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(Additional Counsel on next page)

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF MERCED

TOSHI MAGEE, an individual, on behalf of
herself, and on behalf of all persons similarly
situated,

Plaintiffs,

vs.

CHILDREN'S DENTISTRY AND
ORTHODONTICS A DENTAL OFFICE OF
STEVEN O'HARA, DDS, JORDAN PRIETO,
DDS, JEFFREY EVANS, DDS, AND
JEFFREY KUNKEL, DDS, INC., a California
Corporation; and DOES 1 through 50, Inclusive;

Defendants.

Case No. 21CV-03773

**AMENDED STIPULATION AND
ORDER TO APPROVE
THE SETTLEMENT OF PLAINTIFF'S
INDIVIDUAL PAGA CLAIMS AND LIFT
THE STAY**

Judge: Hon. Brian McCabe
Dept.: 8

FISHMAN LARSEN, & CALLISTER

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Attorneys for DEFENDANT

1 Plaintiff TOSHI MAGEE ("Plaintiff") and Defendant CHILDREN'S DENTISTRY AND
2 ORTHODONTICS A DENTAL OFFICE OF STEVEN O'HARA, DDS, JORDAN PRIETO, DDS,
3 JEFFREY EVANS, DDS, AND JEFFREY KUNKEL, DDS, INC. ("Defendant"), by and through their
4 respective counsel (jointly referred to herein as "the Parties"), hereby stipulate as follows:

5 WHEREAS, Defendant filed a Motion to Compel Arbitration of Individual PAGA Claims and
6 to Dismiss Representative PAGA Claims;

7 WHEREAS, On January 12, 2023, the Court granted Defendant's Motion to Compel
8 Arbitration of Plaintiffs Individual PAGA Claims and stayed Plaintiffs Representative PAGA Claims
9 pending resolution of arbitration.

10 WHEREAS, on May 17, 2023, Plaintiff filed her Demand for Arbitration with Judicial
11 Arbitration and Mediation Services ("JAMS")

12 WHEREAS, Plaintiff's Arbitration has now been resolved by way of settlement.

13 WHEREAS, Defendants deny Plaintiff's claims alleged in the arbitration;

14 WHEREAS, after arms-length negotiations conducted through counsel, the Parties have
15 memorialized the terms of a settlement that resolves Plaintiff's individual claims, including Plaintiff's
16 individual PAGA claims alleged in the arbitration (without any admission of fault or liability on the
17 part of Defendants).

18 WHEREAS, the Parties agreed that the arbitration complaint, including the individual PAGA
19 claims, shall be dismissed with prejudice upon the Court's approval of the settlement.

20 WHEREAS, the settlement of Plaintiff's non-PAGA individual claims is memorialized in a
21 confidential settlement agreement, which the Parties may disclose to the Court, *in camera*, upon
22 request.

23 WHEREAS, the settlement of Plaintiff's individual PAGA claims is memorialized in a
24 confidential settlement agreement that is attached hereto as Exhibit 1 for the Court's review.

25 WHEREAS, pursuant to the settlement agreement of Plaintiff's individual PAGA claims,
26 \$1,000 is being paid by Defendants for the resolution of the individual PAGA claims, and pursuant to
27 Labor Code §2699(i), \$750.00 (75%) of the individual PAGA claim settlement amount will be paid to
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1 the California Labor and Workforce Development Agency, and \$250.00 (25%) will be paid to
2 Plaintiff.

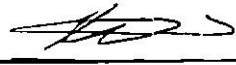
3 WHEREAS the Parties respectfully request that the stay on Plaintiff's representative PAGA
4 claim be lifted.

5 NOW, THEREFORE, Upon the Court's execution of this Order, Plaintiff's individual PAGA
6 claims are settled as set forth herein and the stay of Plaintiff's representative PAGA claims shall be
7 lifted.

8 **IT IS SO STIPULATED.**

9
10 DATED: January 16, 2024

ZAKAY LAW GROUP, APLC

11
12 By: 

13 Shani O. Zakay, Esq.
14 Jean-Claude Lapuyade, Esq.
15 Attorneys for Plaintiff

16 DATED: January 16, 2024

LARSEN, FISHMAN & CALLISTER

17
18 By: 

19 Doug M. Larsen, Esq.
20 Michael W. Green, Esq.
21 Attorneys for Defendant
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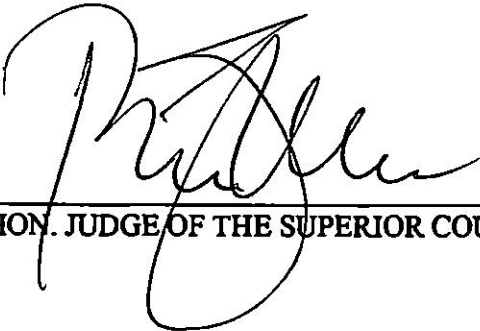
ORDER

PURSUANT TO THE STIPULATION, AND GOOD CAUSE APPEARING, IT IS SO ORDERED:

1. The settlement of Plaintiff's individual PAGA claims is approved.
2. The stay of Plaintiff's representative PAGA claim is lifted.

