustained by Plaintiff. Nevertheless, Plaintiff desires to forever and fully release
10 and discharge the Released Party and understand that by the execution of this Agreement no further
11 claims for any such injuries that existed at the time of the execution of this Agreement may ever be
12 asserted by Plaintiff. Plaintiff expressly waives and relinquishes all rights and benefits afforded by
13 section 1542 of the Civil Code of the State of California and do so understanding and
14 acknowledging the significance of such specific waiver of section 1542. Specifically, Plaintiff
15 waives his rights under Section 1542 of the Civil Code, which states:

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

20 Plaintiff make this waiver with full knowledge of his rights and with the specific intent to
21 release all known and unknown claims arising on or before the effective date of this Agreement,
22 and therefore specifically waive the provisions of any statute in any state of the United States which
23 prevents release of unknown claims. Thus, subject to and in accordance with this Agreement, even
24 if Plaintiff may hereafter discover facts in addition to or different from those he now knows or
25 believes to be true, Plaintiff shall be deemed to have fully, finally, and forever settled and released
26 any and all claims against the Released Party that were alleged or could have been alleged in the
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1 Action, as well as any other claims, whether known or unknown, suspected or unsuspected,
2 contingent or non-contingent, that now exist, upon any theory of law or equity, including, without
3 limitation, conduct that is negligent, intentional, with or without malice, or a breach of any duty,
4 law, or rule, without regard to the subsequent discovery or existence of such different or additional
5 facts.

6 10.3 **Settlement Group Members' Release.** Upon the Effective Date, Plaintiff, the
7 Settlement Group Members, and the State of California vis-à-vis the LWDA shall hereby release
8 the Released Party for the Released Claims for the PAGA Period.

9 **11. DUTIES OF THE PARTIES**

10 11.1 **Mutual Full Cooperation.** The Parties agree to cooperate fully with one
11 another to accomplish and implement the terms of this Agreement. Such cooperation shall include,
12 but not be limited to, execution of such other documents and the taking of such other actions as
13 may reasonably be necessary to fulfill the terms of this Settlement. The Parties shall use their best
14 efforts, including all effects contemplated by this Agreement and any other efforts that may become
15 necessary by Court order or otherwise, to effectuate the terms of this Agreement. As soon as
16 practicable after execution of this Agreement, PAGA Counsel, with the cooperation of Defendant
17 and Defense Counsel, shall take all necessary and reasonable steps to secure the Court's final
18 approval of this Agreement.

19 11.2 **Duty to Support and Defend the Settlement.** The Parties agree to abide by all
20 of the terms of the Settlement in good faith and to support the Settlement fully and to use their best
21 efforts to defend this Settlement from any legal challenge, whether by appeal or collateral attack.

22 **12. CONTINUING JURISDICTION OF THE COURT.**

23 The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the
24 Parties, Action, and the Settlement solely for purposes of: (i) enforcing this Agreement and/or
25 Judgment: (ii) addressing settlement administration matters: and (iii) addressing such post-
26 Judgment matters as are permitted by law.

1 12.1 **Waiver of Right to Appeal.** Provided the Judgment is consistent with the terms
2 and conditions of this Agreement, specifically including the PAGA Counsel's Attorney's Fees and
3 Expenses, the Parties and their respective counsel waive all rights to appeal from the Judgment,
4 including all rights to post-judgment and appellate proceedings, the right to file motions to vacate
5 judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not
6 include any waiver of the right to oppose such motions, writs or appeals. If another party appeals
7 the Judgment, the Parties' obligations to perform under this Agreement will be suspended until such
8 time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do
9 not affect the amount of the Net Settlement Amount.

10 **13. MISCELLANEOUS PROVISIONS**

11 13.1 **Different Facts.** The Parties hereto, and each of them, acknowledge that, except for
12 matters expressly represented herein, the facts in relation to the dispute and all claims released by
13 the terms of this Agreement may turn out to be other than or different from the facts now known by
14 each party and/or its counsel, or believed by such Party or counsel to be true, and each Party
15 therefore expressly assumes the risk of the existence of different or presently unknown facts, and
16 agrees that this Agreement shall be in all respects effective and binding despite such difference.

17 13.2 **No Prior Assignments.** The Parties represent, covenant, and warrant that they have
18 not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or
19 encumber to any person or entity any portion of any liability, claim, demand, action, cause of action,
20 or right herein released and discharged except as set forth herein.

