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FILED
Superior Court of California
County of Sacramento
07/15/2024
T. Shaddix, Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO**

ZACKERY HEARELL, individually, and
on behalf of all others similarly situated;

Plaintiff,

v.

D.G. SMITH ENTERPRISES, INC., a
California corporation; and DOES 1 through 10,
inclusive;

Defendants.

Case No.: 34-2021-00306690-CU-OE-GDS

Assigned for All Purposes to:
Honorable Jill H. Talley
Department 23
AMENDED

**~~[PROPOSED]~~ ORDER AND
JUDGMENT GRANTING APPROVAL
OF PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2698, ET SEQ.)
SETTLEMENT AGREEMENT AND
RELEASE OF CLAIMS**

[Reservation ID: A-306690-001]

Hearing Date: July 12, 2024
Hearing Time: 9:00 A.M.
Hearing Place: Department 23

Complaint Filed: August 20, 2021
Trial Date: None Set

1 This matter has come before the Honorable Jill H. Talley in Department 23 of the
2 Sacramento County Superior Court, located at 720 Ninth Street, Sacramento, California 95814,
3 Plaintiff Zackery Hearell's ("Plaintiff") Motion for Approval of Private Attorneys General Act
4 (Labor Code § 2698, *et seq.*) Settlement Agreement and Release of Claims. This Court reviewed
5 the papers submitted by Plaintiff in support of approval of the Parties' Private Attorneys General
6 Act ("PAGA") Settlement Agreement and Release of Claims ("Settlement Agreement,"
7 "Settlement," and "Agreement") pursuant to Labor Code section 2698, *et seq.* The Settlement
8 Agreement is attached hereto as **Exhibit 1**. Based upon this review, and the findings below, the
9 Court finds good cause to enter this Order and Judgment.

10 **FINDINGS:**

11 Unless otherwise specified, defined terms in this Order and Judgment have the same
12 definition as the terms in the Settlement Agreement.

13 The Court has jurisdiction over the subject matter of this litigation brought by Plaintiff,
14 individually and in his capacity as a private attorney general proxy or agent of the State, against
15 Defendant D.G. Smith Enterprises, Inc. ("Defendant").

16 On August 18, 2021, Plaintiff provided written notice to the LWDA and Defendant.

17 On August 20, 2021, Plaintiff filed a Class Action Complaint against Defendant, alleging
18 (1) Failure to Pay Minimum and Regular Rate Wages (Cal. Lab. Code §§ 204, 1194, 1194.2, and
19 1197); (2) Failure to Pay Overtime Compensation (Cal. Lab. Code §§ 1194 and 1198); (3)
20 Failure to Provide Meal Periods (Cal. Lab. Code §§ 226.7 and 512); (4) Failure to Authorize and
21 Permit Rest Breaks (Cal. Lab. Code §§ 226.7); (5) Failure to Provide Accurate Itemized Wage
22 Statements (Cal. Lab. Code § 226); and (7) Unfair Business Practices (Cal. Bus. & Prof. Code §§
23 17200, *et seq.*).

24 On November 23, 2021, Plaintiff filed a First Amended Class and Representative Action
25 Complaint ("FAC"), adding an eighth cause of action for Civil Penalties Under PAGA.

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1 On January 25, 2022, the Court ordered that the class and individual allegations set forth
2 in the FAC be dismissed. The only remaining cause of action in the operative complaint is
3 Plaintiff's claim for Civil Penalties under PAGA.

4 Plaintiff and Defendant (collectively, the "Parties") expressly acknowledge the
5 Settlement Agreement is entered solely for the purpose of compromising the significantly
6 disputed PAGA claim and that nothing contained therein is an admission of liability or
7 wrongdoing by Defendant.

8 The Court finds the Settlement was entered in good faith and that the Parties have
9 satisfied the standards and applicable requirements for approval of a settlement of the PAGA
10 claim.

11 The Court finds, pursuant to Labor Code sections 2699(l)(2) and (l)(4), the LWDA was
12 given timely notice of the Agreement. On June 12, 2024, Plaintiff submitted a Notice of
13 Settlement to the LWDA, attached to which was a copy of the Agreement. Plaintiff's Notice of
14 Settlement complied with the requirements of Labor Code section 2699(l)(2).

15 The Court, having reviewed the evidence and papers submitted, and considered any
16 argument of counsel, hereby grants the motion and approves the terms of the settlement as set
17 forth in the Settlement Agreement under Labor Code section 2699(l)(2) as fair, adequate, and
18 reasonable.

19 **IT IS HEREBY ORDERED THAT:**

20 1. The "Aggrieved Employees" are defined as past and present non-exempt, hourly-
21 paid employees of Defendant who worked in California during the applicable PAGA Period (i.e.,
22 starting on and including June 16, 2020 up to and including May 31, 2023).

23 2. The "Released Parties" are defined as Defendant, and each and all of its
24 respective current and former parents, subsidiaries, predecessors and successors, affiliates,
25 corporate members, administrators, operators, shareholders, and their affiliated entities and each
26 of their respective owners, officers, directors, employees, partners, shareholders, and agents, and
27 any other successors, heirs, assigns, or legal representatives, any attorneys, insurers, claim
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representatives, and their future trustees, parent companies, subsidiaries, divisions, agents, employees, attorneys, representatives, consultants, insurers and reinsurers.

