PAGA SETTLEMENT AGREEMENT

This PAGA Settlement Agreement ("Agreement") is made by and between plaintiff Charles Poirier ("Plaintiff") and defendant D.G. Smith Enterprises, Inc. ("Defendant"). The Agreement refers to Plaintiff and Defendant collectively as "Parties," or individually as "Party."

1 DEFINITIONS.

1.1 "Action" or "Operative Complaint" means the Plaintiff's PAGA lawsuit alleging wage and hour violations against Defendant captioned *Charles Poirier v. D.G. Smith Enterprises, Inc.,* initiated on April 2, 2022 and pending in Superior Court of the State of California, County of Sacramento, Case No. 24CV006496.

1.2 "Administrator" means Phoenix Settlement Administrators, the neutral entity the Parties have agreed to appoint to administer the Settlement.

1.3 "Administration Expenses Payment" means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator's "not to exceed" bid submitted to the Court in connection with approval of this Settlement.

1.4 "Aggrieved Employee" or "Aggrieved Employees" means all current and former hourly, nonexempt employees of Defendant who worked in California during the PAGA Period.

1.5 "Aggrieved Employee Data" means Aggrieved Employee identifying information in Defendant's possession including the Aggrieved Employee's name, last-known mailing address, Social Security number, hire and termination dates and/or number of PAGA Pay Periods.

1.6 "Aggrieved Employee Address Search" means the Administrator's investigation and search for current Aggrieved Employee mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Aggrieved Employees.

1.7 "Approval Order" means the Court's order granting approval of PAGA Settlement.

1.8 "Court" means the Superior Court of California, County of Sacramento.

1.9 "Defense Counsel" means Beth Kahn and Matthew Richardson, Musick, Peeler & Garrett LLP.

1.10 "Effective Date" The date on which the Approval Order becomes final. For purposes of this section, the Approval Order "becomes final" only after the Court grants the stipulation or motion for approval of the PAGA Settlement and upon service of the Notice of Entry of Order and/or Judgment, and upon the latter of: (i) if no appeal is filed, the expiration date of the time for the filing or noticing of any appeal from, or other challenge to, the Approval Order and/or Judgment (this time period shall not be less than sixty (60) calendar days after the Court's Approval Order is entered); (ii) the date of affirmance of an appeal of the Approval Order and/or Judgment becomes final under the California Rules of Court; or (iii) the date of final dismissal of any appeal from the Approval Order and/or Judgment or the final dismissal of any proceeding on review of any Court of Appeal decision relating to the Approval Order and/or Judgment.

1.11 "Gross Settlement Amount" means $179,000.00 plus reimbursement of $11,495.00 for Plaintiff's share of the mediation fee, which is the total amount Defendant agrees to pay under the Settlement. The Gross Settlement Amount will be used to pay Individual PAGA Payments, the LWDA PAGA Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, payment of Plaintiff's Representative Service Award, and the Administrator's Expenses Payment.

1.12 "Individual PAGA Payment" means the Aggrieved Employee's pro rata share of 25% of the PAGA Penalties calculated according to the number of Pay Periods the Aggrieved Employee worked during the PAGA Period.

1.13 "Judgment" means the judgment entered by the Court based upon the Court's approval of the settlement.

1.14 "LWDA" means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).

1.15 "LWDA PAGA Payment" means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).

1.16 "Net Settlement Amount" means the amount remaining to distribute to the LWDA and Aggrieved Employees after the following amounts (subject to Court approval) are subtracted from the Gross Settlement Amount: (a) PAGA Counsel Fees Payment up to thirty-three and thirty-three hundredths percent (33.33%) of the Gross Settlement Amount, currently estimated at $59,660.00; (b) PAGA Counsel Litigation Expenses Payment of not more than $25,000.00; and (d) the Administration Expenses Payment.

1.17 "Notice of PAGA Settlement" means the letter, substantially similar to the form attached hereto as Exhibit A, explaining the Settlement to the Aggrieved Employees, which will accompany each settlement check.

1.18 "PAGA Counsel" means Nazo Koulloukian, Esq. of Koul Law Firm APC, and Sahag Majarian, Esq. and Garen Majarian, Esq. of Majarian Law Group, APC, the attorneys currently representing the Plaintiff in the Action.

