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20 MARK D. PHILLIPS, INC. and
21 MARK PHILLIPS

22 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
23 **FOR THE COUNTY OF LOS ANGELES**

24 HENRY MARTINEZ, an individual;
25
26 Plaintiff,
27
28 vs.

29 MARK D. PHILLIPS, INC., a California
30 Corporation; MARK PHILLIPS, an individual;
31 and DOES 1 through 100, inclusive,
32
33 Defendants.

CASE NO.: 21STCV30758

Assigned to: *Honorable Upinder S. Kalra,*
Dept. 51

**STIPULATION BY ALL PARTIES FOR
ORDER APPROVING SETTLEMENT
PURSUANT TO CALIFORNIA LABOR
CODE PRIVATE ATTORNEYS'
GENERAL ACT AND ENTERING
JUDGMENT**

Complaint Filed: August 19, 2021
Trial Date: April 4, 2023

34 Plaintiff HENRY MARTINEZ ("Plaintiff") and Defendants MARK D. PHILLIPS, INC., and
35 MARK PHILLIPS ("Defendants") (collectively, "the Parties"), by and through their respective
36 counsel of record, hereby stipulate as follows:

DEFINITIONS

1. “Aggrieved Employee” or “Aggrieved Employees” means all current and former non- exempt employees who worked at least one pay period for Defendants in California at any time during the PAGA Period.
2. The “PAGA Period” shall be from June 15, 2020 through the date the Court enters the order granting final approval of the PAGA settlement.
3. “Aggrieved Employees’ Counsel” means Sarkis Sirmabekian, Esq. of Sirmabekian Law Firm, PC.
4. “Aggrieved Employees’ Counsel Costs” means verified litigation costs in an amount not to exceed \$75.00 as approved by the Court.
5. “Aggrieved Employees’ Counsel Fees” means the amount to be paid, after Court approval, to Aggrieved Employees’ Counsel for all past and future attorneys’ fees incurred by Aggrieved Employees’ Counsel in the Lawsuit on behalf of Representative Plaintiffs and the Aggrieved Employees including, but not limited to, future attorneys’ fees incurred in securing final approval of the Settlement in the amount of Three Thousand Three Hundred and Thirty- Three Dollars and Thirty- Three Cents (\$3,333.33), representing one-third of the PGSA.
6. “Agreement” means this Stipulation and Settlement Agreement, including any attached exhibits.
7. “Complaint” means the operative Complaint filed in the Lawsuit.
8. “Counsel for Defendants” or “Defense Counsel” means Corinne D. Spencer and Antwoin D. Wall.
9. “Court” means the Los Angeles Superior Court, in which the Lawsuit is currently pending, the Honorable Judge Lawrence P. Riff presiding. Court shall also mean any other Court that acquires proper jurisdiction of this Lawsuit.
10. “Distributable Amount” means the amount that is distributable to the Aggrieved Employees, and equals the PGSA less Aggrieved Employees’ Counsel Fees, Aggrieved Employees’ Counsel Costs, Settlement Administration Costs, and payment to the California Labor & Workforce Development Agency (“LWDA”).

- 1 11. "Effective Date" means the later of (a) the date of entry of Order granting approval of this
2 Settlement, if no objection to the Settlement is filed, (b) the date on which the time for all
3 appeals from objections to the Settlement has passed, if one or more objections to the
4 Settlement are filed, and (c) if an appeal is taken, the date on which any reviewing court issues
5 a decision, the time for further appeal has expired, and the trial court has regained jurisdiction.
- 6 12. "Maximum Settlement Amount" means the total amount of Ten Thousand Dollars and No
7 Cents (\$10,000.00), the maximum amount to be paid by Defendants pursuant to the terms of
8 this Agreement, regardless of how the court rules on the first or subsequent motions for
9 approval.
- 10 13. "Lawsuit" means this lawsuit and the operative Complaint in the matter entitled *Henry*
11 *Martinez vs Mark D. Phillips, Inc., et al.*, Case No. 21STCV30758, Los Angeles Superior
12 Court.
- 13 14. "Notice of Settlement" means the form to be prepared and approved by both Counsel for
14 Defendants and Aggrieved Employees' Counsel and sent to the Aggrieved Employees with the
15 Settlement Payments to inform them of the material terms of the Agreement and the Released
16 Claims.
- 17 15. "Notice Returns" means envelopes containing the Notice of Settlement that were mailed by
18 the Settlement Administrator to Aggrieved Employees but were undelivered and returned to
19 the Settlement Administrator by the United States Postal Service.
- 20 16. "Order and Judgment" means the order and judgment entered by the Court pursuant to the
21 terms set forth in this Agreement (i) approving finally and fully the terms contained in this
22 Agreement; (ii) permanently enjoining and forever barring from prosecuting any and all
23 Released Claims against Defendants or the Released Persons; (iii) entering a final judgment in
24 the Lawsuit; and (iv) retaining jurisdiction to enforce the terms of this Agreement following
25 approval of the Settlement. Aggrieved Employees' Counsel will submit with its approval
26 motion a proposed Order and Judgment – the form and content of which is agreed to by
27 Counsel for Defendants.
- 28

1 17. "Personal Release" means the Representative Plaintiff's irrevocable and unconditional release,
2 acquittal, and discharge of the Released Persons and all persons and/or corporate entities acting
3 by, through, under or in concert with any of them, or any of them, from any and all complaints,
4 claims, liabilities, obligations, promises, agreements, controversies, damages, costs, losses,
5 debts and expenses (including attorneys' fees and costs actually incurred), of any nature
6 whatsoever, including but not limited to the release of any and all claims arising under any of
7 the following, as amended: the National Labor Relations Act ("NLRA"), Title VII of the Civil
8 Rights Act of 1964, Sections 1981 through 1988 of Title 42 of the United States Code, the
9 Employee Retirement Income Security Act of 1974 ("ERISA"), the Americans with
10 Disabilities Act of 1990 ("ADA"), the Fair Labor Standards Act ("FLSA"), the Occupational
11 Safety and Health Act ("OSHA"), the Consolidated Omnibus Budget Reconciliation Act of
12 1985 ("COBRA"), the Genetic Information Nondiscrimination Act ("GINA"), the Family and
13 Medical Leave Act ("FMLA"), the Worker Adjustment and Retraining Notification Act
14 ("WARN"), the California Fair Employment and Housing Act ("FEHA"), the Family and
15 Medical Leave Act of 1993 ("FMLA") and the California Family Rights Act ("CFRA"), the
16 Private Attorneys' General Act ("PAGA"), the California Worker Adjustment and Retraining
17 Notification Act ("Cal-WARN"), the California Business and Professions Code, including the
18 Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, the California Minimum Wage
19 Law, the Equal Pay Law for California, the California Labor Code (including specifically,
20 Section 132a) and California Wage Orders, together with any alleged violation of the United
21 States or any state Constitution, any local, state or federal law, regulation or ordinance, and/or
22 public policy, contract or tort or common-law, any claim for injunctive or declaratory relief
23 any violation of the penal code, and any other claim whether cognizable at law or in equity
24 having any bearing whatsoever on Representative Plaintiff's application for employment,
25 employment with, or separation of employment from the Released Persons, which
26 Representative Plaintiffs ever had, now have, or shall have, from the beginning of time to the
27 date of the Effective Date.
28

