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Attorneys for Plaintiff Chondra Phillips

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA

Chondra Phillips, as an aggrieved employee
pursuant to the Private Attorneys General Act,

Plaintiff,

vs.

A-TEAM DELIVERS LLC; and DOES 1
through 50, inclusive,

Defendant.

Case No. RG21104034

**PAGA SETTLEMENT AND RELEASE
AGREEMENT**

[Assigned for all purposes to The Honorable
Somnath Raj Chatterjee, Dept. 517]

Action Filed: June 15, 2021
Trial Date: N/A

Plaintiff CHONDRA PHILLIPS (“Plaintiff”), individually and in her capacity as a representative of the State of California on behalf of other aggrieved employees, and Defendant A-TEAM DELIVERS, LLC (“Defendant”), enter into this PAGA Settlement and Release Agreement (“Settlement”) as follows:

I. DEFINITIONS

As used in this Settlement, these terms shall have these meanings:

“Action” means this action, entitled *Chondra Phillips v. A-Team Delivers, LLC*, Alameda County Superior Court, Case No. RG21104034.

“Defendant” means A-Team Delivers, LLC.

“Defense Counsel” means Tim L. Johnson, Nikolas T. Djordjevski, and Yousaf M. Jafri of Ogletree, Deakins, Nash, Smoak & Stewart, P.C.

“Effective Date” means the date upon which both the following have occurred: (i) approval of the Settlement is granted by the Alameda County Superior Court or other court assuming jurisdiction of this matter, and the Action is dismissed with prejudice, and (ii) the Court’s order approving the Settlement becomes Final.

“Final” shall mean the latest of: (i) if there are no objections to the Settlement, the date approval of the Settlement is granted by the Alameda County Superior Court or other court assuming jurisdiction of this matter, and the Action is dismissed with prejudice; (ii) if there are objections to the Settlement and if there is an appeal of the Court’s approval order, the date the approval order is affirmed on appeal, the date of dismissal of such appeal, or the expiration of the time to file a petition for review to the California Supreme Court; (iii) if there are objections to the Settlement and if a petition for review is filed, the date of denial of the petition for review, or the date the approval order is affirmed pursuant to such petition; or (iv) if there are objections to the Settlement and if no appeal is filed, the day following the expiration date for filing or noticing any appeal of the approval order.

“LWDA” means the California Labor and Workforce Development Agency.

“PAGA” means the California Labor Code Private Attorneys General Act of 2004, codified at California Labor Code §§ 2698 *et seq.*

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1 “PAGA Members’ Information” means the MS Excel Spreadsheet that Defendant shall
2 transmit via email to the Settlement Administrator containing each “PAGA Settlement Members” (i)
3 full name; (ii) their last known mailing address; (iii) their social security number; and (iv) the number
4 of pay periods worked during the “PAGA Period.”

5 “PAGA Notice” means the letter(s) Plaintiff filed with the LWDA on behalf of herself and
6 all other aggrieved employees alleging Defendant committed certain violations of the California
7 Labor Code.

8 “PAGA Period” means April 1, 2020 through February 10, 2022.

9 “PAGA Settlement Members” means all hourly-paid, non-exempt employees who worked
10 for Defendant in California at any time during the PAGA Period. Defendant represents that the total
11 number of PAGA Settlement Members is approximately 374 individuals.

12 “Plaintiff” means Chondra Phillips, individually and in her capacity as representative of the
13 State of California on behalf of other aggrieved employees.

14 “Plaintiffs’ Counsel” means Alexander I. Dychter of Dychter Law Offices, APC.

15 “Parties” means Plaintiff and Defendant.

16 “Released Claims” means any and all claims for the recovery of civil penalties under PAGA,
17 whether known or unknown, as well as for attorney fees and litigation costs arising therefrom, which
18 Plaintiff and/or the PAGA Settlement Members alleged, or could have alleged, against the Released
19 Parties, arising out of the facts, circumstances, and primary rights in the operative Complaint in this
20 Action.

