PRIVATE ATTORNEYS GENERAL ACT SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

This Private Attorneys General Act Settlement Agreement and Release of Claims ("Agreement") is made by and between Plaintiff Zackery Hearell ("Plaintiff") for himself and on behalf of the State of California and all Aggrieved Employees, and D. G. Smith Enterprises, Inc. ("Defendant"). Plaintiff and the Defendant are collectively referred to as the "Parties" and individually as the "Party."

Capitalized terms used herein shall have the meanings set forth in Section 1 or elsewhere in this Agreement.

IT IS HEREBY STIPULATED AND AGREED by and among the undersigned Parties, subject to the approval of the Court, pursuant to section 2699 of the California Labor Code, that the Settlement of this Action shall be effectuated upon and subject to the following terms and conditions.

The Parties agree that the PAGA Claims (as defined in Section 1 below) shall be, and hereby are, ended, settled, resolved, and concluded without any admission of fault or liability on the part of the Defendant and by agreement of the Defendant to pay the gross settlement amount of Six Hundred Thousand Dollars and Zero Cents ($600,000.00) as provided in Section 3 below upon the terms and conditions of this Agreement and for the consideration set forth herein.

DEFINITIONS

Section 1: Definitions

Unless otherwise defined herein, the following terms used in this Agreement shall have the meanings ascribed to them as set forth below:

(a) "Action" means the civil action filed by Plaintiff on August 20, 2021, in Sacramento County Superior Court, Case Number 34-2021-00306690, titled *Hearell v. D. G. Smith Enterprises, Inc., et al.* and Plaintiff's first amended complaint filed on November 23, 2021. The term "Action" shall include any future amended complaints.

(b) "Agreement" means this Private Attorneys General Act Settlement Agreement and Release of Claims.

(c) "Aggrieved Employees" or "Aggrieved Employee" means past and present non-exempt, hourly-paid employees of Defendant who worked in California during the applicable PAGA Period.

(d) "Approval Order" means the signed [Proposed] Order for Judicial Approval of the Parties' Private Attorneys General Act Settlement Agreement and Release of Claims.

(e) "Settlement Administrator" means CPT Group, Inc., the third-party entity jointly selected by the Parties to perform all duties relating to the administration of the PAGA Settlement. The Parties agree that CPT Group, Inc. shall be the Settlement Administrator subject to the Court's approval.

(f) "Complaint" means the first amended complaint including any amendment thereto filed by Plaintiff in the Action.

(g) "Court" means the Superior Court for the State of California, County of Sacramento.

(h) "Defendant" or "the Defendant" means D. G. Smith Enterprises, Inc.

(i) "Defense Counsel" means:
Beth A. Kahn, Esq.
Matthew Richardson, Esq.
Clark Hill LLP
555 South Flower Street, 24th Floor
Los Angeles, CA 90071

(j) "Effective Date" means the later of the following: (a) if no one intervenes to object to the Settlement, then the Effective Date shall be the date the Court grants approval of this Agreement by signing the [Proposed] Order for Judicial Approval of the Parties' Private Attorneys General Act Settlement Agreement and Release of Claims (which includes, without limitation, a dismissal with prejudice of the PAGA Claims)(the "Order") and entering Judgment in accordance with the terms and conditions of this Agreement; (b) if someone intervenes to object to the Settlement, then all of Defendant's obligations under this Agreement shall be stayed until the time for seeking appeal from, review of, or writ relating to the objection has passed, which date shall then be the Effective date if no appeal, review or writ is sought; or (c) if an appeal, review or writ is sought, the date by which the final decision is made in any appeal, review or writ and the Order and Judgment are no longer subject to further appellate challenges or procedures.

(k) "Employee Net Settlement Amount" means the sum that constitutes twenty-five percent (25%) of the Net Settlement Amount.

(l) "Employee Settlement Share" means the portion of the Employee Net Settlement Amount that shall be paid to the Aggrieved Employees per the terms and conditions of this Agreement, which shall be determined by the calculations provided in Section 7 of this Agreement.

(m) "Judgment" means the method by which the Court adopts and approves the terms of the Settlement, enters the Approval Order, and retains jurisdiction over its enforcement, implementation, construction, administration, and interpretation.

(n) "LWDA" means the State of California Labor and Workforce Development Agency.

(o) "LWDA Notice" means the notice that Plaintiff sent to the LWDA on August 18, 2021 giving notice of his intent to pursue a representative PAGA action, on behalf of himself, the State of California, and other allegedly aggrieved employees.

(p) "LWDA Net Settlement Amount" means the sum that constitutes seventy-five percent (75%) of the Net Settlement Amount.

(q) "Net Settlement Amount" means the amount remaining from the Settlement Sum after deducting Service Payment, Plaintiff's Counsel's fees, costs, expenses, and the costs of the Settlement Administrator from the Settlement Sum.

(r) "Notice of PAGA Settlement" means the letter mutually agreed upon by the Parties and attached as Exhibit A hereto that will be sent by the Settlement Administrator to the Aggrieved Employees notifying them of the PAGA Settlement.