1 18. As to the foregoing claims, Representative Plaintiff expressly waives the benefits of California
2 Civil Code §1542. Civil Code §1542 provides:

3
4 ***A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS***
5 ***THAT THE CREDITOR OR RELEASING PARTY DOES NOT***
6 ***KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE***
7 ***TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN***
8 ***BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS***
9 ***OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED***
10 ***PARTY***
11

12 19. "Per Capita Payment" means the amount payable to each Aggrieved Employee on an equal per
13 capita basis.

14 20. "Redirected Notice" means a second Notice of Settlement mailed by the Settlement
15 Administrator to a new or different address for an Aggrieved Employee that was obtained by
16 the Settlement Administrator as a result of a Notice Return.

17 21. "Released Claims" means any and all claims, rights, demands, liabilities and causes of action
18 for civil penalties under the PAGA that arose during the PAGA Period, based on the factual
19 allegations pled in the operative complaint in the Lawsuit, with respect to the following claims:
20 (a) failure to pay minimum wage (*Labor Code* §§ 200, 206, 216, 218.6, 221, 226, 500, 510,
21 1182.12, 1194, 1194.2, 1197, 1197.1 and 1199); (b) failure to compensate for all hours worked
22 (*Labor Code* §§ 200, 204, 226, 226.8, 432.5, 450, 500, 510, 1194, 1194.2, 1197 and 1198); (c)
23 failure to pay overtime compensation (*Labor Code* §§ 200, 226, 500, 510, 558, 1194 and 1198);
24 (d) failure to provide meal periods and pay meal period compensation (*Labor Code* §§ 226.7
25 and 512); (e) failure to authorize and permit rest periods and pay rest period compensation
26 (*Labor Code* §§ 226.7 and 558.2); (f) failure to furnish accurate wage statements (*Labor Code*
27 §§ 226, 226.3, 1174, 1174.5 and 558.1); (g) failure to timely pay final wages upon discharge
28 (*Labor Code* §§ 201, 203, 256 and 558.1); (h) statutory penalties (*Labor Code* §§ 201, 201.5,

202, 203, 205.5 and 558); (i) failure to indemnify and illegal deductions from wages (*Labor Code* §§ 200, 203, 226 and 2802); (j) violation of *Cal. Gov. Code* § 12940 *et seq.*; (k) violation of *Gov. Code* § 12940(m); (l) violation of *Gov. Code* § 12940(n); (m) violation of *Gov. Code* § 12940(h) and *Gov. Code* § 12653; (n) violation of *Lab. Code* § 98.6 and § 1102.5; (o) Wrongful Termination In Violation Of Public Policy; (p) FEHA Wrongful Termination; (q) violation of the Private Attorneys General Action of 2004, *Labor Code* § 2698, *et seq.*; (m) unfair competition, *Business and Professions Code* § 17200, *et seq.*, including any related claims for attorneys' fees, penalties, costs, or interest resulting therefrom. ("Claims") The Released Claims shall specifically include all civil penalties or other amounts which are or may be available under or through the PAGA based on the facts that were alleged in the operative complaint filed in the Lawsuit, and/or predicated any of the Labor Code violations asserted in the operative complaint filed in the Lawsuit, inclusive of all Representative Aggrieved Employees' and the Aggrieved Employees' attorneys' fees and costs. As to the foregoing claims, Representative Plaintiffs and Aggrieved Employees release PAGA civil penalties recoverable under any theory of liability upon which such civil penalties under the PAGA could have been recovered based upon the allegations in the operative complaint filed in the Lawsuit.

22. "Released Persons" means Defendants and their respective agents, attorneys, insurers, past, present and future divisions, affiliates, any DBAs, predecessors, successors, shareholders, officers, directors, managers, employees, trustees, representatives, administrators, fiduciaries, assigns, subrogees, executors, partners, parents, subsidiaries, privies, and/or any and all persons and/or corporate entities acting by, through, under or in concert with any of them.

23. "Representative Plaintiff" or "Plaintiff" means Henry Martinez and his respective representative(s), heir(s), assign(s), attorney(s) and/or insurer(s).

24. "Settlement to Plaintiff" means an amount to be paid to Plaintiff in exchange for the Personal Release and Release of the remaining individual claims in the Lawsuit.

25. "Settlement Administration Costs" means the fees and costs incurred or charged by the Settlement Administrator in connection with the execution of its duties under this Agreement

1 including, but not limited to: (i) fees and costs associated with preparing, issuing and/or
2 monitoring reports, filings and notices (including the cost of printing, verifying addresses
3 through a United States Postal Service national change of address database (which provides
4 updated addresses for any individual who has moved in the previous four years who has
5 notified the U.S. Postal Service of a forwarding address) to obtain current address information,
6 skip tracing, and mailing all notices and other documents to the Aggrieved Employees)
7 required to be prepared in the course of administering the Settlement; (ii) computing the
8 amount of the Settlement Payments, taxes, and any other payments to be made under this
9 Agreement; (iii) handling inquiries about the calculation of individual Settlement Payments or
10 mailings; (iv) establishing and operating a physical Settlement payment center address, and
11 phone number to receive Aggrieved Employees' inquiries about the Settlement; (v) remitting
12 any tax deductions or subtractions applicable under the law and/or pursuant to this Agreement
13 and preparing and submitting any filings required by any governmental taxing authority or
14 other governmental agency and/or Defendants' worker's compensation insurer; and (vi)
15 establishing a Qualified Settlement Fund. Settlement Administration Costs will not exceed
16 Two Thousand Five Hundred Dollars and No Cents (\$2,500.00).

17 26. "Settlement Administrator" refers to Phoenix Settlement Administrators, to administer this
18 Settlement and to act as the administrator to process the Settlement under the terms of this
19 Agreement.

