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10 Attorneys for Plaintiff SONJA PHILLIPS

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

12 **COUNTY OF STANISLAUS**

13 SONJA PHILLIPS, on behalf of herself and all
14 others similarly situated, on behalf of the
15 general public, and as an "aggrieved
16 employee" under California Labor Code
17 Private Attorneys General Act

18 Plaintiffs,

19 v.

20 STORER TRANSPORTATION SERVICE, a
21 California Corporation; and DOES 1 through
22 50, inclusive,

23 Defendants.

CASE NO. 9000031

*Assigned for All Purposes:
Honorable Roger Beauchesne
Department 24*

**STIPULATION AND [PROPOSED]
ORDER APPROVING PRIVATE
ATTORNEYS GENERAL ACT
SETTLEMENT; DECLARATION OF
JOCELYN BURTON IN SUPPORT
THEREOF**

Action Filed:	May 17, 2016
FAC Filed:	Sept. 15, 2016
SAC Filed:	Dec. 27, 2016

This Stipulation and Proposed Order is entered into between plaintiff Sonja Phillips (“Plaintiff”) and defendant Storer Transportation Service (“Defendant”) (Plaintiff and Defendant all collectively, the “Parties”), by and through their counsel of record, as follows:

STIPULATION

WHEREAS on or about December 24, 2015, Plaintiff submitted her written notice to the Labor and Workforce Development Agency (“LWDA”) of her intent to bring a representative claim under the Private Attorneys General Act (“PAGA”) for the violation of California Labor Code sections 510, 1194 (Failure to Pay Overtime Wages); 226, 226.3 (Failure to Provide Accurate Wage Statements); 201-203 (Failure to Pay Final Wages); and California Business and Professions Code section 17200 (Unfair Business Practices);

WHEREAS, the above entitled action was initiated by the filing of a complaint on about May 17, 2016, against Defendant in Stanislaus County Superior Court, Case No. 9000031 (the “Complaint”), alleging individual claims, California state class claims, and representative claims pursuant to the PAGA based on various California Labor Code violations, including Defendant’s alleged failure to pay overtime alleged failure to provide accurate itemized wage statements, alleged failure to pay final wages, and violation of California Business and Professions Code for unfair business practices.

WHEREAS, Plaintiff filed a First Amended Complaint on September 15, 2016, alleging a single cause of action for alleged failure to provide accurate itemized wage statements under California Labor Code section 226.

WHEREAS, Plaintiff filed a Second Amended Complaint on December 27, 2016, alleging a single cause of action for alleged failure to provide accurate itemized wage statements under California Labor Code section 226.

WHEREAS, the Second Amended Complaint alleges claims on behalf of a class defined as “all current and former California employees of Defendants, employed by Defendants and paid an hourly rate during any pay period between May 17, 2015 and through the date of final judgment, who received for such a pay period an itemized wage statement which did not show (1) the total hours worked by the employees and (2) all applicable hourly rates in effect during the

1 pay period and the corresponding number of hours worked at each hourly rate by the employee.”
2 (the “Class”);

3 WHEREAS, the Second Amended Complaint alleges claims on behalf of two sub-classes
4 defined as “(a) all current and former California employees of Defendants who, for any pay
5 period between May 17, 2015 and the date of final judgment, were not both (1) paid solely on
6 salary and (2) exempt from overtime pay under subdivisions (a) of Labor Code section 515 or any
7 applicable order of the California Industrial Welfare Commission, and who received for any such
8 pay period an itemized wage statement which failed to show the total hours worked by the
9 employee, as required by Labor Code section 226(a)(2); and (b) all current and former California
10 employees of Defendants who, between May 17, 2015 and the date of final judgment, received an
11 itemized wage statement which did not show all applicable hourly rates in effect during the pay
12 period and the corresponding number of hours worked at each hourly rate by the employee, as
13 required by Labor Code section 226(a)(9)” (the “Sub-Classes”);

14 WHEREAS, the Second Amended Complaint alleges PAGA claims on Plaintiff’s behalf
15 and on behalf of all allegedly aggrieved employees in California (the “PAGA Group”);

16 WHEREAS Plaintiff has not received any notice from the LWDA that it intends to
17 investigate said claims and the requisite time has passed such that Plaintiff is authorized to act as
18 a private attorney general regarding the claims alleged in her December 24, 2015 notice letter
19 pursuant to California Labor Code section 2699.3;