21 13.3 **Non-Admission.** Nothing in this Agreement shall be construed as or deemed to be
22 an admission by any Party of any liability, culpability, negligence, or wrongdoing toward any other
23 Party, or any other person, and the Parties specifically disclaim any culpability, negligence, or
24 wrongdoing toward each other or any other person. Each of the Parties has entered into this
25 Agreement with the intention to avoid further disputes and litigation with the attendant
26 inconvenience, expenses, and contingencies. Nothing herein shall constitute any admissions by
27

1 Defendant of wrongdoing or liability, or of the truth of any factual allegations in the Action.
2 Nothing herein shall constitute any admission by Defendant regarding the merits of the Claims in
3 this Action. Nothing herein shall constitute an admission by Defendant that the Action was properly
4 brought as a representative action other than for settlement purposes. To the contrary, Defendant
5 has denied and continues to deny each and every material factual allegation and all Claims. To this
6 end, the Settlement of the Action, the negotiation and execution of this Agreement, and all acts
7 performed or documents executed pursuant to or in furtherance of this Agreement or the Settlement
8 are not, shall not be deemed to be, and may not be used as, an admission or evidence of any
9 wrongdoing or liability on the part of Defendant or of the truth of any of the factual allegations in
10 the Action; and are not, shall not be deemed to be, and may not be used as, an admission or evidence
11 of any fault or omission on the part of Defendant in any civil, criminal or administrative proceeding
12 in any court, administrative agency or other tribunal.

13 13.4 **Media or Press.** Plaintiff and Defendant, and their respective counsel, agree to limit
14 public comment on this Settlement, the Action, and claims in the Action, stating that the matter has
15 been resolved to the satisfaction of the Parties. Plaintiff and Defendant, and their respective counsel,
16 shall not initiate public comment and/or discuss with or present to the media or press.

17 13.5 **Construction.** The Parties hereto agree that the terms and conditions of this
18 Agreement are the result of lengthy, intensive, arm's length, non-collusive negotiations between
19 the Parties and that this Agreement is not to be construed in favor of or against any party by reason
20 of the extent to which any Party or their counsel participated in the drafting of this Agreement. If
21 any of the dates in the Agreement fall on a weekend, bank, or court holiday, the time to act shall be
22 extended to the next business day.

23 13.6 **Governing Law.** This Agreement is intended to and shall be governed by the laws
24 of the State of California, without regard to conflict of law principles, in all respects, including
25 execution, interpretation, performance, and enforcement.
26
27

1 13.7 **Captions and Interpretations.** Section titles or captions contained herein are
2 inserted as a matter of convenience and for reference only and in no way define, limit, extend, or
3 describe the scope of this Agreement or any provision thereof.

4 13.8 **Modification.** This Agreement may not be changed, altered, or modified, except in
5 writing signed by the Parties and approved by the Court. This Agreement may not be discharged
6 except by performance in accordance with its terms or by a writing signed by the Parties.

7 13.9 **Integration Clause.** This Agreement contains the entire agreement between the
8 Parties relating to the Settlement of the Action and the transactions contemplated thereby, and all
9 prior or contemporaneous agreements, understandings, representations, and statements, whether
10 oral or written, and whether by a party or such party's legal counsel, are hereby superseded. No
11 rights under this Agreement may be waived except in writing as provided above.

12 13.10 **Successors and Assigns.** This Agreement shall be binding upon and inure to the
13 benefit of the Parties and Settlement Group Members and their respective present and former heirs,
14 trustees, executors, administrators, representatives, officers, directors, shareholders, agents,
15 employees, insurers, attorneys, accountants, auditors, advisors, consultants, pension and welfare
16 benefit plans, fiduciaries, parent companies, subsidiaries, affiliates, related companies, joint
17 ventures, predecessors, successors, and assigns.

18 13.11 **Corporate Signatories.** Any person executing this Agreement or any such related
19 document on behalf of a corporate signatory or on behalf of a partnership hereby warrants and
20 promises, for the benefit of all Parties hereto, that such person has been duly authorized by such
21 corporation or partnership to execute this Agreement or any such related document.

22 13.12 **Execution in Counterparts.** This Agreement shall become effective upon its
23 execution by all of the undersigned. The Parties may execute this Agreement in counterparts, and
24 execution of counterparts shall have the same force and effect as if all Parties had signed the same
25 instrument.

13.13 **Attorney's Fees, Costs, and Expenses.** Except as otherwise specifically provided for herein, each Party shall bear their or its own attorney's fees, costs, and expenses, taxable or otherwise, incurred by them in or arising out of the Action and shall not seek reimbursement thereof from any other Party to this Agreement.

13.14 **Stay of Litigation.** The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to C.C.P. Section 583.330 to extend the date to bring a case to trial under C.C.P. Section 583.310 for the entire period of this settlement process.

IN WITNESS WHEREOF, the Parties and their counsel have executed this Agreement on the date below their signatures of their representatives. The date of the Agreement shall be the date of the latest signature.

EMPLOYEE

DATED: 2/15/2023

By:

DocuSigned by:
Erica Hernandez
BF38B6D7A1F9461...

THE COMPANY

DATED: 02/10/23

By:

David Ganji
Its/Their:

APPROVED AS TO FORM AND CONTENT:

Dated: February 15, 2023

SEZGIN KHOUSADIAN LLP

By:

DocuSigned by:
Arthur Sezgin
ARTHUR SEZGIN, ESQ.
Attorneys for PLAINTIFF
ERICA HERNANDEZ

1 Dated: February 10, 2023

LANDEGGER VERANO & DAVIS

2 By:



MARIE D. DAVIS, ESQ.

Attorneys for DEFENDANTS