20 27. "Settlement Payment(s)" refers to the payment(s) to any Aggrieved Employee pursuant to the
21 terms of this Agreement.

22 28. "Settlement and Release Period" means from June 15, 2020 through the date the Court enters
23 the order granting final approval of the PAGA settlement.

24
25 **WHEREAS**, on or about May 20, 2021, Plaintiff by and through Plaintiff's counsel, sent a
26 notice to the California Labor Workforce Development Agency ("LWDA") and Defendants (the
27 "PAGA Notice") alleging that Defendants engaged in violations of the California Labor Code and
28 California Wage Orders, seeking civil penalties pursuant to the California Labor Code Private

1 Attorneys' General Act ("PAGA");

2 **WHEREAS**, on or about June 15, 2020, Plaintiff filed a Complaint in the California Superior
3 Court for the County of Los Angeles entitled Henry Martinez v. Mark D. Phillips, Inc., et al., (the
4 "Action") alleging individual employment claims;

5 **WHEREAS**, this Settlement is entered into on June 16, 2022 by and between Plaintiff, on
6 behalf of themselves and "Aggrieved Employees" (defined below), on the one hand, and Defendants,
7 on the other hand, to memorialize the essential terms of the settlement of Plaintiff's representative
8 claims asserted in the Action.

9 **WHEREAS**, on or about June 15, 2020, Plaintiff filed a Complaint, alleging the following
10 causes of action: (1) Violation Of The Private Attorneys General Act Of 2004; (2) Failure to Pay
11 Minimum Wage; (3) Failure to Compensate for All Hours Worked (4) Failure to Pay Overtime
12 Compensation; (5) Failure To Pay Meal Period Compensation; (6) Failure To Rest Period
13 Compensation; (7) Failure To Furnish Accurate Wage and Hour Statements; (8) Failure to Pay Wages
14 Upon Discharge; (9) Statutory Penalties; (10) Failure to Indemnify and Illegal Deductions From
15 Wages; (11) FEHA - Discrimination; (12) FEHA Failure To Accommodate; (13) FEHA Failure To
16 Engage in Good Faith Interactive Process; (14) FEHA - Wrongful Termination; (15) Wrongful
17 Termination In Violation Of Public Policy; (16) Unfair Competition;

18 **WHEREAS**, for purposes of Plaintiff representative claims under PAGA, and for purposes of
19 the Action (as defined below) and this PAGA Agreement, the alleged aggrieved individuals
20 ("Aggrieved Employees") are defined by Plaintiff to be all current and former non-exempt employees,
21 who worked at least one pay period for Defendants during the PAGA Period. The PAGA Period is
22 defined to be from June 15, 2020 through the date this Court approves the settlement described herein
23 (the "PAGA Settlement") and enters judgment pursuant to the terms of the PAGA Settlement (the
24 "Approval Date");

25 Defendants represent that the PAGA Members Settlement Class consists of approximately 41
26 employees and 612 pay periods during the PAGA Period.

27 **WHEREAS**, Defendants vigorously dispute and deny the allegations and various causes of
28 action asserted in the Action, including, without limitation, Plaintiff's individual claims and the

1 Aggrieved Employees' claim for civil penalties pursuant to PAGA;

2 **WHEREAS**, the Parties engaged in an informal exchange of documents and information
3 including Defendants' financial records. The Parties have also conducted extensive independent
4 investigation and evaluations of the claims and defenses in this matter. Both Plaintiff's counsel and
5 Defendants' counsel have significant experience litigating and resolving the type of wage-and-hour
6 claims alleged in the Action, including claims for civil penalties under PAGA;

7 **WHEREAS**, according to the PAGA Settlement Agreement, Plaintiff's "PAGA Claims" are
8 defined as any and all claims for civil penalties pursuant to PAGA based on the allegations in
9 Plaintiff's Complaints and/or PAGA Notices, broadly construed, including, but not limited to, civil
10 penalties based on or arising from California Labor Code Sections 98.6, 200, 201, 201.5, 202, 203,
11 204, 205.5, 206, 206.5, 208, 210, 215, 216, 218.5, 221, 223, 224, 225.5, 226, 226(a)(1), 226(a)(5),
12 226(a)(8), 226(a)(9), 226(c), 226(e)(1), 226(f), 226.3, 226.6, 226.7, 226.8, 227.3, 233 *et seq.*, 246,
13 247, 432.5, 450, 500, 510, 512, 512(a), 551, 552, 553, 558, 558(a)(3), 558.1, 1102.5, 1174, 1174.5,
14 1175, 1182.12, 1194, 1194.2, 1197, 1197.1, 1197.2, 1198, 1198.5, 1198.5(k), 1199, 1776, 2698 *et seq.*,
15 2699.3(c)(1), 2699(i), 2802 and 2810.5 *et seq.*, California Code of Civil Procedure Section 1021.5,
16 3294, California Constitution Article I § 8, Government Code Section 12926.1, 12940 *et seq.*,
17 12940(h) *et seq.*, 12940(m), 12940(n), 12945.2, 12945.2(c)(3)(C), 12965(b), 12965(c) California
18 Business and Professions Code Section 17200 *et seq.*, and the California Wage Orders, whether known
19 or unknown, suspected or unsuspected, concealed or hidden, that were alleged in the Action and/or
20 the PAGA Notice, or that could have been alleged in the Action and/or PAGA Notices, which Plaintiff
21 and any Aggrieved Employee have or had at any time through and including the Approval Date,
22 against any of the Releasees identified in the PAGA Settlement Agreement. A true and correct copy
23 of the PAGA Settlement Agreement is attached hereto as Exhibit A, and its defined terms are hereby
24 incorporated by reference;

25 **WHEREAS**, California Labor Code Section 2699(l)(2) requires that this Court review and
26 approve any settlement pursuant to PAGA;

27 **WHEREAS**, the Parties recognize that the issues presented in the Action are likely only to be
28 resolved with extensive and costly discovery, pretrial and trial proceedings, and that further litigation

1 will cause inconvenience, distraction, disruption, delay and expense disproportionate to the potential
2 benefits of litigation. The Parties agree that it reflects their good faith compromise of the claims raised
3 in the Action, based upon their assessment of the mutual risks and costs of further litigation and the
4 assessments of their respective counsel;

5 **WHEREAS**, the parties agree to fully cooperate to obtain approval of the settlement, pursuant
6 to the terms set forth herein. The Parties also pledge their good faith effort and fair dealing in providing
7 assistance and assent to a final Joint Stipulation for Settlement (or similar long-form Settlement
8 Agreement), and in effectuating the terms of the settlement of Plaintiff's representative claims asserted
9 in the Action.