20 WHEREAS Plaintiff paid the \$75.00 filing fee to the LWDA required under the PAGA on
21 or about December 24, 2015;

22 WHEREAS the Parties have engaged in substantial discussions and informal exchange of
23 information regarding this matter, and trial commenced in this matter on May 14, 2019;

24 WHEREAS Defendants deny they are liable in any respect for the asserted class, PAGA,
25 or individual claims, and deny that penalties may be recovered by Plaintiff and the PAGA Group
26 for the alleged violations, if any, and/or any penalties that would be imposed would be
27 substantially reduced by the Court;

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1 WHEREAS the Parties have engaged in settlement discussions during a settlement
2 conference held on April 29, 2019, and have continued those discussions in person, electronically,
3 and over the phone concerning the merits of Plaintiff's claims and wherein that Defendant has
4 obtained releases for the clear majority of members of the Class and PAGA Group, thereby
5 limiting Defendant's potential liability and thus Plaintiff's potential recovery pursuant to both the
6 class and PAGA claims;

7 WHEREAS, as a result of these negotiation efforts, the Parties have agreed to resolve
8 Plaintiff's individual claims, and also agree to resolve Plaintiff's PAGA claims in the amount of
9 \$10,000.00, plus PAGA administration costs, to be divided between the LWDA (75%) and the
10 PAGA members (25%) in accordance with Labor Code section 2699(i);

11 WHEREAS, notwithstanding the legal disputes in this matter and in order to avoid the
12 risks and expenses associated with continued litigation and trial, the Parties are seeking Court
13 review and approval of the proposed PAGA settlement pursuant to California Labor Code section
14 2699(l);

15 WHEREAS no motion for certification of this matter has been filed or has been scheduled
16 to be filed;

17 WHEREAS, in order to avoid the risks and expenses associated with continued litigation
18 and trial, the Parties now wish to dismiss the class allegations without prejudice, dismiss the
19 PAGA claims with prejudice, and dismiss Plaintiff's individual claims with prejudice;

20 WHEREAS California Rule of Court 3.770(a) requires Court approval to dismiss a
21 proposed class action once filed:

22 A dismissal of an entire class action, or of any party or cause of
23 action in a class action, requires court approval. The court may not
24 grant a request to dismiss a class action if the court has entered
25 judgment following final approval of a settlement. Requests for
26 dismissal must be accompanied by a declaration setting forth the
27 facts on which the party relies. The declaration must clearly state

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1 whether consideration, direct or indirect, is being given for the
2 dismissal and must describe the consideration in detail

3 WHEREAS Plaintiff's counsel has concurrently submitted a declaration, pursuant to
4 California Rule of Court 3.770(a), setting forth the facts on which Plaintiff relies, and attesting
5 that neither Plaintiff nor her counsel are receiving any consideration in exchange for dismissal of
6 the class action claims as those claims are not being compromised because they are being
7 dismissed without prejudice; and

8 WHEREAS notice to the proposed class is not warranted under California Rules of Court,
9 Rule 3.770(c), insofar as this matter has not been certified as a class and there have been no
10 communications with putative class members regarding whether this matter has been certified as
11 a class action;

12 IT IS HEREBY STIPULATED AND AGREED, by and between the Parties, subject to
13 the approval of the Court, as follows:

14 1. That the claims of any putative class member, class claims, and/or class allegations
15 shall be dismissed without prejudice;

16 2. That Plaintiff has exhausted all administrative remedies required to bring the
17 PAGA claims asserted in this litigation and is authorized to act as a private attorney general with
18 respect to the PAGA claims being released under the proposed PAGA settlement;

19 3. That the proposed PAGA settlement, attached hereto as **Exhibit A**, should be
20 approved and adopted as a reasonable compromise of the asserted PAGA claims pursuant to
21 California Labor Code section 2699(l);

22 4. That Plaintiff's PAGA claims shall be dismissed with prejudice in their entirety
23 and as to all Parties as set forth in **Exhibit A**; and

24 5. That Plaintiff's individual claims shall be dismissed with prejudice as set forth in
25 **Exhibit A**.