1.19 "PAGA Counsel Fees Payment" and "PAGA Counsel Litigation Expenses Payment" mean the amounts allocated to PAGA Counsel for reimbursement of reasonable attorneys' fees and expenses, respectively, incurred to prosecute the Action. Defendants will not oppose Plaintiff's request for attorneys' fees in the amount of up to thirty-three and thirty-three hundredths percent (33.33%) of the Gross Settlement Amount, currently estimated at $59,660.00, and PAGA Counsel Litigation Expenses Payment of not more than $25,000. In the event the Court approves a payment of less than these amounts, the difference will be added to the Net Settlement Amount. The Administrator will report these payments on IRS Form 1099 issued to PAGA Counsel.

1.20 "PAGA Pay Period" means any Pay Period during which an Aggrieved Employee worked for Defendant for at least one day during the PAGA Period.

1.21 "PAGA Period" means the period from June 1, 2023 to January 14, 2025.

1.22 "PAGA" means the Private Attorneys General Act of 2004 (Labor Code §§ 2698. et seq.).

1.23 "PAGA Notice" means Plaintiff's January 26, 2024 letter to Defendant and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).

1.24 "PAGA Penalties" means the Net Settlement Amount, allocated 25% to the Aggrieved Employees and the 75% to LWDA in settlement of PAGA claims.

1.25 "Plaintiff' means Charles Poirier, the named plaintiff in the Action.

1.26 "Released PAGA Claims" means the claims being released by Plaintiff, Aggrieved Employees, State of California and PAGA Counsel and as described in Paragraph 5 below.

1.27 "Released Parties" means: Defendant and each of its past, present, and future parents, subsidiaries, affiliated companies, agents, managing agents, employees, servants, officers, directors, owners (whether direct or indirect), general partners, limited partners, trustees, representatives, shareholders, stockholders, members, franchisors, mortgagees or ground lessors, attorneys, parents, subsidiaries, equity sponsors, related companies/corporations and/or partnerships, divisions, assigns, predecessors, successors, insurers, consultants, joint venturers, joint employers, potential and/or alleged joint employers, temporary staffing agencies, dual employers, potential and/or alleged dual employers, co-employers, potential and/or alleged co-employers, common law employers, contractors, affiliates, service providers, alter-egos, potential and/or alleged alter-egos, vendors, affiliated organizations, any person and/or entity with potential or alleged to have joint liability, and all of their respective past, present and future employees, directors, officers, members, owners, agents, representatives, payroll agencies, attorneys, stockholders, fiduciaries, parents, subsidiaries, other service providers, and assigns and any and all persons and/or entities acting under, by, through or in concert with any of them.

1.28 "Representative" means the named Plaintiff in the Action seeking Court approval to serve as a Representative for the Aggrieved Employees.

1.29 "Representative Service Award" means the payment to the Representative for initiating the Action and providing services in support of the Action.

1.30 "Settlement" means the disposition of the Action effected by this Agreement and the Judgment.

1.31 Defendant" means named Defendant D.G. Smith Enterprises, Inc.

2 RECITALS.

2.1 On April 2, 2024, Plaintiff commenced this Action by filing a Complaint seeking penalties against Defendant D.G. Smith Enterprises, Inc. pursuant to the Private Attorneys General Act, Cal. Labor Code §§ 2698 et seq. ("PAGA") for D.G. Smith Enterprises, Inc.'s alleged violations of California employment law; including, but not limited to failure to pay for all hours worked including overtime hours and off the clock work, failure to pay minimum wage, failure to pay all wages due at termination, failure to timely pay all wages owed, failure to provide timely meal breaks, failure to provide rest breaks, failure to provide suitable seating, failure to provide cool-down periods, failure to provide safe working conditions, failure to pay reporting time pay, failure to provide accurate itemized wage statements and maintain accurate records, failure to reimburse business expenses and penalties pursuant to the Private Attorneys General Act of 2004. The Complaint is the Operative Complaint in the Action. Defendant 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.

2.2 Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave timely written notice to the LWDA by sending the PAGA Notice.

2.3 On January 14, 2025, the Parties participated in a mediation with Eve Wagner, which led to this Agreement to settle the Action.

2.4 Prior to mediation, Plaintiff obtained, through informal discovery, a 18% sampling of employees' time and wage records, the number of Aggrieved Employees and applicable pay periods.

2.5 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.