21 “Released Parties” means Defendant and all of its past and present owners, officers, directors,
22 shareholders, employees, agents, assigns, attorneys, insurers, parent companies, subsidiaries, and
23 affiliates, and their respective predecessors, successors, and assigns.

24 “Settlement Administrator” means Atticus Administration, LLC.

25 **II. RECITALS**

26 A. On April 1, 2021, Plaintiff’s counsel sent a letter to the LWDA on behalf of Plaintiff
27 pursuant to California Labor Code § 2699.3. Plaintiff sought to represent herself and all PAGA
28 Settlement Members. At no time did the LWDA indicate its intention to investigate the alleged

violations referenced in the letter.

B. Thereafter, on June 15, 2021, Plaintiff's counsel filed a civil lawsuit alleging the violations set forth in the PAGA Notice as grounds for recovering civil penalties.

C. The Parties subsequently agreed to engage in private mediation, which took place on December 16, 2021, with mediator Kristin Rizzo, Esq. The Parties engaged in extensive informal discovery prior to mediation. The Parties also engaged in extensive negotiations at mediation, which involved substantial offers and counteroffers between the Parties for an entire day. The Action resolved, with the assistance of Kristin Rizzo, Esq., ultimately culminating in this Settlement.

D. Counsel for all Parties have thoroughly investigated the facts relating to the claims alleged in the operative Complaint and made a thorough study of the legal principles applicable to the claims asserted against Defendant. Plaintiff's Counsel concluded the Settlement is fair, reasonable, and adequate in light of all known facts and circumstances, including the defenses asserted by Defendant, potential adverse findings regarding liability, numerous potential appellate issues, and Defendant's financial condition.

E. Defendant denies, and continues to deny, each and every claim and contention alleged in the PAGA Notice, and has always maintained that it never engaged in any unlawful acts regarding any of the matters alleged in the PAGA Notice.

NOW, THEREFORE, in consideration of the mutual covenants, promises, and conditions set forth, the Parties agree as follows.

III. NON-ADMISSION OF LIABILITY

Based on the factual and legal issues involved, the expense and time necessary to prosecute the Action through trial, the risks, uncertainty, and costs of further prosecution, the financial status of Defendant, the difficulty of proof necessary to establish a class or manageable group for purposes of liability, and the relative benefits to the PAGA Settlement Members of an expeditious resolution to the Action, the Parties have concluded that the terms set forth in this Settlement are fair, reasonable, adequate, and in the best interests of the PAGA Settlement Members.

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By entering into this Settlement, Defendant denies any liability for any of the claims in the Action, as well as any other potential or unknown claims based on wage and hour violations under California or federal law. Neither this Settlement, nor any document referred to or contemplated herein, nor any action taken to carry out this Settlement, may be construed as, or may be used as, an admission, concession, or indication by or against Defendant of any unlawful conduct, fault, wrongdoing or liability whatsoever. Defendant specifically denies that it has engaged in any unlawful or wrongful conduct against Plaintiff or the PAGA Settlement Members.

IV. TERMS OF THE PAGA SETTLEMENT

A. Gross Settlement Amount and PAGA Members' Information

Defendant shall pay a non-reversionary monetary settlement payment in the total amount of \$98,000 ("Gross Settlement Amount" or "GSA"). The Gross Settlement Amount is the maximum amount Defendant can be required to pay under this Settlement. Defendant shall submit the GSA to the Settlement Administrator within thirty (30) calendar days of the Effective Date ("Final Payment Date"). Defendant shall transmit the PAGA Member's Information via e-mail to the Settlement Administrator within thirty (30) calendar days of the Effective Date.

B. Settlement Administrator's Fees and Costs

The Settlement Administrator shall calculate and distribute payments to individual PAGA Settlement Members and to the LWDA. The Settlement Administrator will skip-trace and re-mail all returned, undeliverable mail within seven days of receiving notice that the mailing was undeliverable. The Settlement Administrator will also handle payment of Plaintiffs' Counsel's attorney fees and costs as approved by the Court. Settlement Administrator's Fees are estimated to be \$3,516 and are to be paid from the Gross Settlement Amount.