(s) "PAGA" means the Labor Code Private Attorneys General Act of 2004, California Labor Code section 2698, et seq.

(t) "PAGA Claims" means any and all claims, demands, rights, liabilities, and/or causes of action for penalties pursuant to PAGA, Labor Code Section 2698 et seq., that were asserted in Plaintiff's LWDA Notice and/or the Action for alleged violation of Labor Code sections 201, 202, 203, 101-203, 204, 210, 218.5, 218.6, 223, 226, 226.3, 226.7, 510, 512, 558, 1174(d), 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2698, et seq., 2698.6, et seq., 2699, et seq., 2699.3, 2802, Business and Professions Code sections 17200, et seq., 17201, and Code of Civil Procedure section 1021.5, and the applicable Industrial Welfare Commission Orders including, but not limited to, Order No. 5-2001.

(u) "PAGA Period" means at any time starting on and including June 16, 2020 up to and including May 31, 2023.

(v) "Parties" means Plaintiff and Defendant. "Party" refers to Plaintiff or Defendant individually.

(w) "Pay Period" means any pay period during which an Aggrieved Employee worked for Defendant for at least one day during the PAGA Period.

(x) "Plaintiff's Counsel" refers to:
Kane Moon, Esq.
Brett Gunther, Esq.
Moon & Yang, APC
1055 W. Seventh St., Suite 1880
Los Angeles, CA 90017

(y) "Released Parties" means the Defendant, and each and all of its respective current and former parents, subsidiaries, predecessors and successors, affiliates, corporate members, administrators, operators, shareholders, and their affiliated entities and each of their respective owners, officers, directors, employees, partners, shareholders, and agents, and any other successors, heirs, assigns, or legal representatives, any attorneys, insurers, claim representatives, and their future trustees, parent companies, subsidiaries, divisions, agents, employees, attorneys, representatives, consultants, insurers and reinsurers.

(z) "Service Payment" means amount to be paid to Plaintiff in recognition of Plaintiff's effort and work in prosecuting the Action on behalf of the State of California and Aggrieved Employees and for Plaintiff's general release of all claims. Subject to the Court granting approval of this Agreement, Plaintiff will request Court approval of a Service Payment of Seven Thousand Five Hundred Dollars and Zero Cents ($7,500.00). Plaintiff will be issued an IRS Form 1099 in connection with Plaintiff's Service Payment. Plaintiff shall be solely and legally responsible for paying any and all applicable taxes on the Service Payment and shall hold Defendant harmless from any claim or liability for taxes, penalties or interest arising as a result of the Service Payment. The Service Payment will be paid from the Settlement Sum and will be in addition to Plaintiff's share of the Employee Net Settlement Amount. Defendant made no representations as to the tax treatment or legal effect of the payment called for herein, and Plaintiff is not relying on any statement or representation by Defendant or Defense Counsel in this regard.

(aa) "Settlement" means the complete disposition of the PAGA Claims and all related claims, demands, rights, promises, covenants, actions, suits, causes of action, obligations, debts, costs, expenses, attorney's fees and costs, damages, penalties, fines, interest, injuries, compensation, judgments, orders and liabilities effectuated by this Agreement.

(bb) "Settlement Sum" means the total gross settlement amount of Six Hundred Thousand Dollars and Zero Cents ($600,000.00), subject to the escalator clause in Section 6(b) of this Agreement, to be paid by the Defendant to fully and finally settle, resolve and conclude the PAGA Claims and all related attorney's fees and costs as provided under this Agreement, without any admission of fault or liability.

NATURE OF ACTION

Section 2: Background

(a) On August 18, 2021, Plaintiff sent notice to the LWDA of his intent to pursue a representative PAGA action, on behalf of himself, the State of California and other allegedly aggrieved employees.

(b) On August 20, 2021, Plaintiff initiated the Action. The Action was brought on an individual basis and as a putative class action.

(c) On November 23, 2021, Plaintiff filed an amended complaint on a representative basis under PAGA. The Action contains a representative claim on behalf of Plaintiff, the State of California and other allegedly aggrieved employees under PAGA based on alleged violations of the California Labor Code.

(d) On January 25, 2022, the Court ordered that the class and individual allegations set forth in the action be dismissed.