3 MONETARY TERMS.

3.1 Gross Settlement Amount. Defendant promises to pay $179,000.00 plus reimbursement of $11,495.00 for plaintiff's share of the mediation fee, and no more, as the Gross Settlement Amount. Defendant must pay the Gross Settlement Amount by the deadline stated in Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendant.

3.2 Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Approval Order:

3.2.1 To Plaintiff: Representative Service Award to the Plaintiff as Representative for the Aggrieved Employees of not more than $10,000.00 (in addition to any Individual PAGA Payment the Class Representative is entitled to receive). Defendant will not oppose Plaintiff's request for a Representative Service Award that does not exceed the amount of $10,000. As part of the motion or stipulation for PAGA Counsel Fees Payment and PAGA Counsel Litigation Expenses Payment, Plaintiff will seek Court approval for any Representative Service Award. If the Court approves a Representative Service Award less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the Representative Service Award using IRS Form 1099. Plaintiff assumes full responsibility and liability for taxes owed on the Representative Service Award.

3.2.2 To PAGA Counsel: A PAGA Counsel Fees Payment of not more than 33.33% which is currently estimated to be $59,660.00 and PAGA Counsel Litigation Expenses Payment of not more than $25,000.00. Defendant will not oppose requests for Court approval of these payments provided that they do not exceed these amounts. Plaintiff and/or PAGA Counsel will file a motion or stipulation for PAGA approval, including for approval of Counsel Fees Payment and PAGA Litigation Expenses Payment. If the Court approves a PAGA Counsel Fees Payment and/or a PAGA Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to PAGA Counsel or any other Plaintiff's Counsel arising from any claim to any portion any PAGA Counsel Fee Payment and/or PAGA Counsel Litigation Expenses Payment. The Administrator will pay the PAGA Counsel Fees Payment and PAGA Counsel Expenses Payment using one or more IRS I099 Forms. PAGA Counsel assumes full responsibility and liability for taxes owed on the PAGA Counsel Fees Payment and the PAGA Counsel Litigation Expenses Payment and holds Defendant harmless, and indemnifies Defendant, from any dispute or controversy regarding any division or sharing of any of these Payments.

3.2.3 To the Administrator: An Administrator Expenses Payment not to exceed $12,250.00 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than $12,250.00, the Administrator will retain the remainder in the Net Settlement Amount.

3.2.4 To the LWDA and Aggrieved Employees: The Net Settlement Amount, the PAGA Penalties, will be distributed 75% to the LWDA PAGA Payment and 25% to the Individual PAGA Payments.

3.2.4.1 The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

3.2.4.2 If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will report the Individual PAGA Payments on IRS I099 Forms.

4 SETTLEMENT FUNDING AND PAYMENTS.

4.1 Aggrieved Employee Pay Periods. Based on a review of its records at the time of mediation, Defendant estimates there were approximately 38,185 PAGA Pay Periods.

4.2 Aggrieved Employee Data. Within 30 calendar days after the Court grants approval of the PAGA Settlement, Defendant will deliver the Aggrieved Employee Data to the Administrator in the form of a Microsoft Excel spreadsheet. To protect Aggrieved Employee' privacy rights, the Administrator must maintain the Aggrieved Employee Data in confidence, use the Aggrieved Employee Data only for purposes of this Settlement and for no other purpose, and restrict access to the Aggrieved Employee Data to Administrator employees who need access to the Aggrieved Employee Data to effect and perform under this Agreement. Defendant has a continuing duty to immediately notify PAGA Counsel if it discovers that the Aggrieved Employee Data omitted employee identifying information and to provide corrected or updated Aggrieved Employee Data as soon as reasonably feasible. The Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Aggrieved Employee Data.

4.3 Funding of Gross Settlement Amount. Defendant shall fully fund the Gross Settlement Amount by transmitting the funds to the Administrator no later than 21 business days after the Effective Date.

4.4 Payments from the Gross Settlement Amount. Within 21 business days after Defendant funds the Gross Settlement Amount, the Administrator will mail checks for all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the PAGA Counsel Fees Payment, the PAGA Counsel Expenses Payment, and Plaintiff's Representative Service Award. Disbursement of the PAGA Counsel Fees Payment and the PAGA Counsel Litigation Expenses Payment shall not precede disbursement of Individual PAGA Payments.

4.4.1 The Administrator will issue checks for the Individual PAGA Payments and send them to the Aggrieved Employees via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database.