C. Attorneys' Fees and Costs

A total of 35% of the Gross Settlement Amount (estimated to be \$34,300) shall be allocated as attorneys' fees and up to \$9,000 shall be allocated as costs, payable to Plaintiff's Counsel (*i.e.* "Dychter Law Offices, APC") and issued via an IRS Form 1099-Misc. The Settlement Administrator will mail the payment to Plaintiff's Counsel's offices at 180 Broadway, Suite 1835, San Diego, California 92101.

1 **D. General Release Payment to Plaintiff**

2 A total of \$5,000 will be paid to Plaintiff as a PAGA Representative Service Award in
3 consideration for her general release of claims, including her individual claims, as set forth in Section
4 VI.C., *infra*. The General Release Payment will be considered miscellaneous income. The
5 Settlement Administrator will issue a Form 1099-Misc., and any other required tax form(s), to
6 Plaintiff relating to this payment.

7 **E. PAGA Fund**

8 A total of approximately \$46,184 of the GSA shall be allocated toward payment to the LWDA
9 and PAGA Settlement Members (“PAGA Fund”). 75% of the PAGA Fund (approximately \$34,638)
10 will be sent to the LWDA and 25% of the PAGA Fund (approximately \$11,546) will be allocated
11 among the PAGA Settlement Members based on proportionate number of pay periods worked during
12 the PAGA Period as set forth in Section V.B., *infra*.

13 **V. COMPUTATION AND DISTRIBUTION OF THE PAGA FUND**

14 **A. Payment of the PAGA Fund**

15 Within 10 business days after the Final Payment Date, the Settlement Administrator shall
16 distribute Plaintiff’s Counsel’s attorney fees and costs, the General Release Payment to Plaintiff, and
17 respective amounts of the PAGA Fund to the LWDA and to the PAGA Settlement Members.
18 Payments to PAGA Settlement Members shall be made via U.S. Mail to their last known addresses.
19 Prior to conducting the mailing to PAGA Settlement Members, the Settlement Administrator shall
20 conduct a search of the National Change of Address (“NCOA”) database to update PAGA Settlement
21 Members mailing addresses, as applicable, prior to the initial mailing.

22 **B. Formula for Calculating Share of PAGA Fund**

23 The portion of the PAGA Fund to be paid to each PAGA Settlement Member shall be
24 determined based on this formula:

25 The payments to PAGA Settlement Members will be based on the number of pay periods for
26 each PAGA Settlement Member worked during the PAGA Period. The value of a pay period will
27 be calculated by dividing the portion of the PAGA Fund paid to PAGA Settlement Members by the
28 total number of pay periods for all PAGA Settlement Members during the PAGA Period. The

1 resulting value will then be multiplied by the number of pay periods for each PAGA Settlement
2 Member to calculate the individual PAGA payment (“Individual Payment”). Defendant’s records
3 shall be determinative for purposes of calculating the number of pay periods and any payments to
4 PAGA Settlement Members.

5 **C. Distribution of PAGA Fund**

6 The Settlement Administrator shall pay an amount equivalent to 75% of the PAGA Fund to
7 the LWDA, or as otherwise directed by the Court. A copy of the check that the Settlement
8 Administrator mails to the LWDA shall be provided to Plaintiff’s Counsel within five (5) business
9 days of mailing.

10 The Settlement Administrator shall also distribute each Individual Payment to each PAGA
11 Settlement Member, or as otherwise directed by the Court, by postmarked First Class U.S. Mail. The
12 Settlement Administrator shall maintain a list of the postmarked dates for the original mailing of
13 each Individual Payment to the PAGA Settlement Members and a list of PAGA Settlement Members
14 who did not receive the Individual Payment, if any, due to the inability to locate a valid address.

15 All settlement checks will remain valid and negotiable for 180 days from the date of their
16 execution. After 180 days, any uncashed checks will be void and escheat to the State of California
17 Controller’s Office – Unclaimed Property Fund in the names of the PAGA Settlement Members who
18 did not cash such checks.