10 **WHEREAS**, the Parties have provided a copy of this Joint Stipulation and the proposed PAGA
11 Settlement Agreement to the LWDA in accordance with Labor Code Section 2699(1)(2), and a proof
12 of service to the LWDA is attached hereto

13 **WHEREAS**, in consideration of the terms and conditions set forth in the PAGA Settlement
14 Agreement, the Parties agree to be bound to the terms and conditions set forth in the PAGA Settlement
15 Agreement, including that:

16 Upon expiration of the appeal period after the final Approval Date, the Company shall
17 pay the total sum of Ten Thousand Dollars (\$10,000.00) (the "PAGA Settlement Sum") on account of
18 disputed and alleged civil penalties as follows:

19 A. One-third (1/3) of the PAGA Gross Settlement Amount ("PGSA"), \$3,333.33,
20 plus \$75.00 for costs, totaling \$3,408.33, shall be paid to Plaintiff's counsel Sirmabekian Law Firm
21 PC, for attorney's fees and costs incurred on the PAGA claims; an enhancement payment to Plaintiff
22 in the amount of up to \$500.00; and \$2,500.00 shall be paid to the settlement administrator.

23 B. The remaining balance after deducting the amount being paid to Plaintiff's
24 counsel for attorney's fees, costs, and administration on the PAGA claims, \$6,408.33 (the " PAGA
25 Net Settlement Amount" or "PNSA"), shall be classified for tax purposes as civil penalties ("Civil
26 Penalty Allocation"), unless otherwise required by law, and shall be distributed as follows:

27 The remaining balance after deducting the above amounts being paid to Plaintiff's
28 counsel, Aggrieved Employees' Counsel will request, and Defendants will not oppose:

i. Seventy-Five Percent (75%) of the Civil Penalty Allocation, \$4,806.24, shall be paid to the LWDA, which represents civil penalties payable to the LWDA under the PAGA, Labor Code section 2698, *et seq.*;

ii. Twenty Five Percent (25%) of the Civil Penalty Allocation, \$1,602.08, (the “Aggrieved Employee Amount”) shall be paid to the PAGA Members, pursuant to Labor Code § 2699(i), divided amongst PAGA Members based on each PAGA Member’s respective number of pay periods worked for Defendants in California during the PAGA Period.

Plaintiff agrees that counsel for Plaintiff will notify the LWDA of the settlement at the same time the settlement is submitted to the Court for approval, seek approval of the settlement, and perform any and all statutory tasks as required by law.

The Parties further agree that should the Court deny approval of the settlement based on the allocation of the PGSA or PNSA, the Parties agree to re-negotiate in good faith in an effort to obtain approval of the settlement.

WHEREAS, upon Court approval of the Settlement and performance of the payment obligations therein, Plaintiff and PAGA Members will fully and finally release and discharge Defendants and its former, present and future owners, parents, and subsidiaries, and all of their current, former and future spouse(s), children, officers, directors, members, managers, employees, consultants, partners, shareholders, joint venturers, agents, successors, assigns, accountants, insurers, or legal representatives (“Released Parties”), from all claims, rights, demands, liabilities and causes of action for civil penalties under the PAGA asserted, or that could have been asserted in the Complaint, including, but not limited to, those under California Labor Code §§ 201, 202, 203, 204, 206.5, 210, 221, 223, 224, 225.5, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2802, Wage Order sections 3, 4, 7, 9, 11, 12, 20, and a California Civil Code § 1542 release as to those sections, that arose during the PAGA Period, based on the factual allegations pled in the operative complaint in the Action. These released claims include, but are not limited to the following claims: (a) failure to pay all overtime wages; (b) failure to pay all minimum wages; (c) failure to pay wages, (d) failure to pay for all work, including off-the-clock work (e) failure to provide proper meal periods; (d) failure to authorize and permit rest periods; (e) failure to furnish accurate

1 wage statements; (f) failure to reimburse employees for business expenses; (g) misclassification of
2 employees as independent contractors, (h) failure to timely pay final wages, and (i) failure to
3 indemnify and illegal deductions from wages, including any related claims for attorneys' fees, costs,
4 or interest resulting therefrom ("Released Claims").

5 **WHEREAS**, defendants shall pay a Settlement to Plaintiff and his Counsel in exchange for a
6 release as to Released Parties of all claims, including individual, and representative action claims, all
7 causes of action, and matters that are based on, arise from, pertain and relate to, result from and could
8 have been alleged based on the facts, claims and allegations pertaining and related to and forming the
9 basis of the Action, including a Section 1542 release and waiver of all claims known and unknown,
10 without exception, except as may be prohibited by law. Payment of the Settlement to Plaintiff will
11 occur after the Court approves the PAGA settlement. Plaintiff shall not participate as class
12 representative or class member with respect to any class claims related to the releases arising out of
13 this Agreement.

14 **WHEREAS**, defendants will provide PAGA Members' information (names, addresses, phone
15 numbers, social security numbers, and number of pay periods worked for Defendants in California
16 during the PAGA Period) to the Settlement Administrator to assist the settlement process within fifteen
17 (15) business days of the court signing the approval order.

18 Plaintiff has sole responsibility for all tax consequences of payments and penalties and agrees
19 to indemnify Defendants regarding same.

20 **WHEREAS**, defendants represent that they have employed 41 persons from the beginning of
21 the PAGA Period through present. If as of the date of court approval, the number of PAGA Members
22 exceeds 41 by more than ten percent (10%) (i.e., the number of PAGA Members exceeds 41 by 5 or
23 more PAGA Members), then the amount of the Gross Settlement Amount shall increase in proportion
24 to the increased percentage. For example, if such increase in PAGA Members during the PAGA Period
25 is 11% over 41 PAGA Members, the Gross Settlement Fund will increase by 11%.

26 Partied agree that Phoenix Settlement Administrators, shall be the Settlement
27 Administrator. Payments to PAGA members, the LWDA, Plaintiff, and Plaintiff's Counsel shall be
28 made by the Settlement Administrator within 21 days of the payment by Defendants. All checks to

1 Aggrieved Employees will be sent by the Settlement Administrator to each Aggrieved Employees'
2 last known address on file with Defendants and shall remain valid and negotiable for 180 days from
3 the date of their issuance to Aggrieved Employees. If any checks are returned as undeliverable, the
4 Settlement Administrator shall make reasonable efforts to obtain an updated address and reissue a
5 check to that Aggrieved Employee. All funds not claimed within 180 days of the initial mailing shall
6 be directed to the State Controller's Office under the Unclaimed Property Statutes in the name(s) of
7 the individual(s) who did not cash his or her check(s).