4.4.2 The distribution of Individual PAGA Payments shall be accompanied by the Notice of PAGA Settlement, attached hereto as Exhibit A. The Notice shall be sent in English and Spanish.

4.4.3 The Administrator must conduct an Aggrieved Employee Address Search for all Aggrieved Employees whose checks are retuned undelivered without USPS forwarding address. Within 7 days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Aggrieved Employee Address Search. The Administrator need not take further steps to deliver checks to Aggrieved Employees whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Aggrieved Employee whose original check was lost or misplaced, requested by the Aggrieved Employee prior to the void date.

4.4.4 For any Aggrieved Employee whose Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Aggrieved Employee.

4.4.5 The payment of Individual PAGA Payments shall not obligate Defendant to confer any additional benefits or make any additional payments to the Aggrieved Employees (such as 40l(k) contributions or bonuses) beyond those specified in this Agreement.

5 **RELEASES OF CLAIMS**. Effective on the date when Defendant fully funds the entire Gross Settlement Amount, Plaintiff, Aggrieved Employees, State of California and PAGA Counsel will release claims against all Released Parties as follows:

5.1 Release by Plaintiff and Aggrieved Employees:

The State of California and all Aggrieved Employees, including Plaintiff, are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint and/or the PAGA Notice, including, but not limited to, failure to pay for all hours worked including overtime hours and off the clock work, failure to pay minimum wage, failure to pay all wages due at termination, failure to timely pay all wages owed, failure to provide timely meal breaks, failure to provide rest breaks, failure to provide suitable seating, failure to provide cool-down periods, failure to provide safe working conditions, failure to pay reporting time pay, failure to provide accurate itemized wage statements and maintain accurate records, failure to reimburse business expenses, and penalties pursuant to the Private Attorneys General Act of 2004, Labor Code sections 200, 201, 202, 203, 204, 208, 210, 216, 218, 218.5, 218.6, 221-223, 226, 226.2, 226.3, 226.7, 245-248.6, 432, 432.5, 432.6, 432.7, 510, 512, 558, 558.1, 1024.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1197,2, 1198, 1199, 2350, 2441, 2698, 2699 *et seq*., 2699.3, 2802, 2810.5, 3457, 6400, 6401, 6402, 6403, 6404, 6407, 6712, California Code of Regulations, Title 8, Section 11050, and the applicable Industrial Welfare Commission Orders. Plaintiff and the Aggrieved Employees shall be deemed to have acknowledged and agreed that their claims in this Action are disputed, and that the payments to them set forth in this Agreement constitute payment of all sums allegedly due to them.

5.2 Plaintiff's Release:

Upon the Effective Date and as a condition of receiving Plaintiff's Representative Service Award, Plaintiff and for Plaintiff's heirs, estate, executors, administrators, successors and assigns, hereby irrevocably and unconditionally releases, waives, acquits, and forever discharges Released Parties and their respective subsidiaries, parents, affiliates, affiliated companies, related entities, successors, heirs, assigns, agents, employees, joint employees, joint employer, staffing agencies, staffing agencies' employees, dba's and all of their respective past, present and future owners, franchisors, subsidiaries, parents, affiliated companies, affiliates, related entities, employees, officers, directors, shareholders, persons, agents, servants, representatives, members, attorneys, insurers, reinsurers, insurers' representatives, claims representatives, claims administrators, successors, and assigns (collectively "Releasees") from any and all claims, demands, charges, obligations, actions, causes of action, penalties, liabilities, debts, promises, agreements, attorneys' fees, losses and expenses, known or unknown, suspected or unsuspected, filed or unfiled, that Plaintiff may have or had arising out of any known or unknown fact, condition or incident occurring prior to and including the date of execution of this Agreement by Plaintiff.