(e) Plaintiff's PAGA claim alleges that the Defendant failed to pay employees for all hours worked, including minimum wages, overtime wages, in compliance with the California Labor Code and Industrial Welfare Commission Wage Orders ("IWC Wage Orders"); failed to maintain accurate records of the hours employees worked; failed to provide employees with timely and duty-free meal periods in compliance with the California Labor Code and IWC Wage Orders, failed to maintain accurate records of all meal periods taken or missed, and failed to pay an additional hour's pay for each workday a meal period violation occurred; failed to authorize and permit employees to take timely and duty-free rest periods in compliance with the California Labor Code and IWC Wage Orders, and failed to pay an additional hour's pay for each workday a rest period violation occurred; willfully failed to pay employees all minimum wages, overtime wages, meal period premium wages, and rest period premium wages due within the time period specified by California law when employment terminates; and failed to provide employees with accurate, itemized wage statements containing all of the information required by the California Labor Code and IWC Wage Orders, all in alleged violation of California Labor Code 201, 202, 203, 101-203, 204, 210, 218.5, 218.6, 223, 226, 226.3, 226.7, 510, 512, 558, 1174(d), 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2698, et seq., 2698.6, et seq., 2699, et seq., 2699.3, 2802, Business and Professions Code sections 17200, et seq., 17201, and Code of Civil Procedure section 1021.5, and the applicable Industrial Welfare Commission Orders including, but not limited to, Order No. 5-2001. Plaintiff seeks relief on a representative basis under PAGA on behalf of the State of California and the Aggrieved Employees.

(d) The Defendant disputes all of the allegations and causes of action asserted in the Action and denies any liability or wrongdoing of any kind associated with the claims alleged in the Action and Plaintiff's PAGA letter (the LWDA Notice). The Defendant contends, among other things, that at all times during the PAGA Period, it made good faith efforts to comply with the California Labor Code, the related California Industrial Welfare Commission Orders, and all other applicable wage or employment laws, and further contends that the Action is without merit.

(e) The Parties engaged in informal discovery regarding the Defendant's policies, practices, operations, payroll information and other topics related to this Action. This informal discovery included the production of documents pursuant to the settlement/mediation privilege, headcounts of all Aggrieved Employees, and pay periods worked. The Parties reached this Settlement only after informal discovery and investigation were performed.

(f) The Parties participated in a mediation with mediator Kelly Knight and, on March 24, 2023, reached the subject Settlement. The Settlement embodied in this Agreement relates to the PAGA claim in the Action and contemplates (a) issuance of a Court Order approving the Settlement, (b) entry of Judgment enforcing the terms of the Settlement, and retaining jurisdiction, (c) discharge of the Defendant from liability for any and all claims relating to the PAGA Claims (as defined in Section 1 above), (d) release by Plaintiff, the State of California and all Aggrieved Employees of all PAGA Claims against the Released Parties as more particularly set forth in Section 12, (e) all Parties bearing their respective fees and costs except as expressly provided in this Agreement, and (f) a general release by Plaintiff of Released Parties, including a waiver of any rights under California Civil Code section 1542.

SETTLEMENT FUNDS

Section 3: Allocation of the Settlement Sum

(a) In exchange for the releases, obligations, and promises set forth in this Agreement (and subject to the terms and conditions contained in this Agreement), the Defendant agrees to pay the Settlement Sum, which is the total and all-inclusive amount the Defendant will be obligated to pay under the Settlement embodied by this Agreement. Under no circumstances will the Defendant be required to pay more than the Settlement Sum to obtain the relief (i.e., the Settlement, release of claims by Plaintiff, the State of California and Aggrieved Employees, issuance of the Approval Order and Judgment) provided in this Agreement. The Settlement Sum, the maximum which the Defendant can pay under this Agreement, subject to the escalator clause in Section 6(b) of this Agreement, comprises the following:

(b) Plaintiff's Counsel shall request attorneys' fees of 33 and 1/3% of the Settlement Sum to procure the PAGA penalties, namely the total sum Two Hundred Thousand Dollars and Zero Cents ($200,000.00). If Plaintiff's Counsel's request for 33 1/3% of the Settlement Sum is not approved and is reduced by the Court, any amount not approved and/or reduced by the Court will revert to the Net Settlement Amount. Plaintiff agrees that other than the attorney fees approved by the Court herein, there are no liens for attorney fees arising out of the prosecution of the PAGA Claims.

(c) Plaintiff's Counsel shall request the Court to approve Plaintiff's Counsel's costs to be established by Plaintiff's Counsel up to Twenty Thousand Dollars and Zero Cents ($20,000.00) incurred in prosecuting the PAGA Claims. The costs approved by the Court shall be paid from the Settlement Sum. If Plaintiff's Counsel's request of up to Twenty Thousand Dollars and Zero Cents ($20,000.00) for costs is not approved and is reduced by the Court, any amount not approved and/or reduced by the Court will revert to the Net Settlement Amount. Plaintiff agrees that other than the costs approved by the Court herein, there are no liens for costs arising out of the prosecution of the PAGA Claims.

(d) Plaintiff's Counsel shall request up to Sixteen Thousand Dollars and Zero Cents ($16,000.00) of the Settlement Sum as payment to the Settlement Administrator for costs incurred by the Settlement Administrator in connection with the Settlement including, but not limited to, mailing of the Notice of PAGA Settlement described herein, and distributing the Settlement Sum. The Settlement Administrator costs shall not exceed Sixteen Thousand Dollars and Zero Cents ($16,000.00). To the extent that the costs of the Settlement Administrator exceed this amount, such costs shall be paid from the Settlement Sum; to the extent such costs are below this amount, the difference shall be added to the Net Settlement Amount.