1 Dated: May 15, 2019

Burton Employment Law

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3 By: Jocelyn Burton
4 Jocelyn Burton
5 Attorneys for Plaintiff Sonja Phillips

6 Dated: 05/15, 2019

Medina McKelvey LLP

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8 By: Timothy Nelson
9 Timothy Nelson
10 Attorneys for Defendant Storer
11 Transportation Service
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DECLARATION OF JOCELYN BURTON

I, Jocelyn Burton, declare:

1. I am an attorney at law, duly admitted to practice before all of the courts of California and am counsel of record for Plaintiff in the above-captioned matter. This declaration is made in support of the Parties' Stipulation and Proposed Order. If called as a witness, I could and would testify based on my own personal knowledge as follows:

2. Although this lawsuit was filed as a class action, no certification motion has been filed and there has been no order scheduling a certification motion to be filed.

3. My office filed this lawsuit on behalf of Plaintiff and similarly situated individuals on May 17, 2016.

4. My office sent notice to the Labor and Workforce Development Agency ("LWDA") pursuant to Labor Code section 2699.3 regarding the PAGA claims that the Parties are seeking to be resolved through this stipulation. The notice was sent on December 24, 2015, alleging claims for the violation of California Labor Code sections 510, 1194 (Failure to Pay Overtime Wages); 226, 226.3 (Failure to Provide Accurate Wage Statements); 201-203 (Failure to Pay Final Wages); and California Business and Professions Code section 17200 (Unfair Business Practices). Plaintiff's operative complaint, the Second Amended Complaint, alleges individual, class, and PAGA claims based solely on the alleged violations of Labor Code section 226 (Failure to Provide Accurate Wage Statements).

5. From about May 2016, the Parties have discussed the merits of Plaintiff's claims against Defendants and have even engaged in informal exchange of information and numerous electronic and telephonic communications regarding the merits of Plaintiff's claims. Defendant's defenses included the fact that Defendant was able to obtain releases from the clear majority of the putative class and PAGA members and, as a result, would rely on these releases for purposes of determining Defendant's liability and Plaintiff's potential recovery. Because of the factual and legal disputes in this matter, the Parties eventually agreed to resolve Plaintiff's claims on a PAGA and individual basis. A true and correct copy of the proposed PAGA settlement agreement is being submitted with this Stipulation and Proposed Order as **Exhibit A**.

6. This Stipulation and Proposed Order was submitted to the LWDA via the LWDA's online submission portal at the same time it was submitted to the Court for review and approval pursuant to California Labor Code section 2699.3(*I*).

7. Ultimately, Plaintiff and I believe it better to dismiss Plaintiff's class claims without prejudice, thereby avoiding prejudice to any other potential class members. Neither Plaintiff nor my firm are receiving any compensation for dismissing the class claims. These claims are not being compromised because they are being dismissed hereto without prejudice so that the claims may still proceed for any potential class member. Further, there have been no communications with putative class members regarding whether this matter has been certified as a class action. Therefore, in accordance with California Rules of Court, Rule 3.770(c), I do not believe that notice to the putative class members of the dismissal of their class claims is necessary because putative class members' class claims will be dismissed without prejudice.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on May 15 2019, in Modesto, California.


Jocelyn Burton

Exhibit A

SETTLEMENT AGREEMENT OF PLAINTIFF'S PAGA CLAIMS

This Settlement Agreement and General Release ("Agreement") is made and entered into by and between Plaintiff Sonja Phillips ("Plaintiff") and Defendant Storer Transportation Service ("Defendant") (Plaintiff and Defendant sometimes collectively referred to as "Parties"), as follows:

RECITALS

A. WHEREAS, Plaintiff alleged a representative claim under the Private Attorneys General Act ("PAGA") for violation of California Labor Code § 226 based on Defendant's alleged failure to provide accurate wage statements ("PAGA Claim"). Plaintiff submitted notice of said claims to the Labor and Workforce Development Agency ("LWDA") on March 6, 2018 (the "PAGA Letter");

B. WHEREAS, the LWDA has not stated it intends to investigate the allegations raised in Plaintiff's PAGA letter, thereby authorizing Plaintiff to act as a private attorney general on behalf of herself and all other similarly situated employees of Defendant for the PAGA Claim;

C. WHEREAS, Plaintiff filed a complaint in the Stanislaus County Superior Court (Case Number 9000031) on December 24, 2015, alleging several Labor Code violations against Defendants. Plaintiff filed a Second Amended Complaint on December 27, 2016 (which is the operative complaint in this matter), which asserted on cause of action under Labor Code section 226 for inaccurate wage statements. Plaintiff sought damages or penalties under Labor Code section 226 and a claim for civil penalties based on said Labor Code violations pursuant to Labor Code section 2699 *et seq.* (the PAGA Claim);

D. WHEREAS, the Parties attended a settlement conference on April 29, 2019;

E. WHEREAS, although the Parties were unable to reach a settlement at the settlement conference, the Parties continued to discuss resolution, up to and including on the first day of trial;

F. WHEREAS, as a result, the Parties wish to finally settle and resolve all grievances, disputes, controversies, claims, actions, and potential actions between them concerning the PAGA Claim in order to avoid further litigation and the expenses and costs incident thereto.