This release includes, without limiting the generality of the foregoing: any and all claims, demands, causes of actions, obligations, charges, actions, debts, promises, complaints, liabilities, attorneys' fees, costs, penalties, actual, compensatory and punitive damages, and all claims for any other type of relief relating to, arising out of, or based upon all claims in the Action (including causes of action including, but not limited to, failure to pay for all hours worked including overtime hours and off the clock work, failure to pay minimum wage, failure to pay all wages due at termination, failure to timely pay all wages owed, failure to provide timely meal breaks, failure to provide rest breaks, failure to provide suitable seating, failure to provide cool-down periods, failure to provide safe working conditions, failure to pay reporting time pay, failure to provide accurate itemized wage statements and maintain accurate records, failure to reimburse business expenses, and penalties pursuant to the Private Attorneys General Act of 2004, as well as violation of California Penal Code §§ 484(a) and 487(a), Title VII of the Civil Rights Act of 1964, as amended, the Civil Rights Act of 1866, the Age Discrimination in Employment Act, The Employment Retirement Security Act, as amended, the Immigration Reform and Control Act, California Occupational Safety and Health Act or the Federal equivalent, the California Fair Employment and Housing Act, including, but not limited to, California Government Code §§ 12900, et seq., 12920, 12921, 12926, 12926.1(b), 12940, et seq., 12945.2, 12950, 12960, 12965, and 2986, the Fair Labor Standards Act, including, but not limited to, 29 U.S.C. §§ 207 and 216, the California Labor Code, including, but not limited to, California Labor Code §§ 200, 201, 202, 203, 204, 208, 210, 216, 218, 218.5, 218.6, 221-223, 226, 226.2, 226.3, 226.7, 245-248.6, 432, 432.5, 432.6, 432.7, 510, 512, 558, 558.1, 1024.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1197,2, 1198, 1199, 2350, 2441, 2698, 2699 *et seq*., 2699.3, 2802, 2810.5, 3457, 6400, 6401, 6402, 6403, 6404, 6407, 6712, California Code of Regulations, Title 8, Section 11050, and the applicable Industrial Welfare Commission Orders, and claims for retaliation, disability discrimination, sexual harassment, sexual orientation discrimination, sex discrimination, religious discrimination, discrimination, negligence, assault, battery, sexual battery, failure to investigate, harassment, failure to take all reasonable steps to prevent harassment, failure to take all reasonable steps to prevent discrimination, failure to take all reasonable steps to prevent retaliation, failure to take all reasonable steps to correct harassment, failure to take all reasonable steps to correct discrimination, failure to take all reasonable steps to correct retaliation, failure to pay wages, including minimum wage, overtime, paid time off, bonuses, reimbursable expenses and/or commissions, all claims for rest or meal period violations, failure to furnish wage and hour statements and personnel records, unfair competition, failure to pay for accrued vacation, retaliation for opposing harassment and discrimination, retaliation for opposing violations of the Fair Employment and Housing Act, false imprisonment, intentional infliction of emotional distress, retaliation, breach of the implied covenant not to terminate except with good cause, age discrimination, emotional distress, race discrimination, national origin discrimination, constructive termination, tortuous termination in violation of public policy, wage and hour violations, wrongful discharge, wrongful termination, constructive discharge, breach of implied-in-fact contract, breach of contract, failure to provide leaves, invasion of privacy, fraud, negligent misrepresentation, intentional interference with contractual relations, prospective economic advantage, conversion, violation of the Ralph Civil Rights Act, violation of the Tom Bane Civil Rights Act, gender violence, violation of California Business and Professions Code Section 17200 et seq., unjust enrichment, defamation, breach of the covenant of good faith and fair dealing, breach of confidentiality, any and all local, federal, and state civil rights laws, ordinances, regulations or orders based on charges of discrimination on account of race, color, religion, sex, sexual orientation, citizenship, national origin, physical handicap, mental or physical disability, medical condition, marital status, or any other discrimination prohibited by such laws, ordinances, regulations or orders including, but not limited to, Title VII of the Civil Rights Act of 1964, as amended; 42 USC Section 2000, et seq., Americans with Disabilities Act, 42 USC Section 1981, et seq., Equal Pay Act, as amended, 29 USC Section 206(d), California Labor Code, the California Health and Safety Code, the Labor Code Private Attorneys General Act of 2004, US Consumer Credit Protection Act of 1968, as amended, the Worker Adjustment and Retraining Notification Act, the Employee Polygraph Protection Act of 1988, the Employee Retirement Income Security Act of 1974, the National Labor Relations Act, the Vocational Rehabilitation Act of 1973, the Families First Coronavirus Response Act, the Emergency Family Medical Leave Expansion Act, the Federal and California Family and Medical Leave Acts ("FMLA" and "CFRA"), regulations of the Office of Federal Contract Compliance, 41 CFR Section 60, et seq., and any local, state or federal statute or law, ordinances, regulations, or order applicable to claims arising from Plaintiff's employment with Respondent, and any alleged wrongful conduct or injury arising out of or in any way connected with any acts or omissions occurring prior to and including the execution of this Agreement by Plaintiff. Plaintiff fully releases all claims against Releasees of every nature and kind whatsoever, specifically including any and all liens, known and unknown, and releases claims that are known and unknown, suspected and unsuspected. This release does not extend to claims that cannot be released as a matter of law, such as workers' compensation claims.