(e) Plaintiff's Counsel shall request up to Seven Thousand Five Hundred Dollars and Zero Cents ($ 7,500.00) of the Settlement Sum for the Service Payment to Plaintiff;

(f) Plaintiff's Counsel shall request that 75% of the Net Settlement Amount, be distributed to the LWDA; and

(g) Plaintiff's Counsel shall request that 25% of the Net Settlement Amount shall be distributed to the Aggrieved Employees.

IMPLEMENTATION OF SETTLEMENT

Section 4: Court Approval

(a) Because this Action involves PAGA claims, this Agreement requires approval by the Court. Accordingly, the Parties enter into this Agreement on a conditional basis. This Agreement is expressly contingent upon the Court's unconditional approval of this Settlement, the terms and conditions of this Agreement. If Court approval is not given or the Approval Order is not entered under the specific terms requested, this entire Agreement shall automatically be deemed null and void, shall be of no force or effect whatsoever, and shall not be referred to or used for any purpose whatsoever.

(b) The Parties and their respective counsel shall take all steps that may be required by the Court relating to the approval and implementation of this Agreement and shall otherwise use their respective best efforts to obtain Court approval and implement this Agreement. If the Court does not grant the motion for approval and unconditionally issue the Approval Order and Judgment, under the specific terms requested, the Parties agree to meet and confer to address the Court's concerns in an effort to resolve the dispute and to resubmit the Agreement with revisions that are acceptable to the Parties and the Court.

(c) The Parties will jointly submit the [Proposed] Order for Judicial Approval of the Parties' Private Attorneys General Act Settlement Agreement and Release of Claims in connection with a motion to be filed by Plaintiff for such an order unconditionally approving this Agreement.

Section 5: Notice

Notice. Notice shall be provided in the following manner:

(a) No later than fifteen (15) calendar days after the Effective Date, the Defendant shall provide the Settlement Administrator with a list of all Aggrieved Employees ("Aggrieved Employees List"). The Aggrieved Employees' List shall state the first name and last name for each Aggrieved Employee; the last known home address for each Aggrieved Employee; each Aggrieved Employee's social security number, and each Aggrieved Employee's respective number of pay periods worked for the Defendant during the PAGA Period.

(b) Upon receipt of the Aggrieved Employees List, the Settlement Administrator shall run all addresses of the Aggrieved Employees through the United States Postal Service NCOA database (which provides updated addresses for any individual who has moved in the previous four years who has notified the U.S. Postal Service of a forwarding address) to obtain current address information. No later than thirty (30) calendar days after the Effective Date, the Settlement Administrator shall mail the Employee Settlement Share checks to all Aggrieved Employees by first-class United States mail, postage prepaid, to the last known address of each recipient with directions to the Postmaster to forward the Employee Settlement

Share checks to any forwarding addresses, and to return all undeliverable Employee Settlement Share checks to the Settlement Administrator. A letter approved by the Parties ("Notice of PAGA Settlement" attached hereto as Exhibit A) in advance of the motion to be filed by Plaintiff in connection with the Parties' submission of the [Proposed] Order for Judicial Approval of the Parties' Private Attorneys General Act Settlement Agreement and Release of Claims, will be included in the mailing of each Aggrieved Employee's Employee Settlement Share check. It will be conclusively presumed that an Aggrieved Employee's Employee Settlement Share check was received if such check has not been returned within twenty-one (21) calendar days of the original mailing. The date of the initial mailing of the Employee Settlement Share check shall be conclusively determined according to the records of the Settlement Administrator.

(c) No later than thirty (30) calendar days after the Defendant deposits the Settlement Sum with the Settlement Administrator, the Settlement Administrator shall mail the LWDA and Plaintiff's Counsel their respective shares of the Settlement Sum.

(d) No later than thirty (30) calendar days after the Defendant deposits the Settlement Sum with the Settlement Administrator, the Settlement Administrator shall mail Plaintiff the Service Payment.

(e) No later than thirty (30) calendar days after the Defendant deposits the Settlement Sum with the Settlement Administrator, the Settlement Administrator shall pay itself up to the Sixteen Thousand Dollars and Zero Cents ($16,000.00) allocated to it for administration fees.

Section 6: Settlement Payment Deposit

(a) No later than 12 months after the Effective Date, the Defendant shall deposit the Settlement Sum with the Settlement Administrator.

(b) Escalator Clause. This Settlement is based on Defendant's representation that there are approximately 3,763 Aggrieved Employees for the period from June 16, 2020 to March 16, 2023, and approximately 70,245 Pay Periods for the period from June 16, 2020 and extrapolating to March 24, 2023. If the actual number of employee Pay Periods encompassed within the PAGA Period exceeds 70,245 by more than 10%, then, Defendant at its exclusive discretion may agree to increase the Settlement Sum proportionately for any excess increase in the total number of Aggrieved Employees. For example, if the total number of Aggrieved Employees increases by 11%, the Settlement Sum will increase by 1% (actual increase minus the 10% tolerated increase). In the alternative, Defendant shall have the exclusive option to modify the applicable PAGA Period to a date prior to May 31, 2023 to avoid incurring the pro rata increase.