8 **WHEREAS**, discovery is stayed in the Action while the Parties work toward settlement and
9 court approval of the settlement. The Parties shall submit stipulations of settlement within 30 days of
10 execution of a full and complete settlement agreement, which fully executed settlement agreement
11 should occur within 45 days of the settlement.

12 **WHEREAS**, the Parties agree that this PAGA Settlement is not evidence that the operative
13 complaint filed in the Action by Plaintiff has any merit, nor does it constitute an admission of any
14 wrongdoing by Defendants. Defendants do not admit to liability or to the suitability of this case for
15 representative litigation other than for purposes of settlement. This PAGA Settlement will not be
16 deemed admissible in any other proceeding or in this proceeding other than to effectuate this
17 settlement. If the Court does not grant approval of this settlement, then the Parties revert to their
18 previous positions and Defendants will contend that a representative action is not appropriate.

19 **WHEREAS**, the Parties to this PAGA Settlement are represented by competent counsel, and
20 they have had an opportunity to consult with counsel. The Parties to this PAGA Settlement agree that
21 it reflects their good faith compromise of the claims raised in the Action, based upon their assessment
22 of the mutual risks and costs of further litigation and the assessments of their respective counsel.

23 **WHEREAS**, the Parties agree that this PAGA Settlement is confidential (except for purposes
24 of enforcement) and that no Party will communicate with or to anyone the settlement or anything to
25 do with the settlement, including, but not limited, to the issuance of any press release nor other public
26 or non-public representation regarding the settlement other than as necessary to obtain Court approval
27 and effectuate the terms of the settlement. The Parties and their counsel agree that they will not initiate
28 or have any contact with the press, respond to any press inquiry, or have any communication with the

1 press about this case.

2 **WHEREAS**, the Parties intend that this PAGA Settlement shall be fully enforceable and
3 binding upon all Parties, and that it shall be admissible and subject to disclosure in any proceeding to
4 enforce its terms under Code of Civil Procedure section 664.6 and any other applicable statute or law,
5 notwithstanding the mediation confidentiality provisions that otherwise might apply under local,
6 federal and state law.

7 **WHEREAS**, the Parties agree that mediator Eve Wagner, Esq. may, at her discretion, execute
8 a Declaration supporting the settlement and the Court may, in its discretion, contact Eve Wagner to
9 discuss the settlement.

10 **WHEREAS**, the Parties agree that the subsequent filing of a Joint Stipulation of Settlement
11 (or similar Settlement Agreement) is for settlement purposes only and if, for any reason, the settlement
12 is not approved, the Joint Stipulation of Settlement and this PAGA Settlement will be of no force or
13 effect.

14 **WHEREAS**, the Defendants shall not authorize or knowingly permit any disparaging or
15 critical statements in reference to Plaintiff's employment with Defendants. In response to requests for
16 employment verification, Defendants will only provide (i) dates of Plaintiff's employment and (ii)
17 position.

18 The Parties shall not make any disparaging or critical statement about, relating or pertaining
19 to, or otherwise involving each other.

20 **WHEREAS**, the Parties to this PAGA Settlement agree that the long-form Settlement
21 Agreement will contain an integration clause.

22 **WHEREAS**, Plaintiff will prepare and file a motion, if necessary, with the Court requesting
23 Approval of the PAGA Settlement. If the Court does not approve the settlement reached at mediation,
24 the Parties agree to work cooperatively together to renegotiate the terms of any settlement within 60
25 days of the first date the Court fails to approve the settlement. Should Court approval of a settlement
26 still not occur within 60 days after any such renegotiation, then any settlement and agreement is null
27 and void, of no force and effect whatsoever and shall not be referred to or used for any purpose
28 whatsoever and the Parties will be restored to their positions prior to mediation, unless the Parties

1 mutually agree otherwise in writing.

2 Plaintiff acknowledges that Plaintiff already attained the age of 40 and understands that the
3 full release of all existing claims whether currently known or unknown includes, but is not limited to
4 claims for age discrimination under the Age Discrimination in Employment Act. Plaintiff:

- 5 a. Has been advised that he had no less than twenty-one (21) days during which to
6 consider the provisions of the Memorandum of Understanding ("MOU") dated June
7 16, 2022. .
- 8 b. Has carefully read and fully understands all of the provisions of this Agreement and
9 the MOU.
- 10 c. Is, through this Agreement and the MOU, releasing the Released Parties from any and
11 all claims he may have against them.
- 12 d. Knowingly and voluntarily agrees to all of the terms set forth in this Agreement and
13 the MOU.
- 14 e. Knowingly and voluntarily intends to be legally bound by it.
- 15 f. Was advised and hereby is advised in writing to consider the terms of this Agreement
16 and the MOU and to consult with an attorney of his choice prior to executing this
17 Agreement.
- 18 g. Understands that he had a period of seven (7) calendar days following his execution of
19 the MOU to revoke his acceptance of the terms of the MOU only as it relates to claims
20 under the ADEA by delivering a written notification to counsel for Defendants,
21 Pearlman, Brown & Wax LLP, via personal messenger service to Pearlman, Brown &
22 Wax LLP, attention Corinne D. Spencer. The front desk staff at Pearlman, Brown &
23 Wax LLP, 15910 Ventura Blvd., 18th floor, Encino, CA 91436 can accept service
24 during business hours. Plaintiff has been and hereby is advised in writing that the
25 revocation period expired on June 23, 2022 without revocation by Plaintiff..
- 26 h. Understands that rights or claims under the ADEA that may arise due to acts or
27 omissions that occur after the date this Agreement is executed are not waived.

1 This Court shall retain jurisdiction to enforce the terms of the PAGA Settlement Agreement
2 pursuant to California Code of Civil Procedure Section 664.6; and

3 **NOW THEREFORE**, the Parties jointly request that the Court approve the PAGA Settlement
4 set forth in the PAGA Settlement Agreement and enter judgment accordingly to its terms.

5 DATED: October 17, 2022

PEARLMAN, BROWN & WAX, L.L.P.