This release in all respects has been voluntarily and knowingly executed with the express intention of effecting the legal consequences provided in California Civil Code § 1541, that is, the extinguishment of obligations herein designated.

Plaintiff hereby expressly waives and relinquishes all of Plaintiff's rights and benefits, if any, arising under the provisions of California Civil Code § 1542, which provides:

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.

(b) No Conditional Payments Made By Medicare to Plaintiff. Plaintiff expressly acknowledges Medicare's statutory right to recovery of conditional payments for medical treatment and medical service rendered in connection with any illness or injury suffered by Plaintiff in the course of Plaintiff's employment with Defendant, and guarantees that Plaintiff is not a Medicare Beneficiary, and there are no outstanding Medicare or Medicaid claims or rights of recovery of conditional payments based on Plaintiff's application for, or receipt of, Medicare or Medicaid benefits. This specifically includes benefits arising out of or in any way connected with, directly or indirectly, the facts and/or allegations that form the basis of the Action, the occurrences described herein, and any consequences thereof. Additionally, Plaintiff warrants, represents, and guarantees that Plaintiff has no medical expenses arising out of or in any way connected with, directly or indirectly, the facts and/or allegations that form the basis of the Action, the occurrences described herein, and any consequences thereof, including any of Plaintiff's released claims, nor does Plaintiff anticipate any medical expenses arising out of or in any way connected with, directly or indirectly, the facts and/or allegations that form the basis of the Action, the occurrences described herein, and any consequences thereof, including any released claims. In the event Medicare asserts such a claim or right of reimbursement now, or at any point in the future, all such claims or rights of reimbursement shall be satisfied from among the proceeds of this settlement, and no additional monies shall ever be requested from or paid by the Released Parties. This settlement is based upon a good faith determination of the Parties to resolve disputed claims. The Parties have not shifted responsibility of medical treatment to Medicare in contravention of 42 U.S.C. § 1395y(b). The Parties resolved this matter in compliance with both state and federal law. The Parties made every effort to adequately protect Medicare's interest and incorporate such into the settlement terms. The Parties acknowledge and understand that any present or future action or decision by the Centers for Medicare & Medicaid Services ("CMS") or Medicare on this Agreement, or Plaintiff's eligibility or entitlement to Medicare or Medicare payments, will not render this release void or ineffective, or in any way affect the finality of this Agreement.

5.3 Release of Attorneys' Fees:

Plaintiff, the State of California and all Aggrieved Employees release on behalf of themselves and their respective present and former representatives, attorneys, heirs, administrators, employees, agents, successors and assigns, the Released Parties from all claims for the PAGA Counsel Fees Payment and PAGA Counsel Expenses Payment incurred in connection with or any way related to, the Action, the facts stated in the Action, and/or the PAGA Notice, except for the right to enforce the provisions of settlement providing for the PAGA Counsel Fees Payment and PAGA Counsel Expenses Payment.

6 MOTION OR STIPULATION FOR APPROVAL OF SETTLEMENT. The Parties agree to jointly prepare and file an application or motion for approval of this Settlement.

6.1 Plaintiff's Responsibilities. Plaintiff will prepare and deliver to Defense Counsel a motion for approval of PAGA Settlement, including all documents necessary for obtaining approval of this Settlement under Labor Code Section 2699, subd. (f)(2)) including (i) a draft proposed Order Granting Approval of PAGA Settlement; (ii) a signed declaration from the Administrator attaching its "not to exceed" bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Aggrieved Employee Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Aggrieved Employees or the LWDA; and the nature and extent of any financial relationship with Plaintiff, PAGA Counsel or Defense Counsel; (iii) a signed declaration from PAGA Counsel attesting to its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (1)(1)), this Agreement (Labor Code section 2699, subd. (1)(2)); and (iv) all facts relevant to any actual or potential conflict of interest with Aggrieved Employees and/or the Administrator. 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.