IT IS SO ORDERED.

Dated: JAN 22 2024



HON. JUDGE OF THE SUPERIOR COURT

EXHIBIT 1

INDIVIDUAL PAGA SETTLEMENT AGREEMENT

This PAGA Settlement Agreement ("Agreement") is made by and between Plaintiff, Toshi Magee in her capacity as an individual, and Defendant, Children's Dentistry and Orthodontics a Dental Office Of Steven O'Hara, DDS, Jordan Prieto, DDS, Jeffrey Evans, DDS, and Jeffrey Kunkel, DDS, Inc. ("CDO"). The Agreement refers to Plaintiff and CDO collectively as "Parties," or individually as "Party."

1. DEFINITIONS.

- 1.1. "Action" means the Plaintiff's PAGA lawsuit alleging wage and hour violations against CDO captioned *Toshi Magee v. Children's Dentistry and Orthodontics a Dental Office Of Steven O'Hara, DDS, Jordan Prieto, DDS, Jeffrey Evans, DDS, and Jeffrey Kunkel, DDS, Inc., a California Corporation*, initiated on November 17, 2021, and pending in Superior Court of the State of California, County of Merced.
- 1.2. "Individual Action" means the Plaintiff's Individual PAGA claims alleging wage and hour violations against CDO compelled to arbitration by the Court on January 25, 2023.
- 1.3. "Representative Action" means the PAGA claims in the Action encompassing the claims of the State of California and the LWDA on behalf of all Aggrieved Employees other than Plaintiff.
- 1.4. "Aggrieved Employee" means Toshi Magee who worked for CDO during the PAGA Period.
- 1.5. "Court" means the Superior Court of California, County of Merced.
- 1.6. "Defense Counsel" means Doug M. Larsen and Michael W. Green of Fishman, Larsen & Callister.
- 1.7. "Effective Date" means the date by when all of the following have occurred: (a) Employee executes this Agreement (b) Employee dismisses the arbitration with prejudice, (c) Employee dismisses the individual PAGA claims in the Action in Court with prejudice and the Court approves such dismissal, and (d) Employee submits this Agreement and the Court's order dismissing the individual PAGA claims to the LWDA.
- 1.8. "Gross Settlement Amount" means \$ 1,000.00 which is the total amount CDO agrees to pay under the Settlement except as provided in Paragraph 8 below. The Gross Settlement Amount will be used to pay the Individual PAGA Payment and the LWDA PAGA Payment.
- 1.9. "Individual PAGA Payment" means the Aggrieved Employee's share of 25% of the PAGA Penalties.
- 1.10. "LWDA" means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code § 2699(i).

- 1.11. "LWDA PAGA Payment" means the 75% of the PAGA Penalties paid to the LWDA under Labor Code § 2699(i).
- 1.12. "PAGA Counsel" means the Zakay Law Group, APLC, and the JCL Law Firm, APC, the attorneys representing the Plaintiff in the Action.
- 1.13. "PAGA Period" means the period from September 13, 2020, to the Effective Date of this Agreement.
- 1.14. "PAGA" means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).
- 1.15. "PAGA Notice" means Plaintiff's September 13, 2021, letter to CDO and the LWDA providing notice pursuant to Labor Code § 2699.3(a).
- 1.16. "PAGA Penalties" means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employee (\$ 250.00) and the 75% to LWDA (\$ 750.00) in settlement of Plaintiff's Individual PAGA claims.
- 1.17. "Released PAGA Claims" means the claims being released by the Plaintiff and PAGA Counsel and as described in Paragraph 5 below.
- 1.18. "Released Parties" means: CDO and each of its former and present directors, officers, shareholders, owners, attorneys, insurers, predecessors, successors, assigns, subsidiaries, or affiliates.
- 1.19. "Settlement" means the disposition of the Individual Action effected by this Agreement.