7
8 By:



CORINNE D. SPENCER
ANTWOIN D. WALL
Attorneys for Defendants

11
12 DATED: October 17, 2022

SIRMABEKIAN LAW FIRM PC

14
15
16 By:



SARKIS SIRMABEKIAN
Attorney for Plaintiff

EXHIBIT A

[MODEL] PAGA SETTLEMENT AGREEMENT¹

This PAGA Settlement Agreement (“Agreement”) is made by and between plaintiff Henry Martinez (“Plaintiff”) and defendant Mark D. Phillips, Inc. and Mark Phillips (“PHILLIPS”). The Agreement refers to Plaintiff and PHILLIPS collectively as “Parties,” or individually as “Party.”

1. DEFINITIONS.

- 1.1. “Action” means the Plaintiff’s PAGA lawsuit alleging wage and hour violations against PHILLIPS captioned Henry Martinez vs Mark D. Phillips, Inc., et al. initiated on August 19, 2021 and pending in Superior Court of the State of California, County of Los Angeles.
- 1.2. “Administrator” means Phoenix Settlement Administrators, the neutral entity the Parties have agreed to appoint to administer the Settlement.
- 1.3. “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with approval of this Settlement.
- 1.4. “Aggrieved Employee” means [e.g., a person employed by PHILLIPS in California and classified as a current and former non-exempt employee who worked for PHILLIPS during the PAGA Period].
- 1.5. “Aggrieved Employee Data” means Aggrieved Employee identifying information in PHILLIPS’s possession including the Aggrieved Employee’s name, last-known mailing address, Social Security number, and number of PAGA Pay Periods.
- 1.6. “Aggrieved Employee Address Search” means the Administrator’s investigation and search for current Aggrieved Employee mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Aggrieved Employees.
- 1.7. “Court” means the Superior Court of California, County of Los Angeles.
- 1.8. “Defense Counsel” means Pearlman, Brown & Wax, L.L.P.
- 1.9. “Effective Date” means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Approving the PAGA Settlement and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) the day the Court enters Judgment.

“Gross Settlement Amount” means \$10,000.00 which is the total amount PHILLIPS agrees to pay under the Settlement except as provided in Paragraph 9 below. The Gross Settlement

Amount will be used to pay Individual PAGA Payments, the LWDA PAGA Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, and the Administrator's Expenses Payment.

- 1.10. "Individual PAGA Payment" means the Aggrieved Employee's pro rata share of 25% of the PAGA Penalties calculated according to the number of Pay Periods the Aggrieved Employee worked during the PAGA Period.
- 1.11. "Judgment" means the judgment entered by the Court based upon the Final Approval.
- 1.12. "LWDA" means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).
- 1.13. "LWDA PAGA Payment" means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).
- 1.14. "Net Settlement Amount" means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to Aggrieved Employees as Individual PAGA Payments.
- 1.15. "PAGA Counsel" means Sirmabekian Law Firm, PC, the attorneys representing the Plaintiff in the Action.
- 1.16. "PAGA Counsel Fees Payment" and "PAGA Counsel Litigation Expenses Payment" mean the amounts allocated to PAGA Counsel for reimbursement of reasonable attorneys' fees and expenses, respectively, incurred to prosecute the Action.
- 1.17. "PAGA Pay Period" means any Pay Period during which an Aggrieved Employee worked for PHILLIPS for at least one day during the PAGA Period.
- 1.18. "PAGA Period" means the period from June 15, 2020 to through the date the Court enters the order granting final approval of the PAGA settlement.ⁱⁱ
- 1.19. "PAGA" means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).
- 1.20. "PAGA Notice" means Plaintiff's May 20, 2021 letter to PHILLIPS and the LWDA [and Plaintiff's May 20, 2021 letter to PHILLIPS and the LWDA] providing notice pursuant to Labor Code section 2699.3, subd.(a).
- 1.21. "PAGA Penalties" means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$1,602.08) and the 75% to LWDA (\$4,806.24) in settlement of PAGA claims.
- 1.22. "Plaintiff" means Henry Martinez, the named plaintiff in the Action.

- 1.23. "Approval Order" means the proposed Court Order Granting Approval of PAGA Settlement.
- 1.24. "Released PAGA Claims" means the claims being released by the Plaintiff and PAGA Counsel and as described in Paragraph 5 below.
- 1.25. "Released Parties" means: PHILLIPS and each of its former and present directors, officers, shareholders, owners, [members], attorneys, insurers, predecessors, successors, assigns [subsidiaries] [affiliates].
- 1.26. "Settlement" means the disposition of the Action effected by this Agreement and the Judgment.
- 1.27. PHILLIPS" means named Defendant Mark D. Phillips, INC., and Mark Phillips.

2. RECITALS.

- 2.1. On August 19, 2021, Plaintiff commenced this Action by filing a Complaint alleging causes of action against PHILLIPS for California wage and hour claims, PAGA, FEHA, penalties, interest. The 8/19/21 Complaint is the operative complaint in the Action (the "Operative Complaint.")). PHILLIPS denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in in the Operative Complaint and denies any and all liability for the causes of action alleged.
- 2.2. Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave timely written notice to PHILLIPS and the LWDA by sending the PAGA Notice.
- 2.3. On June 14, 2022,
- ☒ the Parties participated in an all-day mediation presided over by Eve Wagner, Esq. which led to this Agreement to settle the Action.
- ☐ _____ (describe alternative means of negotiation) _____.
- 2.4. Prior to ☒ mediation ☐ negotiating the Settlement, Plaintiff obtained, through ☐ formal ☒ informal discovery, payroll records, wage statements, and Plaintiff's personnel file _____.
- 2.5. The Parties, PAGA Counsel and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

3. MONETARY TERMS.

- 3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 9 below, PHILLIPS promises to pay \$10,000.00 and no more as the Gross Settlement Amount.

PHILLIPS has no obligation to pay the Gross Settlement Amount prior to the deadline stated in Paragraph 6.1 of this Agreement.ⁱⁱⁱ The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to PHILLIPS.

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

3.2.1. To PAGA Counsel: A PAGA Counsel Fees Payment of not more than 33.33% which is currently estimated to be \$3,333.33 and PAGA Counsel Litigation Expenses Payment of not more than \$75. PHILLIPS will not oppose requests for Court approval of these payments provided that they do not exceed these amounts. Plaintiff and/or PAGA Counsel will file an application or motion for PAGA Counsel Fees Payment and PAGA Litigation Expenses Payment. If the Court approves a PAGA Counsel Fees Payment and/or a PAGA Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to PAGA Counsel or any other Plaintiff's Counsel arising from any claim to any portion any PAGA Counsel Fee Payment and/or PAGA Counsel Litigation Expenses Payment. The Administrator will pay the PAGA Counsel Fees Payment and PAGA Counsel Expenses Payment using one or more IRS 1099 Forms. PAGA Counsel assumes full responsibility and liability for taxes owed on the PAGA Counsel Fees Payment and the PAGA Counsel Litigation Expenses Payment and holds PHILLIPS harmless, and indemnifies PHILLIPS, from any dispute or controversy regarding any division or sharing of any of these Payments.