6.2 Responsibilities of PAGA Counsel. PAGA Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the stipulation or motion for approval of this Settlement and, if necessary, obtaining a prompt hearing date for the stipulation or motion and appearing in Court to advocate in favor of the stipulation or motion. PAGA Counsel is responsible for delivering the Court's Order Granting Approval of PAGA Settlement to the Administrator.

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

7 SETTLEMENT ADMINISTRATION.

7.1 Selection of Administrator. The Parties have jointly selected Phoenix Settlement Administrators to serve as the Administrator and verified that, as a condition of appointment, Phoenix Settlement Administrators agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.

7.2 Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports state and federal tax authorities.

7.3 Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation section 468B-l.

7.4 Administrator Duties. The Administrator has a duty to perform or observe all tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

8 AGGRIEVED EMPLOYEE SIZE ESTIMATES AND ESCALATOR CLAUSE

Based on its records, as of January 14, 2025, Defendant calculated that there were approximately 2,191 non-exempt employees that would be Aggrieved Employees and they worked approximately 38,185 pay periods. If the number of pay periods during the PAGA Period exceeds 38,185 pay periods by more than 10%, the Gross Settlement Amount will increase by a proportionate percentage (i.e., if the pay periods increased by 12%, the Gross Settlement Amount would increase by 2%). In the alternative, Defendant may elect to shorten the PAGA Period in order to stay within the 10% cushion and under this option the Gross Settlement Amount will not increase.

9 NULLIFICATION OF AGREEMENT. In the event: (i) the Court does not enter the Approval Order and approve the Released PAGA Claims specified herein; or (ii) the Settlement does not become final for any other reason, this Settlement Agreement shall be null and void. A reduction of the attorneys' fees and expenses and the Plaintiff's Representative Service Award shall not be grounds for nullification of this Settlement. If the Settlement is nullified, any order or judgment entered by the Court in furtherance of this Agreement shall be treated as void from the beginning, and the provisions contained herein shall be of no force or effect, and shall not be treated as an admission by the Parties or their counsel. In such a case, the Parties and any funds to be awarded under this Agreement shall be returned to their respective statuses as of the date and time immediately prior to the execution of this Agreement, and the Parties shall proceed in all respects as if this Agreement had not been executed, except that any fees already incurred by the settlement administrator shall be paid equally by both Parties.

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

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

10.2 Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material modification of this Agreement (including, but not limited to, the scope of release to be granted by Aggrieved Employees), this Agreement shall be null and void. The Parties shall nevertheless expeditiously work together in good faith to address the appellate court's concerns and try to obtain approval of the Settlement and entry of Judgment, sharing, on a 50-50 basis, any additional Administration Expenses reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify the Court's award of any payments to PAGA Counsel shall not constitute a material modification of the Judgment within the meaning of this paragraph, as long as the Gross Settlement Amount remains unchanged.

11 ADDITIONAL PROVISIONS.

11.1 No Admission of Liability or Representative Manageability 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 Defendant that any of the allegations in the Operative Complaint have merit or that Defendant has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that Defendant's defenses in the Action have merit. The Parties agree that representative treatment is for purposes of this Settlement only. If, for any reason the Court does not approve this Settlement, Defendant reserves all available defenses to the claims in the Action, and Plaintiff reserves the right to contest Defendant's defenses. The Settlement, this Agreement and Parties' willingness to settle the 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 or to support a defense of res judicata, collateral estoppel, release, or other theory of claim or issue preclusion or similar defense as to the claims being released in this Agreement).

11.2 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.

11.3 Attorney Authorization. PAGA Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiff and Defendant, 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.

11.4 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 and supplementing points and authorities 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 can seek the assistance of a mediator.

11.5 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.

11.6 No Tax Advice. Neither Plaintiff, PAGA Counsel, Defendant 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.

11.7 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.

11.8 Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.

11.9 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.

11.10 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.

11.11 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.

11.12 Use and Return of Aggrieved Employee Data. Information provided to PAGA Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the PAGA Data provided to PAGA Counsel by Defendant in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than 90 days after the Administrator discharges its obligation to pay out all Settlement funds, Plaintiff shall destroy all paper and electronic versions of Aggrieved Employee Data received from Defendant unless, prior to the Administrator's payment of all Settlement Funds, Defendant makes a written request to PAGA Counsel for the return, rather than the destructions, of Aggrieved Employee Data.