2. RECITALS.

- 2.1. On November 17, 2021, Plaintiff commenced the Action by filing a Complaint alleging causes of action against CDO for alleged violations of Unfair Competition in Violation of Cal. Bus. & Prof. Code §§ 17200, et seq.; Failure to Pay Overtime Wages in Violation of Cal. Lab. Code §§ 510, et seq. Failure to Pay Minimum Wages in Violation of Cal. Lab. Code §§ 1194, 1197 & 1197.1; Failure to Provide Required Meal Periods in Violation of Cal. Lab. Code §§ 226.7 & 512 and the Applicable IWC Wage Order; Failure to Provide Required Rest Periods in Violation of Cal. Lab Code §§ 226.7 & 512 and the Applicable IWC Wage Order; Failure to Provide Accurate Itemized Statements in Violation of Cal. Lab. Code § 226; Failure to Pay Wages When Due in Violation of Cal. Labor Code §§ 201, 202 and 203; Failure to Pay Sick Pay at the Correct Rate of Pay in Violation of Cal. Lab. Code § 246, et seq.; and Violations of the Private Attorneys General Act at Labor Code §§ 2698 et seq.
- 2.2. On March 30, 2022, Plaintiff filed a First Amended Complaint alleging one cause of action against CDO for alleged Violations of the Private Attorneys General Act at Labor Code § 2698 et seq. The First Amended Complaint is the operative complaint in the Action (the "Operative Complaint."). CDO denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in in the Operative Complaint and denies any and all liability for the causes of action alleged.

- 2.3. Pursuant to Labor Code § 2699.3(a), Plaintiff gave timely written notice to CDO and the LWDA by sending the PAGA Notice.
- 2.4. On January 25, 2023, the Court Ordered Plaintiff to arbitrate her individual PAGA claims and stayed the Representative PAGA claims pending the outcome of *Adolph v. Uber Technologies*, Supreme Court Case No. S274671.
- 2.5. On August 23, 2023, Parties agreed to settle Plaintiff's individual PAGA claims prior to completing the Court Ordered Arbitration.
- 2.6. The Parties, PAGA Counsel, and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement, and that the representative claims in this Action brought on behalf of the LWDA and other Aggrieved Employees are not extinguished or affected by this Settlement.

3. MONETARY TERMS.

- 3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 8 below, and except as agreed upon by the Parties in the separate settlement agreement of Plaintiff's non-PAGA claims, CDO promises to pay \$ 1,000.00 and no more as the Gross Settlement Amount. CDO has no obligation to pay the Gross Settlement Amount prior to the deadline stated in Paragraph 4.2 of this Agreement. CDO will disburse the entire Gross Settlement Amount without asking or requiring the Aggrieved Employee to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to CDO.
- 3.2. Payments from the Gross Settlement Amount. the Gross Settlement Amount will be allocated as follows:
 - 3.2.1. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$ 1,000.00 to be paid from the Gross Settlement Amount, with 75% (\$750.00) allocated to the LWDA PAGA Payment and 25% (\$ 250.00) allocated to the Individual PAGA Payment.

SETTLEMENT FUNDING AND PAYMENTS.

- 3.3. Aggrieved Employee Pay Periods. This Agreement covers only one Aggrieved Employee, Plaintiff, who allegedly worked a total of four PAGA Pay Periods.
- 3.4. Payments from the Gross Settlement Amount. Within 15 days after the Effective Date, CDO will mail a check for the Individual PAGA Payment and the LWDA PAGA Payment to PAGA Counsel.
 - 3.4.1. CDO will issue a check for the Individual PAGA Payment and send it to PAGA Counsel, at 5440 Morehouse Drive, Suite 3600, San Diego, California 92121.

3.4.2. CDO shall promptly send a replacement check to the Aggrieved Employee if her original check is lost or misplaced.

3.4.3. The payment of the Individual PAGA Payment shall not obligate CDO to confer any additional benefits or make any additional payments to the Aggrieved Employee (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

4. **RELEASES OF CLAIMS.** Effective on the date when CDO issues payments as provided in Paragraph 4 of this Agreement, Plaintiff and PAGA Counsel will release claims against all Released Parties as follows:

4.1. Plaintiff's Release (Release by the Aggrieved Employee). Plaintiff and her respective former and present spouses, representatives, agents, attorneys (including PAGA Counsel), heirs, administrators, successors, and assigns generally, release and discharge Released Parties from all Plaintiff's individual PAGA claims, that occurred during the PAGA Period, including, but not limited to: (a) all individual PAGA claims that were, or reasonably could have been, alleged, based on the facts contained in the Operative Complaint and the PAGA Notice ("Plaintiff's Release"). Plaintiff's Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time, or based on occurrences outside the PAGA Period. Plaintiff's Release does not extend to any claims or actions, including actions by Plaintiff, for representative PAGA penalties on behalf of the State of California and the LWDA, including the currently pending Action. Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them.

4.2. Plaintiff's Waiver of Rights Under California Civil Code § 1542. For purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions, rights, and benefits, if any, of § 1542 of the California Civil Code, which reads: "A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at 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."

4.3. Release by Aggrieved Employee: Plaintiff is deemed to release, on behalf of herself and her former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for individual PAGA penalties that were alleged on her behalf in her individual capacity, or reasonably could have been alleged on her behalf in her individual capacity, based on the PAGA Period facts stated in the Operative Complaint and the PAGA Notice. Plaintiff's Release does not extend to any claims or actions, including actions by Plaintiff, for representative PAGA penalties on behalf of the State of California and the LWDA, including the currently pending Action.