3.2.2. To the Administrator: An Administrator Expenses Payment not to exceed \$2,500.00 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than \$2,500.00, the Administrator will retain the remainder in the Net Settlement Amount.

3.2.3. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$4,091.67 to be paid from the Gross Settlement Amount, with 75% (\$3,068.75) allocated to the LWDA PAGA Payment and 25% (\$1,022.92) allocated to the Individual PAGA Payments.

3.2.3.1. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$1,022.92) by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

- 3.2.3.2. If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

4. SETTLEMENT FUNDING AND PAYMENTS.

- 4.1. Aggrieved Employee Pay Periods. Based on a review of its records to date, PHILLIPS estimates there are 41 Aggrieved Employees who worked a total 612 of PAGA Pay Periods.
- 4.2. Aggrieved Employee Data. Within [15] days, PHILLIPS will simultaneously deliver the Aggrieved Employee Data to the Administrator in the form of a Microsoft Excel spreadsheet. To protect Aggrieved Employee' privacy rights, the Administrator must maintain the Aggrieved Employee Data in confidence, use the Aggrieved Employee Data only for purposes of this Settlement and for no other purpose, and restrict access to the Aggrieved Employee Data to Administrator employees who need access to the Aggrieved Employee Data to effect and perform under this Agreement. PHILLIPS has a continuing duty to immediately notify PAGA Counsel if it discovers that the Aggrieved Employee Data omitted employee identifying information and to provide corrected or updated Aggrieved Employee Data as soon as reasonably feasible. Without any extension of the deadline by which PHILLIPS must send the Aggrieved Employee Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Aggrieved Employee Data.
- 4.3. Funding of Gross Settlement Amount. PHILLIPS shall fully fund the Gross Settlement Amount by transmitting the funds to the Administrator no later than [14] days after the Effective Date.
- 4.4. Payments from the Gross Settlement Amount. Within [14] days after PHILLIPS funds the Gross Settlement Amount, the Administrator will mail checks for all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the PAGA Counsel Expenses Payment. Disbursement of the PAGA Counsel Litigation Expenses Payment shall not precede disbursement of Individual PAGA Payments.
- 4.4.1. The Administrator will issue checks for the Individual PAGA Payments and send them to the Aggrieved Employees via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database.
- 4.4.2. The Administrator must conduct an Aggrieved Employee Address Search for all Aggrieved Employees whose checks are returned undelivered without USPS forwarding address. Within [7] days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to

an address ascertained through the Aggrieved Employee Address Search. The Administrator need not take further steps to deliver checks to Aggrieved Employees whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Aggrieved Employee whose original check was lost or misplaced, requested by the Aggrieved Employee prior to the void date.

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

4.4.4. The payment of Individual PAGA Payments shall not obligate PHILLIPS to confer any additional benefits or make any additional payments to the Aggrieved Employees (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

5. RELEASES OF CLAIMS. Effective on the date when PHILLIPS fully funds the entire Gross Settlement Amount Plaintiff and PAGA Counsel will release claims against all Released Parties as follows:

5.1 Plaintiff's Release. Plaintiff and his or her respective former and present spouses, representatives, agents, attorneys (including PAGA Counsel), heirs, administrators, successors, and assigns generally, release and discharge Released Parties from all claims, transactions, or occurrences [that occurred during the PAGA Period], including, but not limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts contained in the Operative Complaint and the PAGA Notice ("Plaintiff's Release"). Plaintiff's Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time, or based on occurrences outside the PAGA Period. Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them.

5.1.1 Plaintiff's Waiver of Rights Under California Civil Code Section 1542. For purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

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.

5.2 Release by Aggrieved Employees:

All Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint [,] [and] the PAGA Notice.

5.3 Release by PAGA Counsel:

PAGA Counsel release on behalf of their present and former attorneys, employees, agents, successors and assigns the Released Parties from all claims for PAGA Fees incurred in connection with the Operative Complaint and the PAGA Period facts stated in the Operative Complaint and the PAGA Notice.

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

6.1 Plaintiff's Responsibilities. Plaintiff will prepare and deliver to Defense Counsel all documents necessary for obtaining approval of this Settlement under Labor Code Section 2699, subd. (f)(2)) including (i) a draft proposed Order Granting Approval of PAGA Settlement; (ii) a signed declaration from the Administrator attaching its "not to exceed" bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Aggrieved Employee Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Aggrieved Employees or the LWDA; and the nature and extent of any financial relationship with Plaintiff, PAGA Counsel or Defense Counsel; (iii) a signed declaration from PAGA Counsel firm attesting to its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699, subd. (l)(2)); (iv) a redlined version of the parties' Agreement showing all modifications made to the Model Agreement ready for filing with the Court; and (v) all facts relevant to any actual or potential conflict of interest with Aggrieved Employees and/or the Administrator. In their Declarations, Plaintiff and PAGA shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

6.2 Responsibilities of PAGA Counsel. PAGA Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the application or motion for approval of this Settlement no later than [30] days after the full execution of this Agreement and, if necessary, obtaining a prompt hearing date for the motion and appearing in Court to advocate in favor of the motion. PAGA Counsel is responsible for delivering the Court's Preliminary Approval to the Administrator.

6.3 Duty to Cooperate. If the Parties disagree on any aspect of the proposed application or motion for approval of this Settlement and/or the supporting declarations and documents, PAGA Counsel and Defense Counsel will expeditiously work together on

behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant the motion for approval of this Settlement or conditions its approval on any material change to this Agreement, PAGA Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns.

7. SETTLEMENT ADMINISTRATION.

- 7.1 Selection of Administrator. The Parties have jointly selected Phoenix Settlement Administrators to serve as the Administrator and verified that, as a condition of appointment, Phoenix Settlement Administrators agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.
- 7.2 Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports state and federal tax authorities.
- 7.3 Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation section 468B-1.
- 7.4 Administrator Duties. The Administrator has a duty to perform or observe all tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

8. AGGRIEVED EMPLOYEE SIZE ESTIMATES [and ESCALATOR CLAUSE]

Based on its records, PHILLIPS estimates that, as of the date of this Settlement Agreement, (1) there are 41 Aggrieved Employees who worked 612 Pay Periods during the PAGA Period.^{iv}

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

- 9.1 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the PAGA Counsel Fees Payment and PAGA Counsel Litigation Expenses Payment, the Parties, their respective counsel waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If another party appeals

the Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.