Section 7: PAGA Payments

The total sum available for payment of PAGA penalties shall be calculated by deducting Plaintiff's Counsel's fees and costs, the service award to Plaintiff and the costs of claim administration collectively referenced in Section 3(b), (c), (d), and (e) from the Settlement Sum, which will yield the "Net Settlement Amount." Seventy-five percent (75%) of the Net Settlement Amount shall be paid to the LWDA ("LWDA Net Settlement Amount"); the remaining twenty-five percent (25%) of the Net Settlement Amount (the "Employee Net Settlement Amount") shall be paid to Aggrieved Employees based on the following formula:

(a) The LWDA Net Settlement Amount shall be sent to LWDA by the Settlement Administrator in accordance with the deadlines established in Section 5 (c) above.

(b) Plaintiff and each Aggrieved Employee shall receive a portion of the Employee Net Settlement Amount on a pro rata basis by multiplying the Employee Net Settlement Amount by the ratio of (i) the number of pay periods worked by the Aggrieved Employee any time during the PAGA Period to (ii) the total number of pay periods worked by all Aggrieved Employees during the PAGA Period. No benefit, including but not limited to 401(k), shall increase or accrue as a result of any payment made as a result of this settlement.

(c) The Parties recognize that the settlement amounts to be paid to the Aggrieved Employee are penalties and not subject to payroll tax withholdings. The Parties agree that the Aggrieved Employee payments shall be reported as interest and penalties on IRS Form 1099 and its state and local equivalent.

(d) To the extent any Aggrieved Employee disputes any aspect of his or her payment, that Aggrieved Employee must produce supporting evidence to the Settlement Administrator. Defendant's records will be presumed determinative.

(e) The settlement checks issued to the Aggrieved Employees shall remain valid for one hundred eighty (180) days. Thereafter, those checks will be cancelled and all unclaimed funds shall be transmitted to the California State Controller to be held in the name of the Aggrieved Employee in the unclaimed property fund.

JUDGMENT

Section 8: <u>Judgment</u>

Plaintiff will submit the [Proposed] Order for Judicial Approval of the Parties' Private Attorneys General Act Settlement Agreement and Release of Claims to be entered by the Court to enforce this Agreement and enter Judgment in accordance with the terms of this Agreement. In connection with the [Proposed] Order for Judicial Approval of the Parties' Private Attorneys General Act Settlement Agreement and Release of Claims, the Parties will submit a proposed final judgment requesting the entry of judgment in the amount of the Settlement Sum.

LIMITATIONS ON USE OF THIS SETTLEMENT

Section 9: <u>No Admission</u>

The Defendant disputes the allegations and each and every cause of action in the Action. This Agreement is entered into solely for the purpose of compromising highly disputed claims. This Agreement and the payment of the Settlement Sum and the other considerations recited herein represent the compromise of disputed claims. Nothing in this Agreement is intended or will be construed as an admission of liability, unlawful conduct, or wrongdoing by the Released Parties.

Nothing in this Agreement, nor any action taken in implementation thereof, nor any statements, discussions or communications, nor any materials prepared, exchanged, issued or used during the course of the negotiations leading to this Agreement, is intended by the Parties to constitute, nor will any of the foregoing constitute, be introduced, be used or be admissible in any way in this case or any other judicial, arbitral, administrative, investigative or other forum or proceeding as evidence of any violation of any federal, state, or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity. The Parties agree not to introduce, use, or admit this Agreement, directly or indirectly, in this case or any other judicial, arbitral, administrative, investigative or other forum or proceeding, as purported evidence of any violation of any federal, state, or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity, or for any other purpose. Notwithstanding the foregoing, this Agreement may be used in any proceeding before the Court that has as its purpose the interpretation, implementation, or enforcement of this Agreement or any orders or judgments of the Court entered in connection with the Agreement. Neither the existence of this Settlement nor anything contained in this Agreement, nor any action taken in implementation thereof, nor any statements, discussions or communications, nor any materials prepared, exchanged, issued or used during the course of the negotiations leading to this Agreement, shall be construed or deemed a waiver of the Defendant's rights to compel arbitration of any dispute with any Aggrieved Employee.

None of the documents produced or created by the Defendant, Plaintiff or the Aggrieved Employees in connection with the claims procedures or claims resolution procedures constitute, and they are not intended to constitute, an admission by the Defendant of any violation of any federal, state, or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity.

