

## SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Agreement") is entered into by and between **Melinda Berlant ("Berlant")** and **SmartOrg, Inc, David Matheson, and James Matheson ("Defendants")**. Berlant and Defendants may be referred to collectively as "the Parties" as appropriate.

### RECITALS

A. Disputes have arisen between Berlant and Defendants regarding the termination of Berlant's appointment, her compensation, her treatment while an employee, and the compensation of other employees of SmartOrg, Inc.

B. Berlant alleges that her employment was wrongfully terminated. She also alleges that Defendants failed to properly make payment to her and other employees of SmartOrg, Inc. for all monies owed and otherwise failed to comply with the California Labor Code. She alleges that she gave written notice by certified mail to the Labor and Workforce Development Agency and Defendants of the violations.

C. These disputes gave rise to a lawsuit filed in Santa Clara County Superior Court entitled *Melinda Berlant v. SmartOrg, Inc, David Matheson and James Matheson*, Santa Clara County Superior Court Case No. 21CV375747 (the "Litigation").

D. After vigorous discussion conducted at arms' length, the Parties have agreed to settle the action as to Berlant's individual claims, including her employment and the events and circumstances regarding the end of her employment, including but not limited to those allegations made under the Litigation, without any admission of liability or fault, and therefore have entered into this Agreement based upon the following terms and conditions.

NOW, THEREFORE, in consideration of the mutual promises made herein, the Parties hereby agree as follows:

### AGREEMENT

1. **Payment to Berlant and PAGA Aggrieved Employees.** The payment of the settlement amounts set forth in this agreement are conditioned on the limiting terms set forth herein and the Court's approval as set forth in subpart c to this paragraph. Subject to such approval, Defendants agree to pay REDACTED

total gross sum of \$10,000 (Ten Thousand Dollars) to the LWDA and the PAGA Aggrieved Employees ("PAGA Settlement") according to the terms set forth below:

REDACTED

- c. **PAGA Settlement.** Twenty days after the Effective Date of this settlement, as defined in Section 1(d) below, Defendants will distribute \$10,000 (Ten Thousand Dollars pursuant to the allocation in (v), below).
  - i. **The PAGA Aggrieved Employees.** The PAGA Aggrieved Employees consists of all persons Defendants employed during the Settlement Period defined as September 16, 2019, through October 30, 2020 (when the pay date issue identified by Plaintiff was corrected).
  - ii. **Common Fund.** The settlement will be on a common fund basis, there will be no claim form or claims process, and there will be no reversion to the Defendants.
  - iii. **Cy Pres.** Any checks that remain uncashed after 180 days of issuance will be sent to Legal Aid at Work as a *cy pres* recipient.
  - iv. **PAGA Release.** As of the Effective Date, Plaintiff and each of the PAGA Aggrieved Employees who have not submitted a timely and valid request to be excluded from this settlement, without the need to manually sign a release document, in exchange for the

consideration recited in this agreement, on behalf of himself or herself, shall and does hereby fully and finally release Defendants and the Releasees (defined below) from any and all claims, demands, rights, liabilities, and causes of action of any kind whatsoever, that have been or could have been, asserted against the Releasees based on the facts alleged at any point in time in this action during the PAGA period ("Released PAGA Claims). The Released PAGA Claims expressly include, expressly include, without limitation, all such claims for unpaid wages, including overtime wages, off-the-clock claims, minimum wage claims, claims for failure to timely pay wages, both during employment and after termination of employment, failure to reimburse for business expenses, claims for failure to keep accurate and complete payroll records, claims for failure to provide accurate and complete wage statements, claims for missed meal periods, rest breaks, wage premiums, penalties, and interest; related penalties, including, but not limited to, recordkeeping penalties, wage statement penalties, minimum-wage penalties, missed meal-period and rest-break penalties, waiting-time penalties, penalties under the Private Attorneys General Act; premiums or costs and attorneys' fees and expenses, and any claim arising from the claims described above under applicable federal, state, local or territorial law; all such claims arising under the California Labor Code (including, but not limited to, sections 201-204, 210, 226, 226.2, 226.3, 226.7, 510, 512, 558, 1174, 1182.12, 1194-1194.2, 1197, 1197.1, 1198, and 2802); the wage orders of the California Industrial Welfare Commission; the Labor Code Private Attorneys General Act of 2004, California Labor Code section 2698, et seq.; and California Business and Professions Code section 17200 et seq.