11.13 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.

11.14 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.

11.15 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 mailing by United States mail, or the day sent by email or messenger, addressed as follows:

To Plaintiff:

Nazo Koulloukian, Esq.
nazo@koullaw.com
KOUL LAW FIRM, APC
217 South Kenwood Street
Glendale, CA 91205

Sahag Majarian, Esq.
sahagii@aol.com
Garen Majarian, Esq.
garen@majarianlawgroup.com
MAJARIAN LAW GROUP, APC
18250 Ventura Blvd.
Tarzana, CA 91356

To Defendant:

Beth Kahn, Esq.
b.kahn@musickpeeler.com
Matthew Richardson, Esq.
m.richardson@musickpeeler.com
MUSICK, PEELER & GARRETT LLP
333 South Hope Street, Suite 2900
Los Angeles, CA 90071

11.16 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.

11.17 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 CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.

The Settlement Agreement consists of 19 pages, inclusive of Exhibit A.

Dated: 5/28/2025

Signed by:

72A523671DFA472...

Plaintiff Charles Poirier

Dated: ______________

for: Defendant D.G. Smith Enterprises, Inc.

11.17 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 CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.

The Settlement Agreement consists of 19 pages, inclusive of Exhibit A.

Dated: ______________ ______________________________________
Plaintiff Charles Poirier

DocuSigned by:
7D72640B944B40A...

Dated: 6/4/2025 ______________________________________
for: Defendant D.G. Smith Enterprises, Inc.

EXHIBIT A

[Date], 2025

[Settlement Administrator Name]
[Settlement Administrator Address]

[Employee Name]
[Employee Street Address]
[City, State Zip]

Re: Notice of PAGA Settlement Payment

Dear Current or Former D. G. Smith Enterprises, Inc., Employee:

You have received this notice because D. G. Smith Enterprises, Inc. ("Defendant") records indicate that you work or have worked for Defendant in California at some time between June 1, 2023, and January 14, 2025 (the "PAGA Period"). This notice relates to the settlement of a lawsuit titled *Charles Poirier v. D.G. Smith Enterprises, Inc.,* initiated on April 2, 2024, and pending in Superior Court of the State of California, County of Sacramento, Case No. 24CV006496 (the "Lawsuit").

In the Lawsuit, Plaintiff Charles Poirier ("Plaintiff") seeks civil penalties pursuant to the California Private Attorneys General Act ("PAGA"), a law which allows a Plaintiff to attempt to recover penalties on behalf of the State of California and on behalf of employees who Plaintiff claims were "aggrieved" by alleged wage and hour violations. In the Lawsuit, Plaintiff alleges that Defendant is liable for failure to pay for all hours worked including overtime hours and off the clock work, failure to pay minimum wage, failure to pay all wages due at termination, failure to timely pay all wages owed, failure to provide meal and rest breaks, failure to provide suitable seating, failure to provide cool-down periods, failure to provide safe working conditions, failure to pay reporting time pay, failure to provide accurate itemized wage statements and maintain accurate records, and failure to reimburse business expenses.

Defendant strongly disputes Plaintiff's allegations and maintains that it has fully complied with all applicable wage and hour laws. The Court has not issued any ruling regarding the merits of the Lawsuit. Nonetheless, to avoid the cost and distraction of litigation, Defendant has made a business decision to settle the Lawsuit, which settlement has been approved by the Court.

The enclosed settlement check represents your portion of the Court-approved PAGA settlement. You will not be retaliated against for cashing your check. Checks that are not cashed within 180 days of issuance will be voided and the funds will be transmitted to the California State Controller Unclaimed Payment Fund in your name. You may search for and claim unclaimed funds by visiting: https://www.sco.ca.gov/search_upd.html.

Regardless of what you do with the settlement check, you will have released claims for <u>penalties</u> arising under PAGA as asserted in the Lawsuit. This settlement does not release any individual claims for wages you may have against Defendant.

If you have any questions about this notice, please contact the Settlement Administrator, [NAME] at <<number/email>>. THIS NOTICE IS NOT AN EXPRESSION OF ANY OPINION BY THE COURT AS TO THE MERITS OF THE CLAIMS OR DEFENSES BY EITHER SIDE IN THE LAWSUITS. PLEASE DO NOT CONTACT THE COURT REGARDING THIS CASE.