Section 10: <u>Non-Evidentiary Use</u>

Whether or not the Approval Order is executed and entered by the Court, neither this Agreement nor any of its terms (including, but not limited to, the payment of the Settlement Sum) nor the Settlement itself will be: (a) construed as, offered, or admitted in evidence as, received as, or deemed to be evidence for any purpose adverse to any of the Released Parties, including but not limited to, evidence of a presumption, concession, indication, or admission by any of the Released Parties of any liability, fault, wrongdoing, omission, concession, or damage, or (b) disclosed, referred to, or offered in evidence against any other civil, criminal, and/or administrative action or proceeding, except for the purposes of effectuating the Settlement pursuant to this Agreement and/or for the Released Parties to establish that an Aggrieved Employee has resolved any of his/her claims released through this Agreement. Either Party, however, may introduce the Agreement as evidence in an action to enforce its terms.

Section 11: <u>Nullification</u>

(a) If (i) the Court should for any reason fail to approve this Settlement in the specific form agreed to by the Parties as described in this Agreement or (ii) the Court should for any reason fail to enter the Approval Order, or (iii) the Approval Order or Judgment is reversed, modified, or declared or rendered void, or (iv) the Court should for any reason fail to enter Judgment on the PAGA Claims, then this Agreement shall be considered null and void.

In that instance, (i) neither this Agreement nor any of the related negotiations or proceedings shall be of any force or effect, and (ii) all Parties to this Agreement shall stand in the same position, without prejudice, as if the Agreement had been neither entered into nor filed with the Court; (iii) the Defendant will not have any obligation to pay any portion of the Settlement Sum to anyone under the terms of this Agreement, and all previous disbursements (if any) from the Settlement Sum will immediately be paid back to the Defendant by the person(s) and/or entity who received such disbursement; and (iv) the first amended complaint shall be the Complaint.

(b) If the Court approves this Settlement on terms and conditions that are materially different than those set forth in the Approval Order, then Plaintiff and the Defendant will each have the right to void the Settlement, which the Party must do by giving written notice to the other Party and the Court not later than ten (10) business days after the Court's entry of the Approval Order.

RELEASE AND WAIVER OF CLAIMS

Section 12: Release

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

Nothing in this Agreement is intended to or shall preclude Plaintiff and Aggrieved Employees from filing a complaint and/or charge with any appropriate federal, state, or local government agency and/or cooperating with said agency in its investigation. Plaintiff and Aggrieved Employees retain the right to file a charge with, and to participate in an investigation conducted by, any appropriate government agency charged with enforcement of any law and the right to engage in concerted activity granted by Section 7 of the National Labor Relations Act. Plaintiff and Aggrieved Employees, however, shall not be entitled to receive any civil penalties for the PAGA Claims in connection with any complaint or charge brought against any Released Party for claims arising on or before the date Plaintiff executes this Agreement, without regard as to who brought said complaint or charge.

Section 13: Plaintiff's Release

(a) Upon the Effective Date and as a condition of receiving the Service Payment, 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 for: (1) failure to pay minimum and regular rate wages [Cal. Lab. Code sections 204, 1194, and 1197]; (2) failure to pay overtime compensation [Cal. Lab. Code §§ 1194 and 1198]; (3) failure to provide meal periods [Cal. Lab. Code §§ 226.7, 512]; (4) failure to authorize and permit rest breaks [Cal. Lab. Code §§ 226.7]; (5) failure to timely pay final wages at termination [Cal. Lab. Code §§ 201-203]; (6) failure to provide accurate itemized wage statements [Cal. Lab. Code § 226]; (7) unfair business practices [Cal. Bus. & Prof. Code §§ 17200, et seq.]; and (8) Civil Penalties Under PAGA [Cal. Lab. Code § 2699, et seq.]), 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 §§ 201, 202, 203, 204, 218.5, 218.6, 221, 222, 223, 224, 226, 226.3, 226.7, 233, 234, 246.5, 432, 432.7, 510, 512, 558, 1102.5, 1194, 1194.2, 1198, 1198.5, 2698, 2699, 2800, 2802, 6304, 6310, 6311, 6400, 6401, 6402, 6403, 6404, and 6405, and California Code of Regulations §§ 3364 and 11069(b)(2), IWC Wage Orders, California Business & Professions Code §§ 17200, et seq., 17203, and 17204, California Code of Civil Procedure §§ 1021.5, 1060, California Civil Code § 3294, 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.

Section 14: Miscellaneous Provisions

(a) No person shall have any claim of any kind whatsoever against any of the Parties, Defense Counsel, and/or Plaintiff's Counsel, based on distribution of the Settlement Sum (including, without limitation, the LWDA Net Settlement Amount, the Employee Net Settlement Amount, and/or the Employee Settlement Share) made in accordance with this Agreement.

(b) In the event any taxing authority asserts that Plaintiff failed to pay any tax liability resulting from the payments made hereunder, and the Defendant is made to pay any taxes, settlements, interest, penalties, and/or other sums (hereinafter collectively referred to as "Tax Payments") to a taxing authority as a result of the payments to Plaintiff made hereunder, Plaintiff shall fully defend, indemnify, hold harmless, and reimburse the Defendant and/or its insurer(s) for any and all such Tax Payments upon demand and reasonable verification of sums paid.

(c) This Agreement is executed voluntarily and without duress or undue influence on the part of or on behalf of any of the Parties, or of any other person, firm or other entity.