- v. **Allocation of PAGA Settlement.** Plaintiff will not request the Court approve any attorney's fees or costs from the PAGA Settlement. The administration of the settlement will be by Defendants. Defendants will forward a payment of \$7,500 (Seven Thousand, Five Hundred Dollars) to the LWDA and will distribute the remaining \$2,500 (Two Thousand Five Hundred Dollars) to the PAGA Aggrieved Employees.
- vi. **Calculation of PAGA Settlement Share.** Each of the seven PAGA Aggrieved Employees will receive an equal share of \$2,500 after that sum is divided by the number of PAGA Aggrieved Employees. As these are for payment of penalties only, they will be paid as the gross amount without withholding.

- d. **Effective Date.** "Effective Date" is defined as follows: If no objection to this Settlement or to any of the terms and or conditions of the settlement are filed by Plaintiff, another member of the PAGA Aggrieved Employees, or any intervenor to this lawsuit, the Effective Date shall occur on the day that the Court enters an order of final approval of this settlement; however, if any objection to this settlement or to any of the terms and or conditions of the settlement is filed by Plaintiffs, a PAGA Aggrieved Employee class, or any intervenor to this lawsuit, the Effective Date shall occur upon the expiration of the time for the filing any appeal of the order of final approval of this settlement.

If an appeal is filed or any writ granted, then the Effective Date shall occur after the appeal has been dismissed or the writ dissolved and when there is no further time to appeal the dismissal of the appeal or the dissolution of the writ.

- e. The parties agree to do all things necessary and to execute all further documents necessary and appropriate to carry out and effectuate the terms and purposes of this Agreement. The parties agree that the court reserves jurisdiction to enforce the terms and conditions of this Agreement pursuant to Code of Civil Procedure 664.6 upon noticed motion of any party. In the event that Plaintiff has performed her obligations under this agreement, and Defendants fails to timely make any payment due hereunder, and after seven (7) days' written notice of default by email from Berlant's counsel to Defendants' counsel and failure by Defendants to cure such default within seven (7) from receipt of such written notice, Berlant shall be entitled, without further notice of any kind, to file an unopposed Motion To Enforce Settlement Agreement with reasonable attorneys' fees and costs awarded to Berlant. Berlant shall be entitled to seek judgment in the amount of \$145,000.00, less any payments previously made under this Settlement Agreement.

2. **Release of Claims.** This is a full and complete release of all claims by Berlant regarding her employment with Defendants and the circumstances regarding the end of her employment, including but not limited to those allegations made under the Litigation, as well as any and all claims of whatsoever kind or nature, whether known or unknown, which Berlant now owns or holds against Defendants or has at any time heretofore owned or held against Defendants. In consideration of the covenants and promises set forth in this Agreement, and subject to Paragraph 1, above, Berlant forever releases and discharges Defendants (defined for purposes of this Agreement to include Defendants SmartOrg, Inc., James Matheson and David Matheson), and any and all related entities, including but not limited to any owner or employee or related person or entity of Defendants (hereafter collectively "Releasees"), from any and all actions, causes of actions, claims, liabilities, obligations, damages, discrimination claims,

injuries, losses, salary, bonuses, commissions, employment benefits, negligence, attorneys' fees and costs whatsoever, whether in law or equity, including, but not limited to, any rights or claims under local, state or federal discrimination or civil rights laws, state or federal privacy laws and any claims in any way related to or arising out of Berlant' employment or the circumstances giving rise to the end of Berlant's employment.

This release does not release claims that cannot be released as a matter of law, including, but not limited to Berlant's right to file a charge with or participate in a charge by the Equal Employment Opportunity Commission, or any other local, state, or federal administrative body or government agency that is authorized to enforce or administer laws related to employment, against Defendants (with the understanding that any such filing or participation does not give Berlant the right to recover any monetary damages against Defendants; Berlant' release of claims herein bars Berlant from recovering such monetary relief from Defendants).

**3. Covenant Not to Sue.** Berlant covenants and agrees that she will refrain from instituting, prosecuting, or maintaining any lawsuit, action and/or administrative or governmental proceeding against Releasees. It is intended that this Agreement shall be effective as a bar to each and every action, cause of action, claim, liability, obligation, damage, discrimination claim, injury, loss, salary, bonus, commission, employment benefit, attorney fee and cost, whether known or unknown, foreseen or unforeseen, suspected or unsuspected, that Berlant may have against Releasees and Berlant expressly waives any and all rights under Section 1542 of the California Civil Code, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

**4. Attorneys' Fees.** The Parties hereby agree and understand that they shall each bear their own attorneys' fees and costs. In any legal action, arbitration, or other proceeding brought to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs.