NOW, THEREFORE, AND SUBJECT TO COURT APPROVAL, the Parties agree as follows:

1. Non-Admission Of Liability, Wrongdoing, Or Status As A Representative Action.
This Agreement shall not in any way be construed as an admission by Defendant that it acted wrongfully with respect to Plaintiff or any other employees or individuals. Defendant specifically disclaims any liability to, or wrongful acts against Plaintiff, on the part of itself, franchisors, parents, subsidiaries, affiliates, predecessors, successors, officers, directors,

employees, or agents. Defendant denies that there is any factual evidence to support any claims that Plaintiff may bring on behalf of Plaintiff or other alleged aggrieved employees or alleged similarly situated employees, or by Plaintiff on her own behalf.

2. Settlement Payment. In consideration for the covenants, promises, waivers, and releases contained in this Agreement, and subject to Court approval, Defendant shall pay the sum of Ten Thousand Dollars and Zero Cents (\$10,000.00) ("Settlement Payment") in full and final settlement of the PAGA Claim. This amount will be provided to the LWDA and the PAGA Group as defined below (*i.e.*, 75% of the amount to the LWDA and 25% of the amount to the PAGA Group).

3. PAGA Group and PAGA Group Period. The scope of the PAGA Group shall include all of Defendant's drivers who were paid under a guaranteed minimum compensation structure from April 14, 2015, to the date the Court approves this settlement. The scope of the PAGA Group Period shall be from April 14, 2015, to the date the Court approves this settlement.

4. Release. For and in consideration of the mutual promises and consideration set forth in this Agreement, Plaintiff and the PAGA Group, on behalf of themselves, and their heirs, successors, assigns, attorneys and agents, hereby release and forever discharge Defendant and each of Defendant's respective past, present and future parents, subsidiaries, principals and any other person, corporation, association or partnership responsible for the claims made in the PAGA Letter or the Lawsuit, and the past, present and future shareholders, directors, officers, agents, employees, attorneys, insurers, predecessors, and successors and assigns their right to participate in or bring a claim under the PAGA based on the underlying alleged violations of the Labor Code, including Labor Code sections 226, 2699 *et seq.*, as alleged in the PAGA Letter and/or the Lawsuit or which could have been alleged in the Lawsuit based on the facts pled therein.

5. Claims Administrator and Distribution Method. The Parties agree that Plaintiff's and Defendant's counsel will select a mutually agreeable Claims Administrator to process and distribute the Settlement Sum in accordance with the Agreement. Defendant will separately pay the cost of the Claims Administrator. In addition, and subject to Court approval, timelines and methods related to the administration of this Agreement shall be as follows:

- a. The entire amount of the Settlement Payment shall be available for distribution to the PAGA Group and the LWDA consistent with Labor Code section 2699(i). The Settlement Payment shall be allocated 75% to the LWDA ("LWDA Payment") and 25% to the PAGA Group ("PAGA Group Payment"). Each member of the PAGA Group will receive a pro rata share of the PAGA Group Payment based on the number of paystubs the PAGA Group member received during the PAGA Group Period compared to the total number of paystubs that the entire PAGA Group received during the same period, with a minimum payment of \$1.00 to each PAGA Group member, and the remaining funds distributed on a pro rata basis. Specifically, a Total Value Per Paystub will be derived by dividing the PAGA Group Payment by the total number of paystubs that all members of the PAGA Group received within the PAGA Group Period and each PAGA Group member will have

their respective number of paystubs multiplied by the Total Value Per Paystub to derive their respective share of the Net Settlement Payment, with each member of the PAGA group receiving at least \$1.00, and the remaining monies to be paid on a pro-rata basis based on paystubs received.