(d) The terms and provisions of this Agreement may be amended only by a written agreement that is both (a) signed by all of the Parties (or their successors in interest) and (b) approved by the Court. Any waiver of any provision of this Agreement shall not constitute a waiver of any other provision of this Agreement unless expressly so indicated otherwise.

(e) None of the rights, commitments, or obligations recognized under this Agreement may be assigned by any Party, Aggrieved Employees or Plaintiff's Counsel without the express written consent of each other Parties hereto. The representations, warranties, covenants, and agreements contained in this Agreement are for the sole benefit of the Parties under this Agreement and shall not be construed to confer any right or to avail any remedy to any other person. Plaintiff expressly warrants that he has not transferred to any person or entity any right or cause of action, or claim released by this Agreement.

(f) This Agreement shall be governed, construed, and interpreted, and the rights of the Parties shall be determined, in accordance with the laws of the State of California and will be enforceable pursuant to California Code of Civil Procedure § 664.6.

(g) Plaintiff's Counsel and Plaintiff represent that there is no agreement with any other attorneys to split any attorneys' fees that may result from the Action.

(h) Plaintiff's Counsel represents that they do not represent anyone in connection with a potential claim against Released Parties. This provision is not intended to, and shall not, restrict any individual's right to the counsel of his or her choice, including Plaintiff's Counsel.

(i) This Agreement sets forth the entire agreement between the Parties regarding the PAGA Claims being settled herein and supersedes all prior agreements and understandings among the Parties hereto with respect to the subject matter hereof, including, without limitation, correspondence between Plaintiff's Counsel and Defense Counsel. There are no restrictions, promises, representations, warranties, covenants, or undertakings governing the subject matter of this Agreement, except as expressly set forth in this Agreement.

(j) Any failure of any Party to comply with any obligation, covenant, agreement, or condition herein may be expressly waived in writing, to the extent permitted under applicable law, by the Party or Parties entitled to the benefit of such obligation, covenant, agreement, or condition. A waiver or failure to insist upon strict compliance with any representation, warranty, covenant, agreement, or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

(k) This Agreement and any amendments may be executed in any number of counterparts and any Party may execute any such counterpart, each of which when executed and delivered shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument. It shall not be necessary in making proof of this Agreement or any counterpart hereof to produce or account for any of the other counterparts. A facsimile signature or signature scanned and sent by electronic mail shall have the same force and effect as an original signature. This Agreement may be executed using DocuSign or any other similar software.

(l) Should any portion of this Agreement be declared or be determined to be illegal, invalid, or unenforceable, the validity of the remaining parts, terms, or provisions shall not be affected thereby and said illegal, invalid, or unenforceable part, term, or provision shall be deemed not to be a part of this Agreement. Before declaring any provision of this Agreement invalid, the Court will first attempt to construe the provisions as valid to the fullest extent possible consistent with applicable law and precedents so as to make all provisions of this Agreement valid and enforceable.

(m) Except as expressly provided herein, each Party shall bear their own attorney's fees and costs. No Aggrieved Employee (including, but not limited to, Plaintiff) or Plaintiff's Counsel or any other attorney acting for any Aggrieved Employee may recover or seek to recover any amounts for fees, costs, or disbursements from the Released Parties or the Settlement Sum in relation to the subject matter of this Agreement except as expressly provided.

(n) Should any dispute(s) arise among the Parties or their respective counsel regarding the implementation or interpretation of this Agreement, a representative of Plaintiff's Counsel and a representative of Defense Counsel shall meet and confer in an attempt to resolve such disputes prior to submitting any such dispute(s) to the Court. To the extent any Party seeks to enforce any of the terms of this Agreement in Court or before the Court, the prevailing Party shall be entitled to recover reasonable attorneys' fees and costs.

(o) This Agreement shall bind and inure to the benefit of the Parties hereto and to their respective successors, assigns, legatees, heirs, and personal representatives.

(p) 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.

(q) The Parties have cooperated in the negotiation and preparation of this Agreement. This Agreement and the provisions contained herein shall not be construed or interpreted for or against any Party hereto because that Party drafted or caused that Party's legal representative to draft any of the provisions in the Agreement.

(r) The Parties agree that this settlement is fair, adequate, and reasonable, and will so represent to the Court. In addition, mediator Kelly Knight may, at his discretion, execute a declaration supporting the settlement, and the Court may, in its discretion, contact Kelly Knight to discuss the settlement, and whether the settlement is fair and reasonable.

(s) The Parties agree to fully cooperate with each other to accomplish the terms of this Agreement, including but not limited to execution of such documents, and to take such other action as may reasonably be necessary to implement the terms of this Agreement. The Parties to this Agreement shall use their best efforts, including without limitation all efforts contemplated by this Agreement, to effectuate this Agreement and the terms set forth herein.