**5. Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California.

**6. Interpretation.** This Agreement shall be construed as a whole, according to its fair meaning, and not in favor of or against any party. By way of example and not in limitation, this Agreement shall not be construed in favor of the party receiving a benefit nor against the party responsible for any particular language in this Agreement.

Captions are used for reference purposes only and should be ignored in the interpretation of the Agreement.

**7. Difference in Known Facts.** The Parties understand and acknowledge that the facts under which this Agreement is made may later be determined to be inaccurate, incomplete, or misleading and accepts this risk and agree that this Agreement shall nonetheless be, and remain in all respects, binding and effective on them and not subject to termination or rescission.

**8. No Admission of Liability or Obligation.** This Agreement is not intended, and shall never constitute nor be construed, as an admission of obligation or liability by Defendants or any other person or entity.

**9. Confidentiality.** The Parties agree to hold the provisions of this Agreement in strictest confidence, and they agree not to publicize or disclose the terms in any manner whatsoever; provided, however, that the Parties may discuss this matter in confidence with their tax advisor(s) and attorney(s) (collectively "Disclosed Parties"), so long as those Disclosed Parties also agree to be bound by this confidentiality provision.

**10. Non-disparagement.** The Parties agree not to take any actions or to make any oral or written statements or remarks to any person, corporation, or other entity that are, or could reasonably be construed as, disparaging, derogatory, or defamatory toward any other Party, or which in any way could harm or interfere with either Party's business interests or reputation. "Oral or written" comments include, but are not limited to, any postings on the internet, postings via social media, email, or any other communications means and includes verbal communications.

**11. Reference letter.** SmartOrg shall provide a reference letter on SmartOrg letterhead substantially in the form attached hereto within ten (10) days of the execution of this agreement.

**12. No Cooperation.** Berlant agrees that she will not knowingly assist any current or former employee of Defendants or his/her attorney in the prosecution of his/her claim, charge, class, or representative action against any of the Defendants Releasees, except under subpoena or court order.

**13. Opportunity to Consult/Voluntary Agreement.** Berlant acknowledges and agrees that she has had the right and full opportunity to consult with legal counsel or any other person of her choosing before signing this Agreement, and Berlant has entered into this Agreement voluntarily and with knowledge that it shall become a binding and enforceable contract affecting her legal rights.

**14. Severability of Provisions.** If any provision of this Agreement is determined to be invalid or unenforceable, then the invalidity or unenforceability of

that provision shall not affect the validity or enforceability of any other provision of this Agreement and all other provisions shall remain in full force and effect.

**15. Entire Agreement.** This Agreement constitutes the entire understanding between Berlant and Defendants and supersedes any other oral or written understanding or agreement. No person or party is authorized to make any representations, warranties, or promises except as set forth in writing in this Agreement. No statement, agreement, representation or promise by any person which is not contained in this Agreement shall be valid or binding. No modification of this Agreement shall be of any force or effect, unless in writing and executed by Berlant and Defendants.

By executing this Agreement below, the Parties understand that they are entering into a binding and enforceable contract subject to the above terms and conditions.

Dated: October 5, 2021

MELINDA BERLANT

Melinda Berlant

Dated: Sept 30, 2021

SMARTORG, INC.

By: James E Matheson

Its Chairman & CFO

Dated: Sept 30, 2021

JAMES MATHESON

James E Matheson

Dated: 4 October, 2021

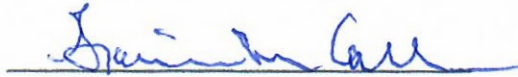
DAVID MATHESON

David Matheson

Approved as to form:

Dated: October 6, 2021

GRAINNE CALLAN, Esq.

A handwritten signature in blue ink, appearing to read "Grainne Callan", written over a horizontal line.

Grainne Callan  
Attorney for Berlant

Dated: October 5, 2021

MCPHARLIN SPRINKLES & THOMAS LLP

A handwritten signature in blue ink, appearing to read "Jeanine DeBacker", written over a horizontal line.

Jeanine DeBacker  
Attorney for Defendants