19 The Settlement Administrator will prepare and issue IRS Form 1099s to PAGA Settlement
20 Members who received an Individual Payment, if so required under Federal or California law.

21 **VI. RELEASE OF CLAIMS**

22 **A. Claims Released by the LWDA and PAGA Settlement Members**

23 Upon the Effective Date, and subject to Defendant’s full payment of the Gross Settlement
24 Amount, the LWDA and PAGA Settlement Members, including Plaintiff, fully release and forever
25 discharge the Released Parties from any and all Released Claims which arose during the PAGA
26 Period. The Parties agree that the settlement of this Action shall be effective as a full and final accord
27 and satisfaction, settlement of, and as a bar to, the Released Claims. The Parties further agree the
28 settlement of this Action shall be binding on Plaintiff, the PAGA Settlement Members, the LWDA,

1 the State of California, Defendant, and the Released Parties. As a result of this release, the PAGA
2 Settlement Members will be unable to bring a claim under, or recover in any other claim
3 encompassed within the Released Claims.

4 **B. Claims Released by Plaintiff Chondra Phillips**

5 In consideration for the General Release Payment to Plaintiff and Defendant's agreement not
6 to contest any such payment by the Court, Plaintiff will be deemed, upon the Effective Date, and
7 subject to Defendant's full payment of the General Release Payment to Plaintiff, to have released the
8 Released Parties of and from all of the Released Claims.

9 In further consideration of the above, and the benefit of this Agreement, Plaintiff
10 unconditionally, irrevocably, and absolutely releases and discharges Defendant, and the Released
11 Parties, from all losses, liabilities, claims, charges, demands and causes of action, known or
12 unknown, suspected or unsuspected, arising directly or indirectly out of or in any way connected
13 with the transactions and occurrences between the Parties, including Plaintiff's employment with
14 Defendant. Notwithstanding the foregoing, the Parties agree and acknowledge that nothing in this
15 Agreement releases or waives any rights or claims Plaintiff has or may have regarding: (i) benefits,
16 or rights to seek benefits, under applicable workers' compensation and/or unemployment insurance;
17 (ii) those which, by law, cannot be waived by signing this Agreement; or (iii) to enforce this
18 Agreement. Barring those excluded rights, this release should have the broadest possible application
19 and includes, but is not limited to, all torts, contract, common law, constitutional or other statutory
20 claims, and all claims for attorney fees, costs, and expenses. This release includes any claim for
21 personal recovery of any type, including damages or reinstatement, due to alleged employment
22 discrimination and retaliation arising under federal, state, or local law, including the California Fair
23 Employment & Housing Act, the California Family Rights Act, the Americans with Disabilities Act,
24 the Family and Medical Leave Act, and Title VII of the Civil Rights Act of 1964. This release further
25 applies to any claims arising out of or based on the Rehabilitation Act of 1973, the California Labor
26 Code, other local and/or applicable wage ordinances and statutes, and the California Business &
27 Professions Code. This release includes any claims for any tortious conduct, wrongful discharge,
28 and wrongful discharge in violation of public policy.

Plaintiff's releases set forth herein include a waiver of all rights under 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.

Upon the Effective Date, and subject to Defendant's full payment of the General Release Payment, Plaintiff will be deemed to have waived her rights under Civil Code § 1542. Such waiver includes all known and unknown claims that were or could have been alleged under any state or federal law (save for those expressly excluded above) and arising out of the facts, circumstances, and primary rights in the Complaint.

C. Tax Treatment and Indemnification

PAGA Settlement Members, including Plaintiff, will assume any tax obligations or consequences that may arise from payments made to them under this Settlement.

VII. MISCELLANEOUS PROVISIONS

A. Mutual Full Cooperation

Plaintiff, Defendant, Plaintiff's Counsel, and Defendant's Counsel agree to cooperate fully with each other to accomplish the terms of this Settlement, including, but not limited to, execution of such documents, and to take such other action as may reasonably be necessary to implement the terms herein. The Parties agree to use their best efforts and any other efforts that may become necessary by Order of the Court, or otherwise, to effectuate this Settlement.