(t) Plaintiff and Plaintiff's Counsel agree that they will not issue any press releases, initiate any contact with the press, respond to any press inquiry, post on any internet website, or have any communication with the press about the Action, and/or the fact, amount or terms of the settlement. Before the date of the filing of the motion for approval of the Settlement, Plaintiff and Plaintiff's Counsel will not initiate any contact with Aggrieved Employees or anyone else about the settlement, except that: (a) Plaintiff's Counsel, if contacted by an Aggrieved Employee, may respond that a settlement has been reached; and (b) the Plaintiff, if contacted by an Aggrieved Employee, may respond only that the Aggrieved Employee should contact Plaintiff's Counsel. If the Plaintiff or Plaintiff's Counsel violates this paragraph of this Agreement, including without limitation, by making a disclosure to any non-Aggrieved Employees that (a) a settlement has been reached or (b) any of the terms of the settlement, before the Court has approved the Settlement, Defendant may rescind the Settlement, rendering it null and void.

(u) The Parties represent and acknowledge that they have carefully read and understand all of the provisions of this Agreement. The Parties represent and acknowledge that they have been advised in writing, and have been afforded the right and opportunity to, consult with an attorney prior to executing this Agreement. The Parties have made such investigation of the facts and the law pertaining to the matters described herein and to this Agreement as they deem necessary, and have not relied, and do not rely, on any statement, promise, or representation of fact or law, made by any of the other Parties, or any of their agents, employees, attorneys, or representatives, with regard to any of their rights or asserted rights, or with regard to the advisability of making and executing this Agreement, or with respect to any such matters. The Parties further acknowledge and confirm that the only consideration for their signing this Agreement is the terms and conditions expressly stated in this Agreement, and that no other promise, representation, warranty, inducement or agreement of any kind, other than those set out in this Agreement regarding the PAGA Claims, has been made to them by any person to cause them to sign this Agreement.

(v) Each Party acknowledges and agrees that:

(1) No provision of this Agreement, and no written communication or disclosure between or among the Parties or their attorneys and other advisors, is or was intended to be, nor shall any such communication or disclosure constitute or be construed or be relied upon as, tax advice within the meaning of U.S. Treasury Dept. Circular 230 (31 C.F.R. Part 10, as amended);

(2) Each Party (a) has relied exclusively upon her, his, or its own, independent legal and tax counsel for advice (including tax advice) in connection with this Agreement, (b) has not entered into this Agreement based upon the recommendation of any Party or any attorney or advisor to any Party, and (c) is not entitled to rely upon any communication or disclosure by any attorney or advisor to any Party to avoid any tax penalty that may be imposed on the Party; and

(3) No attorney or advisor to any Party has imposed any limitation that protects the confidentiality of any such attorney's or adviser's tax strategies (regardless of whether such limitation is legally binding) upon disclosure by the Party of the tax treatment or tax structure of any transaction, including any transaction contemplated by this Agreement.

(w) To the extent that any deadline set forth in this Agreement falls on a Saturday, Sunday or legal holiday, that deadline shall be continued until the following business day.

(x) The Parties agree to stay and hold all proceedings in the Action in abeyance, except such proceedings necessary to implement and complete the Settlement.

IN WITNESS WHEREOF the Parties have voluntarily executed this Private Attorneys General Act Settlement Agreement and Release of Claims on the date(s) set forth below. By signing this Agreement, each Party stipulates, agrees, and warrants as follows: (i) that the person signing this Agreement will not challenge or contest in any way the capacity or authority of any Party hereto to enter into this Agreement; and (ii) that the person signing this Agreement has the necessary and appropriate authority and capacity to enter into this Agreement and to make this Agreement fully binding upon and enforceable against the Party on whose behalf the Agreement was signed.

APPROVED AND ACCEPTED.

Dated: 3/21/2024

DocuSigned by:
1FD87F7D7D644B4...
Zackery Hearell

Dated: ________________

____
D.G. Smith Enterprises, Inc.
By: ______________________________
[Print Name] ______________________________
[Title] ______________________________

(w) To the extent that any deadline set forth in this Agreement falls on a Saturday, Sunday or legal holiday, that deadline shall be continued until the following business day.

(x) The Parties agree to stay and hold all proceedings in the Action in abeyance, except such proceedings necessary to implement and complete the Settlement.

IN WITNESS WHEREOF the Parties have voluntarily executed this Private Attorneys General Act Settlement Agreement and Release of Claims on the date(s) set forth below. By signing this Agreement, each Party stipulates, agrees, and warrants as follows: (i) that the person signing this Agreement will not challenge or contest in any way the capacity or authority of any Party hereto to enter into this Agreement; and (ii) that the person signing this Agreement has the necessary and appropriate authority and capacity to enter into this Agreement and to make this Agreement fully binding upon and enforceable against the Party on whose behalf the Agreement was signed.

APPROVED AND ACCEPTED.

Dated: ______________

____
Zackery Hearell

Dated: 3-15-2024

D.G. Smith
____
D.G. Smith Enterprises, Inc.
By: DAVID SMITH
[Print Name]
[Title] PRESIDENT