3. CPT Group, Inc. is hereby appointed as the “Settlement Administrator.”

4. Defendant shall pay the Settlement Sum of \$600,000 in accordance with the Settlement Agreement.

5. The Court approves the requests for attorneys fees to Moon Law Group, PC (“Plaintiff’s Counsel”) of up to \$200,000, (1/3 of the Settlement Sum); litigation costs to Moon Law Group, PC in the amount of \$12,606.29; a Service Payment to Plaintiff in the amount of \$7,500; and the Settlement Administrator’s costs of up to \$16,000, all payable from the Settlement Sum. The Court finds the amounts requested are fair and reasonable.

6. After deducting the above-mentioned payments, the balance of the settlement amount will be ~~\$363,909.83~~ ^{\$363,893.71} (“Net Settlement Amount”). Under the terms of the Settlement Agreement, seventy-five (75%) of the Net Settlement Amount (i.e., ~~\$272,932.37~~ ^{\$272,920.28}) will be paid to the LWDA (“LWDA Net Settlement Amount”), and the remaining twenty-five percent (25%) of the Net Settlement Amount (i.e., ~~\$90,977.46~~ ^{\$90,973.43}) will be paid to the Aggrieved Employees (“Employee Net Settlement Amount”) using the formula set forth in the Settlement Agreement.

7. The Court authorizes the Settlement Administrator to calculate and pay the Employee Net Settlement Amount in accordance with the terms set forth in the Settlement.

8. Within fifteen (15) days after the Effective Date (defined in the Agreement), Defendant shall provide a list of Aggrieved Employees to the Settlement Administrator.

9. Within twelve (12) months of the Effective Date, Defendant shall deposit the Settlement Sum with the Settlement Administrator.

10. Within thirty (30) calendar days of the funding of the settlement, the Settlement Administrator will issue the payments required by section 5(c)-(e) of the Settlement Agreement to the appropriate entities or persons.

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1 11. Employee Settlement Share checks will remain negotiable for one hundred and
2 eighty (180) days after the date of mailing. Any Employee Settlement Share checks that are not
3 cashed by the void date will be canceled and the Settlement Administrator will transmit the funds
4 to the California State Controller's Unclaimed Property Fund in the name of the Aggrieved
5 Employee.

6 12. Employee Settlement Shares will be paid in the form of a check delivered to each
7 Aggrieved Employee at the last known address on file with Defendant. Upon receipt of the
8 Aggrieved Employees List, the Settlement Administrator shall run all addresses of the Aggrieved
9 Employees through the United States Postal Service NOCA database to obtain current addresses.

10 13. Upon entry of this Order and Judgment by the Court approving payment of the
11 PAGA penalties as described in the Settlement Agreement, Plaintiff, all Aggrieved Employees,
12 and the State of California are deemed to have fully, finally, and forever released, relinquished,
13 and discharged each and all of the Released Parties from any and all claims, demands, rights,
14 liabilities, and/or causes of action for penalties under PAGA that accrued during the PAGA
15 Period and that were asserted in Plaintiff's LWDA notice letter or the Action as well as those
16 that could have been alleged in the Action based on the facts contained therein, including,
17 without limitation, Labor Code Sections 201, 202, 203, 101-203, 204, 210, 218.5, 218.6, 223,
18 226, 226.3, 226.7, 510, 512, 558, 1174(d), 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2698, et
19 seq., 2698.6, et seq., 2699, et seq., 2699.3, 2802, Business and Professions Code sections 17200,
20 et seq., 17201, and Code of Civil Procedure section 1021.5, and the applicable Industrial Welfare
21 Commission Orders including, but not limited to, Order No. 5-2001.

22 14. Pursuant to Code of Civil Procedure section 664.6, the Court shall retain
23 continuing jurisdiction over this matter and the Parties to the fullest extent necessary to enforce
24 and effectuate the terms and intent of the Agreement.

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1 15. Nothing in this Order and Judgment or Settlement Agreement shall be construed
2 as evidence of an admission or concession by any of the Parties. This Order and Judgment and
3 Settlement Agreement simply represent a compromise of significantly disputed allegations.

4 16. Within ten (10) calendar days of entry of this Order and Judgment, Plaintiff shall
5 provide a copy of this Order and Judgment to the LWDA, pursuant to Labor Code section
6 2699(l)(3) and (l)(4).

7 17. The Court sets a nonappearance case review for 12/5/24 at 10:30 a.m., 2025
8 ^{23.}
9 in Department ~~9~~. At least five (5) court days before this date, Plaintiff shall file a compliance
10 status report. Pursuant to Code of Civil Procedure section 384, the compliance status report shall
11 specify the total amount paid to Aggrieved Employees and the residual of the unclaimed
12 settlement funds that will be paid to the entity identified as the recipient of such funds in the
13 Settlement Agreement.

14 18. Upon the Court's approval of the Settlement Agreement and payment of all sums
15 required by the Settlement Agreement, Plaintiff shall file a request for dismissal of this matter in
16 its entirety as to Defendant with prejudice.

17 **IT IS SO ORDERED.**

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19 Dated: 07/15/2024




HONORABLE JILL H. TALLEY
JUDGE OF THE SUPERIOR COURT