4.4. Release by PAGA Counsel: PAGA Counsel release on behalf of their present and former attorneys, employees, agents, successors and assigns the Released Parties from all claims for Plaintiff's individual PAGA Fees and costs incurred in connection with the Operative Complaint and the PAGA Period facts stated in the Operative Complaint and the PAGA Notice.

5. **MOTION OR APPLICATION FOR APPROVAL OF SETTLEMENT.** The Parties agree to jointly prepare and file a request to the Court approving this settlement agreement and dismissing Plaintiff's individual PAGA claims.

5.1. Plaintiff's Responsibilities. Plaintiff will prepare and deliver to Defense Counsel all documents necessary for obtaining approval of this Settlement under Labor Code § 2699 (f)(2)) including (i) a draft proposed Order Granting Approval of PAGA Settlement; (ii) a signed declaration from PAGA Counsel firm attesting to its timely transmission to the LWDA of all necessary PAGA documents including the initial notice of violations (Labor Code § 2699.3(a)), Operative Complaint (Labor Code § 2699(l)(1)), this Agreement (Labor Code § 2699(l)(2)); and (iii) all facts relevant to any actual or potential conflict of interest with Aggrieved Employees. In their Declarations, Plaintiff and PAGA Counsel shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

5.2. Responsibilities of PAGA Counsel. PAGA Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the request to the Court approving this settlement agreement and dismissing Plaintiff's individual PAGA claim no later than 60 days after the full execution of this Agreement.

5.3. Duty to Cooperate. If the Parties disagree on any aspect of the proposed request for approval of this Settlement and/or the supporting declarations and documents, PAGA Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting by telephone, and in good faith, to resolve the disagreement. If the Court does not grant the request for approval of this Settlement or conditions its approval on any material change to this Agreement, PAGA Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns.

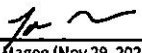
6. ADDITIONAL PROVISIONS.

6.1. No Admission of Liability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by CDO that any of the allegations in the Operative Complaint have merit or that CDO has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that CDO's defenses in the Action have merit. If, for any reason the Court does not approve this Settlement and dismiss the individual PAGA claims, CDO reserves all available defenses to the claims in the Action, and Plaintiff reserves the right to contest CDO's defenses. The Settlement, this Agreement and Parties' willingness to settle the Individual Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

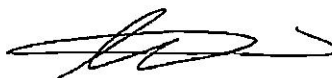
- 6.2. Representative Standing. The Parties agree that Plaintiff's signing of this agreement does not affect her ability to serve as the PAGA Representative in the Representative Action.
- 6.3. Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party. Notwithstanding anything to the contrary herein, this Settlement shall not affect in any way the settlement agreement between the Parties resolving Employee's non-PAGA penalties, which is entered into between the Parties concurrently herewith, except that in the event the Court does not approve the Settlement and does not dismiss Plaintiff's individual PAGA claims, then any other agreements between the Parties, including the separate individual settlement agreement, shall be null and void.
- 6.4. Attorney Authorization. PAGA Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiff and CDO, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.
- 6.5. Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of the Court for resolution.
- 6.6. No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.
- 6.7. No Tax Advice. Neither Plaintiff, PAGA Counsel, CDO nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.
- 6.8. Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.
- 6.9. Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
- 6.10. Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.

- 6.11. Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
- 6.12. Confidentiality. To the extent permitted by law, all agreements made, and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement. Notwithstanding, the Parties acknowledge and agree that this Agreement is not confidential and shall be submitted to the Court in connection with Plaintiff's request to approve the Settlement and dismiss her individual PAGA claims. Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
- 6.13. Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.
- 6.14. Notice. All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after sent by email or messenger, addressed as follows: To Plaintiff: shani@zakaylaw.com; jackland@zakaylaw.com; julieann@zakaylaw.com; jlapuyade@jcl-lawfirm.com. To CDO: larsen@flclaw.net; green@flclaw.net; white@flclaw.net.
- 6.15. Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e., DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

Dated: November 29, 2023


Toshi Magee (Nov 29, 2023 08:19 PST)
TOSHI MAGEE
Plaintiff

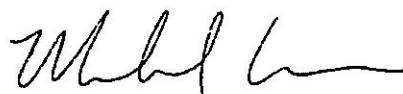
Dated: November 29, 2023


SHANI O. ZAKAY
Counsel for Plaintiff

Dated: November 29, 2023


JEAN-CLAUDE LAPUYADE
Counsel for Plaintiff

Dated: September 30, 2023



MICHAEL W. GREEN
Counsel for Defendant

Dated: September ___, 2023

Dec 28, 2023



JEFFREY EVANS
Secretary for Defendant