B. Parties' Authority

The signatories hereto represent they are authorized to enter into this Settlement.

C. Binding Nature of the Settlement

This Settlement shall be binding upon, and inure to the benefit of, the successors or assigns of the Released Parties. Plaintiff represents, covenants, and warrants she has not directly or indirectly, assigned, transferred, or encumbered any claim, demand, action, cause of action, or rights released in the Released Claims in this Settlement. This Settlement shall be binding upon Plaintiff

1 and the PAGA Settlement Members. This Settlement may be amended or modified only by a written
2 instrument signed by Plaintiff and Defendant's duly authorized representative. No rights under this
3 Settlement may be waived except in writing.

4 **D. Joint Drafting of Settlement Documents**

5 The Parties have arrived at this Settlement as a result of a series of arm's-length negotiations,
6 taking into account all relevant factors, present and potential. This Settlement has been drafted
7 jointly by Plaintiff's Counsel and Defense Counsel and, therefore, in any construction or
8 interpretation of this Settlement, the same shall not be construed against any of the Parties.

9 **E. Execution of the Settlement Agreement**

10 All executed copies of this Settlement and photocopies thereof shall have the same force and
11 effect and shall be as legally binding and enforceable as the original.

12 **F. No Press Release or Publicity Regarding Terms of the Settlement**

13 Plaintiffs and Plaintiff's Counsel, as well as Defendant and Defense Counsel agree that they
14 will issue no media or press release, initiate any contact with the media or the press, respond to any
15 media or press inquiry, or have any communications with the media or the press about the fact,
16 amount, or terms of this Settlement. Plaintiff and Plaintiff's Counsel shall not publicize or refer to
17 the fact or amount of the Settlement on their websites, social media, any other marketing materials,
18 or legal publications. Plaintiff and Plaintiff's Counsel will not state on their websites, social media,
19 any other marketing materials, or legal publications, that Defendant engaged in any act contrary to
20 California law, or denied payment owed to its employees, or otherwise committed any violations of
21 the California Labor Code or any other local, state, or federal law, otherwise disparage Defendant,
22 or otherwise identify Defendant. Defendant may report the Settlement or results of this lawsuit if
23 required to do so by public disclosure regulatory requirements, or with respect to any financial or
24 other disclosures, which in their judgment are necessary.

25 **G. Continuing Jurisdiction of the Court**

26 The above-entitled Court shall retain jurisdiction over all disputes between and among the
27 Parties arising out of the Settlement, including but not limited to the interpretation and enforcement
28 of the terms herein.

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H. Advice of Counsel

Each Party represents and agrees that they have been advised or are fully aware of their right to discuss all aspects of this Agreement with their independent attorney prior to signing this Agreement, that each Party has carefully read and fully understands all of the provisions of this Agreement, and that each Party is voluntarily, and without fraud, duress or undue influence, entering into this Agreement.

[SIGNATURES ON FOLLOWING PAGES]

PLAINTIFF AND PLAINTIFF'S COUNSEL

02/02/22
DATED: February __, 2022


Chondra Phillips (Feb 2, 2022 15:25 PST)

Plaintiff Chondra Phillips

Approved as to form only:

DATED: February 2, 2022

DYCHTER LAW OFFICES, APC

By: 
Alexander I. Dychter

Attorneys for Plaintiff Chondra Phillips

DEFENDANT AND DEFENDANT'S COUNSEL

A-TEAM DELIVERS, LLC

DATED: February 15, 2022


By:
Its: Steve Ford, CEO

Approved as to form only:

DATED: February 15, 2022

OGLETREE, DEAKINS, NASH, SMOAK &
STEWART, P.C.

By: 
Tim L. Johnson
Nikolas T. Egorjevski
Yousaf M. Jafri

Attorneys for Defendant A-TEAM DELIVERS,
LLC