10. ADDITIONAL PROVISIONS.

- 10.1 No Admission of Liability or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by PHILLIPS that any of the allegations in the Operative Complaint have merit or that PHILLIPS has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that PHILLIPS's defenses in the Action have merit. The Parties agree that representative treatment is for purposes of this Settlement only. If, for any reason the Court does not approve this Settlement, PHILLIPS reserves all available defenses to the claims in the Action, and Plaintiff reserves the right to contest PHILLIPS's defenses. The Settlement, this Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).
- 10.2 Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.
- 10.3 Attorney Authorization. PAGA Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiff and PHILLIPS, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.
- 10.4 Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.
- 10.5 No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.

- 10.6 No Tax Advice. Neither Plaintiff, PAGA Counsel, PHILLIPS nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.
- 10.7 Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.
- 10.8 Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
- 10.9 Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.
- 10.10 Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
- 10.11 Confidentiality. To the extent permitted by law, all agreements made, and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.
- 10.12 Use and Return of Aggrieved Employee Data. Information provided to PAGA Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the PAGA Data provided to PAGA Counsel by PHILLIPS in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than 90 days after the Administrator discharges its obligation to pay out of all Settlement funds, Plaintiff shall destroy all paper and electronic versions of Aggrieved Employee Data received from PHILLIPS unless, prior to the Administrator's payment of all Settlement Funds, PHILLIPS makes a written request to PAGA Counsel for the return, rather than the destructions, of Aggrieved Employee Data.
- 10.13 Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
- 10.14 Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.
- 10.15 Notice. All notices, demands or other communications between the Parties in

connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

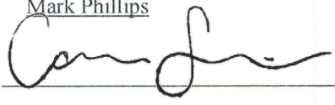
To Plaintiff: Sarkis Sirmabekian (SBN 278588)
SIRMABEKIAN LAW FIRM, PC
3435 Wilshire Blvd., Suite 1710
Los Angeles, California 90010
Telephone: 818.473.5003
Facsimile: 818.476.5619
E-mail: contact@slawla.com

To PHILLIPS: Corinne D. Spencer (SBN 285290)
Antwain D. Wall (SBN 289413)
PEARLMAN, BROWN & WAX, L.L.P.
15910 Ventura Boulevard, 18th Floor
Encino, California, 91436
Telephone: 818.501.4343
Facsimile: 818.386.5700
E-mail: cds@4pbw.com
adw@4pbw.com

10.16 Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

10.17 Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.

DocuSigned by:
 9/30/2022
3965AE6AB4894B8...
Henry Martinez For Plaintiff
DocuSigned by:
Sarkis Sirmabekian 10/18/2022
847C4C0AA169454...
Sarkis Sirmabekian, Esq. Counsel For Plaintiff

 10-4-2022
Mark D. Phillips, Inc.
Mark Phillips For PHILLIPS
 10/12/2022
Corinne D. Spencer
Antwain D. Wall Counsel For PHILLIPS

ⁱThis Form PAGA Settlement Agreement has been approved by the Court, the complex litigation judges and a 2022 Ad Hoc Wage and Hour Committee co-chaired by Judge David Cunningham and Judge Amy Hogue and comprised of 16 attorneys who regularly represent plaintiffs and defendants in wage and hour cases. It was drafted for settlements of single plaintiff PAGA claims against a single employer (PHILLIPS). The parties will need to revise this form if there are multiple Plaintiffs or multiple Defendants. For settlements of wage and hour class actions that include PAGA claims, please use the Form Class Action and PAGA Settlement Agreement and Class Notice.

ⁱⁱ See endnote ii above. THE COURT ASKS ALL COUNSEL USING THIS MODEL AGREEMENT TO ATTACH A REDLINED VERSION TO THEIR MOTIONS OR APPLICATIONS FOR APPROVAL SO THAT THE COURT CAN EASILY SEE EXACTLY HOW THE PARTIES HAVE MODIFIED THIS MODEL AGREEMENT.

ⁱⁱⁱ The Parties are free to negotiate a payment plan structure, if appropriate, and payment deadlines may fall earlier as necessary thereto.

^{iv} Insert negotiated terms, if any, addressing the possibility that PHILLIPS's estimates of the number of Aggrieved Employees or Pay Periods turn out to be understated such as an ADR clause imposing a duty to engage in good faith negotiations or mediation or an "escalator" clause memorializing PHILLIPS's promise to increase the Gross Settlement Amount in an agreed upon proportion to the percentage by which the calculated number of Aggrieved Employees or Pay Periods exceeds PHILLIPS's estimates.

PROOF OF SERVICE
(§ 1013a, 2015.5 C.C.P.)

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am a citizen of the United States of America; I am over the age of eighteen years and not a party to the within entitled action; my business address is: 3435 Wilshire Boulevard, Suite 1710, Los Angeles, California 90010.

On the below-indicated date, I served the following document:

**STIPULATION BY ALL PARTIES FOR ORDER APPROVING SETTLEMENT
PURSUANT TO CALIFORNIA LABOR CODE PRIVATE ATTORNEYS' GENERAL ACT
AND ENTERING JUDGMENT**

on the interested parties in said action by placing:

___X___ a true and correct copy,

and addressed as set forth on the attached Service List and delivered by one or more of the means set forth below:

☒ **BY ELECTRONIC SERVICE IN LIEU OF SERVICE BY MAIL, EXPRESS MAIL, OVERNIGHT DELIVERY, OR FACSIMILE TRANSMISSION:** In accordance with California Code of Civil Procedure section 1010.6, I caused the document to be sent to the person(s) below at the e-mail address(es) listed below.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

EXECUTED: November 10, 2022
At Los Angeles, California

Grigor Gregg Sirmabekian
Grigor Gregg Sirmabekian

[SERVICE LIST ON THE FOLLOWING PAGE]

SERVICE LIST

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Labor and Workforce Development Agency ("LWDA") Department of Industrial Relations Attn. PAGA Administrator 1515 Clay Street, Suite 801 Oakland, CA 94612	<i>Labor and Workforce Development Agency ("LWDA") filed/ served online at:</i> <i>https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html</i>