- b. Within seven (7) calendar days of Court approval of this Agreement (which shall be accomplished by Plaintiff filing a Stipulation and [Proposed] Order Approving Private Attorneys General Act Settlement (as discussed in paragraph 6 below) , Defendant shall deposit the Settlement Payment with the Claims Administrator. Defendant shall also provide a confidential list of all PAGA Group members, their contact information, paystubs received and/or dates of employment, and all other necessary information to the Claims Administrator confidentially to locate PAGA Group members and process payments, including, but not limited to, social security numbers, and any other information required to effectuate the Agreement.
- c. Within the timeframe listed below, the Claims Administrator shall mail and distribute to all individuals within the PAGA Group definition a notice of this settlement informing them of the basic information regarding the reason for the payment and the claims waived. The Parties shall work cooperatively to draft and approve said notice for mailing to PAGA members.
- d. One Hundred Percent (100%) of the PAGA Group Payment will be considered 1099 income representing payment for penalties. Defendant shall be responsible for all tax reporting and documentation related to payment of the PAGA Group Payment.
- e. The PAGA Group information, and any other data provided by Defendant to the Claims Administrator, shall be treated as confidential and not subject to disclosure by the Claims Administrator except as is otherwise necessary for the Claims Administrator to perform its obligations described in this Agreement. Further, the Claims Administrator shall ensure that the Notice and any other communications to PAGA Group members shall not include the PAGA Group members' Social Security Number, except for the last four (4) digits.
- f. Within fourteen (14) calendar days from the date the Court grants approval of this Agreement, the Claims Administrator will perform a National Change of Address check for PAGA Group members' most current address based on the information provided by Defendant and will mail the notice and pro rata shares of the PAGA Group Payment to members of the PAGA Group. For any mailings returned as undeliverable or notifying the Claims Administrator that the PAGA Group member is no longer at the address, the Claims Administrator shall perform a skip-trace on that individual and re-mail the notice and payment to the new address found in the skip-trace.

- g. PAGA Group members shall have ninety (90) days to cash their respective settlement checks under this Agreement. Any checks not negotiated within the ninety (90) days will be voided and will not be reissued. Any unclaimed funds from the PAGA Group Payment will be provided to the *cy pres* entity Center for Workers' Rights.

6. Filing of Stipulation and Order and Notice to the LWDA. Within three days after Plaintiff receives consideration for the release of her individual claims, Plaintiff shall file a stipulation and order to dismiss with prejudice all of Plaintiff's individual claims against Defendant in the Lawsuit and to dismiss with prejudice her PAGA claims. Plaintiff will request that her class claims be dismissed without prejudice as part of the Stipulation and [Proposed] Order Approving Private Attorneys General Act Settlement, which shall be filed concurrently with the execution of this Agreement. Concurrently with the filing of the stipulation and order, Plaintiff shall transmit a copy of this Agreement to the Labor & Workforce Development Agency (as required by PAGA).

7. Applicable Law. This Agreement shall be construed and interpreted in accordance with the laws of the State of California. Pursuant to California Code of Civil Procedure section 664.6, the Court shall retain jurisdiction solely with respect to the interpretation, implementation, and enforcement of the terms of this settlement, and the Parties and their counsel submit to the jurisdiction of the Court for purposes of interpreting, implementing, and enforcing the settlement embodied in this Agreement and all orders and judgments entered in connection therewith. In the case of a dispute regarding the payment of the Settlement Payment or the enforcement of this Agreement, the prevailing party shall be entitled to recover their attorneys' fees and costs.

7. Counterparts. This Agreement may be signed in counterparts. Fax, scan, and/or electronic copies of signatures shall be deemed effective as originals.

Dated: 5/15/2019


Sonja Phillips

Storer Transportation Service

Dated: 5/15/2019

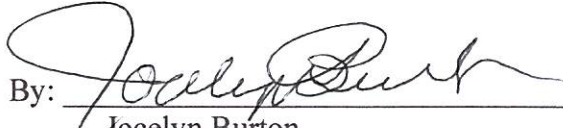
By: Jim Hsia

on behalf of Defendant Storer
Transportation Service

Approved as to Form:

Burton Employment Law

Dated: 05/15/2019

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Jocelyn Burton
Scott Nakama
Attorneys for Plaintiff

Approved as to Form:

Medina McKelvey LLP

Dated: 05/15/19

By: 
Brandon R. McKelvey
Timothy B. Nelson
Attorneys for Defendant Storer
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